

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
PANOCHE WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT

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[1<sup>st</sup>] 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

[2<sup>nd</sup>] WHEREAS, the United States constructed the Delta Division Facilities, including the San Luis Unit facilities (which include the San Luis Canal, the Coalinga Canal, the Pleasant Valley Pumping Plant, and the Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

[4<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-7864A, as amended, which provided the Contractor, Project Water from the Project facilities from August 30, 1974 to December 31, 2008; and

[5<sup>th</sup>] 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 binding agreements identified as Binding Agreement No. 14-06-200-495A-BA, and Binding Agreement No. CV 79-106-EDP-BA, which sets out the terms pursuant to which the Contractor agreed to renew its contract before the expiration date after completion of the 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

[6<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Delta Division and San Luis Unit Contract Number 14-06-200-7864A-IR1 and subsequent Interim Renewal Contracts 14-06-200-7864A-IR2 through 14-06-200-7864A-IR6, the last of which is



hereinafter referred to as the “Existing Contract”, which established terms for the delivery of Project Water to the Contractor from the Delta Division and San Luis Unit, and which was in effect the date the WIIN Act was enacted; and

[7<sup>th</sup>] WHEREAS, on December 16, 2016, the 114<sup>th</sup> Congress of the United States of America enacted the WIIN Act; and

[8<sup>th</sup>] 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

[9<sup>th</sup>] 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

[10<sup>th</sup>] 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

[11<sup>th</sup>] 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

[12<sup>th</sup>] 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

[13<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[14<sup>th</sup>] 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 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

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

[16<sup>th</sup>] 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

[17<sup>th</sup>] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that Section 1(a) of the San Luis Act, Pub. L. 86-488 (74 Stat. 156) imposes on the Secretary of the Interior a duty to provide drainage service to the San Luis Unit; and

[18<sup>th</sup>] WHEREAS, the Contractor and the Contracting Officer recognize that adequate drainage service is required to maintain agricultural production within certain areas served with Project Water made available under this Contract; and

[19<sup>th</sup>] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

[20<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor acknowledge that such drainage solutions may involve actions not originally contemplated and/or the construction or use of facilities, other than the San Luis Drain; that the Contractor is investing in drainage solutions for lands within its boundaries that should be considered by the Contracting Officer in determining drainage solutions; and that the existing ratesetting policy as it relates to the allocation and collection of drainage costs may require amendment to recognize those investments by the Contractor and other relevant circumstances; and

[21<sup>st</sup>] WHEREAS, the Department of the Interior, Bureau of Reclamation published in June 2006 the San Luis Drainage Feature Re-evaluation Final Environmental Impact Statement, which considers alternatives to provide agricultural drainage service to the San Luis Unit; and

[22<sup>nd</sup>] 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

[23<sup>rd</sup>] 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

[24<sup>th</sup>] WHEREAS, the parties intend by this Contract to maintain a cooperative relationship in order to achieve their mutual goals; and

[25<sup>th</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments, rescheduling, and conveyance of Project Water and non-Project water under this Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the beneficial use of water; and

[26<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital immediately above; and

[27<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[28<sup>th</sup>] 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;

(e) "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;

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

(g) "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 36 of this Contract without amendment of this Contract;

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

(i) "Delta Division Facilities" shall mean those existing and future Project facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the C.W. "Bill" Jones Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir, used to divert, store, and convey water to those Project Contractors entitled to receive water conveyed through the Delta-Mendota Canal;

(j) "Eligible Lands" shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982 (96 Stat. 1263), as amended;

(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;



177                   (m)    “Full Cost Rate”, pursuant to CVPIA Section 3405(d) shall mean an  
178   annual rate, as determined by the Contracting Officer that shall amortize the expenditures for  
179   construction properly allocable to the Project irrigation or M&I functions, as appropriate, of  
180   facilities in service including all O&M deficits funded, less payments, over such periods as may  
181   be required under Federal Reclamation law, or applicable contract provisions. Interest will  
182   accrue on both the construction expenditures and funded O&M deficits from October 12, 1982,  
183   on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent  
184   to October 12 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C)  
185   of the Reclamation Reform Act of 1982. The Full Cost Rate includes actual operation,  
186   maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations  
187   for the Reclamation Reform Act of 1982;

188                   (n)    “Ineligible Lands” shall mean all lands to which Irrigation Water may not  
189   be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982;

190                   (o)    “Irrigation Full Cost Water Rate”, pursuant to CVPIA Section 3405(d),  
191   shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

192                   (p)    “Irrigation Water” shall mean the use of Project Water to irrigate lands  
193   primarily for the production of commercial agricultural crops or livestock, and domestic and  
194   other uses that are incidental thereto;

195                   (q)    “Landholder” shall mean a party that directly or indirectly owns or leases  
196   nonexempt land, as provided in 43 CFR 426.2;

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

201                   (s)    “M&I Full Cost Water Rate”, pursuant to CVPIA Section 3405(d), shall  
202   mean the Full Cost Rate applicable to the delivery of M&I Water;

203                   (t)     “Operation and Maintenance” or “O&M” shall mean normal and  
204 reasonable care, control, operation, repair, replacement (other than capital replacement), and  
205 maintenance of Project facilities;

206                   (u)     “Operating Non-Federal Entity” shall mean the entity(ies), its (their)  
207 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of  
208 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this  
209 Contract was entered into, the Operating Non-Federal Entities were the San Luis & Delta-  
210 Mendota Water Authority and, with respect to San Luis Unit facilities, the California Department  
211 of Water Resources, and the Contractor;

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

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

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

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

223                   (z)     Omitted

224                   (aa)    “Repayment Obligation” for Water Delivered as Irrigation Water shall  
225 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;

(bb) "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;

(cc) "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";

(dd) "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;

(ee) "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;

(ff) "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

(gg) "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 July 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,

and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands of Article 1 of this Contract shall no longer be applicable.

(c) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483), to the extent allowed by law.

(d) 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 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 94,000 acre-feet of Project Water for irrigation and 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 PEIS projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. 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.

(1) In the event any Project Contractor (other than a Cross Valley Contractor) that receives Project Water through the Delta Division Facilities obtains a contractual agreement that the Contracting Officer shall make Project Water available at a point or points of delivery in or north of the Delta, at the request of the Contractor and upon completion of any required environmental documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on mutually agreeable terms. Such amendments to this Contract shall be limited solely to those changes made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water does not trigger this right of amendment.

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. 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 25 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.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of any water service contract between the Contracting Officer and the Contractor in effect immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of 34 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for any required biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

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

341 making such a determination. If the Contracting Officer determines that Project Water, or other  
342 water available to the Project, can be made available to the Contractor, the Contracting Officer  
343 will announce the availability of such water and shall so notify the Contractor as soon as  
344 practical. The Contracting Officer will thereafter meet with the Contractor and other Project  
345 Contractors capable of taking such water to determine the most equitable and efficient allocation  
346 of such water. If the Contractor requests the delivery of any quantity of such water, the  
347 Contracting Officer shall make such water available to the Contractor in accordance with  
348 applicable statutes, regulations, guidelines, and policies. Subject to existing long-term  
349 contractual commitments, water rights and operational constraints, long-term Project Contractors  
350 shall have a first right to acquire such water, including Project Water made available pursuant to  
351 Section 215 of the Reclamation Reform Act of 1982.

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

359 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
360 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
361 shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable  
362 Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of  
363 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 11 or subdivision (b) of Article 12 of this Contract.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (p) and (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 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.

(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) thereto satisfactory to the Contracting Officer, 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 Project facilities 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.

(b) The Contracting Officer, either directly or indirectly through its written agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to

the Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

(c) The Contractor shall deliver Irrigation Water in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. 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 either directly or indirectly through its written agreements(s) with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting Officer 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 shall investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies), 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 and the appropriate Operating Non-Federal Entity(ies), if any, prior to making a final determination of the quantity delivered for that period of time.

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to 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 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies) 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, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies), to provide drainage service.

#### 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 irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes 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 25 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 25 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 agricultural turnouts and 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 of this Contract 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) The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity(ies) on or before the 20<sup>th</sup> calendar day of each month of the quantity of Irrigation Water and M&I Water taken during the preceding month.

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 ratesetting policy for Irrigation Water adopted in 1988 and 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 at Rates, Charges, and Tiered Pricing Component in accordance with policies for Irrigation Water and 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 (M&I and Irrigation) and as four (4) approximately equal annual installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date of this Contract as set forth in Exhibit "C". The Repayment Obligation is due in lump sum by August 30, 2021 as provided by the WIIN Act. The Contractor must provide appropriate notice to the Contracting Officer in writing no later than thirty (30) days prior to the Effective Date, if electing to repay the amount due using the lump sum alternative. If such notice is not provided by such date, the Contractor shall be deemed to have elected the installment payment alternative, in which case, the first such payment shall be made no later than August 30, 2021. The second payment shall be made no later than the first anniversary of the first payment date. The third payment shall be made no later than the second anniversary of the first payment date. The final

payment shall be made no later than July 1, 2024. If the installment payment option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using the same methodology as was used to compute the initial annual installment payment amount, which is illustrated in Exhibit "C". 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; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (k)(2) of this Article. 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 Operating Non-Federal Entity(ies) or, if there is no Operating Non-Federal Entity(ies), by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges

616 shall be made through the adjustment of payments due to the United States for Charges for the  
617 next month. Any amount to be paid for past due payment of Charges and Tiered Pricing  
618 Component shall be computed pursuant to Article 19 of this Contract.

619 (f) The Contractor shall pay for any Water Delivered under subdivision (a),  
620 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to  
621 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
622 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this  
623 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water  
624 under subdivision (a) of this Article.

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

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

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

639                   (j)     The parties acknowledge and agree that the efficient administration of this  
640     Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
641     policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,  
642     and/or for making and allocating payments, other than those set forth in this Article may be in  
643     the mutual best interest of the parties, it is expressly agreed that the parties may enter into  
644     agreements to modify the mechanisms, policies, and procedures for any of those purposes while  
645     this Contract is in effect without amending this Contract.

646                   (k)     (1)     Beginning at such time as deliveries of Project Water in a Year  
647     exceed 80 percent of the Contract Total, then before the end of the month following the month of  
648     delivery the Contractor shall make an additional payment to the United States equal to the  
649     applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
650     Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
651     Contract Total, shall equal one-half of the difference between the Rate established under  
652     subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water  
653     Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water  
654     Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)  
655     the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water  
656     Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to  
657     subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract  
658     Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in  
659     the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

660                                 (2)     Subject to the Contracting Officer's written approval, the  
661     Contractor may request and receive an exemption from such Tiered Pricing Component for

Project Water delivered to produce a crop which the Contracting Officer determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply only if such habitat values can be assured consistent with the purposes of the CVPIA through binding agreements executed with or approved by the Contracting Officer prior to use of such water.

(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.

(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, in accordance with the applicable Project ratesetting policy, 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. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

(n) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five years.

#### NON-INTEREST BEARING O&M DEFICITS

8. The Contractor and the Contracting Officer concur that, as of the Effective Date of this Contract the Contractor has no non-interest bearing O&M deficits and shall have no further liability therefore.

#### 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.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, 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 in 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 24 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 24 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

11. (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 or Operating Non-Federal Entity(ies) 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 or Operating Non-Federal Entity(ies) 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

12. (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

779 Contractor of said determination as soon as practicable.

780 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting  
781 or other similar operational errors affecting the Project; drought and other physical or natural  
782 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer  
783 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article  
784 17 of this Contract, no liability shall accrue against the United States or any of its officers,  
785 agents, or employees for any damage, direct or indirect, arising therefrom.

786 (c) In any Year in which there may occur a Condition of Shortage for any of  
787 the reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this  
788 Article, the Contracting Officer will first allocate the available Project Water consistent with the  
789 Project M&I Water Shortage Policy in its form applicable under this Article 12(c) of water  
790 service contracts in effect on the date of this Contract which provide water service from Delta  
791 Division Facilities for determining the amount of Project Water Available for delivery to the  
792 Project Contractors. Subject to the foregoing allocation, in any year in which there may occur a  
793 Condition of Shortage, the Contracting Officer shall then apportion Project Water among the  
794 Contractor and others entitled to Project Water from Delta Division Facilities under long-term  
795 water service or repayment contracts (or renewals thereof or binding commitments therefore) in  
796 force on February 28, 2005, as follows:

797 (1) The Contracting Officer shall make an initial and subsequent  
798 determination as necessary of the total quantity of Project Water estimated to be scheduled or  
799 actually scheduled under subdivision (b) of Article 4 of this Contract and under all other interim  
800 renewal, long-term water service or repayment contracts then in force for the delivery of Project  
801 Water by the United States from Delta Division Facilities during the relevant Year, the quantity  
802 so determined being hereinafter referred to as the scheduled total;

803 (2) A determination shall be made of the total quantity of Project  
804 Water that is available for meeting the scheduled total, the quantity so determined being

805 hereinafter referred to as the available supply;

806 (3) The total quantity of Project Water estimated to be scheduled or  
807 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4  
808 of this Contract, shall be divided by the scheduled total, the quotient thus obtained being  
809 hereinafter referred to as the Contractor's proportionate share; and

810 (4) The available supply shall be multiplied by the Contractor's  
811 proportionate share and the result shall be the quantity of Project Water made available by the  
812 United States to the Contractor for the relevant Year in accordance with the schedule developed  
813 by the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such  
814 amount exceed the Contract Total. In the event the Contracting Officer subsequently determines  
815 that the Contracting Officer can increase or needs to decrease the available supply for delivery  
816 from Delta Division Facilities to interim renewal, long-term water service, and repayment  
817 contractors during the relevant Year, such additions or reductions to the available supply shall be  
818 apportioned consistent with subparagraphs (1) through (4), inclusive.

819 (d) By entering into this Contract, the Contractor does not waive any legal  
820 rights or remedies it may have to file or participate in any administrative or judicial proceeding  
821 contesting: (i) the sufficiency of the Project M&I Water Shortage Policy; (ii) the substance of  
822 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is  
823 implemented in order to allocate Project Water between M&I and irrigation purposes; Provided,  
824 *That* the Contractor has commenced any such judicial challenge or any administrative procedures  
825 necessary to institute any judicial challenge within six months of the policy becoming final. By  
826 agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies  
827 that it may have to assert in such a proceeding. Nothing contained herein shall be interpreted to

validate or invalidate the Project M&I Water Shortage Policy.

(e) Omitted

UNAVOIDABLE GROUNDWATER PERCOLATION

13. (a) To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

(b) Upon complete payment of the Repayment Obligation by the Contractor, this Article 13 shall no longer be applicable.

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

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) The Contracting Officer shall notify the Contractor in writing when drainage service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the Contractor at rates established pursuant to the then-existing ratesetting policy for Irrigation Water; Provided, That such ratesetting policy shall be amended, modified, or superseded only through the process described in subdivision (a) of Article 7 of this Contract.

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

16. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are (were) constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in

43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full-cost land within the Contractor's Service Area that receives non-Project water through Federally financed or constructed facilities. The incremental fee calculation methodology will continue during the term of this Contract absent the promulgation of a contrary Bureau of Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted, it shall supersede this provision.

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

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity 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



906 use power policy is applicable, each as amended, modified, or superseded from time to time.

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

913                               (3)     Neither the United States nor the Operating Non-Federal  
914 Entity(ies) shall be responsible for control, care, or distribution of the non-Project water before it  
915 is introduced into or after it is delivered from the Project facilities. The Contractor hereby  
916 releases and agrees to defend and indemnify the United States and the Operating Non-Federal  
917 Entity(ies), and their respective officers, agents, and employees, from any claim for damage to  
918 persons or property, direct or indirect, resulting from the act(s) of the Contractor, its officers,  
919 employees, agents, or assigns, in (i) extracting or diverting non-Project water from any source, or  
920 (ii) diverting such non-Project water into Project facilities.

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

924                               (5)     After Project purposes are met, as determined by the Contracting  
925 Officer, the United States and Project Contractors entitled to Project Water from Delta Division  
926 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be  
927 available by the Contracting Officer for conveyance and transportation of non-Project water prior  
928 to any such remaining capacity being made available to non-Project contractors. Other Project



Contractors shall have a second priority to any remaining capacity of facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors.

(c) Upon complete payment of the Repayment Obligation by the Contractor, subdivision (a) of this Article 16 shall no longer be applicable.

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

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

#### COORDINATION AND COOPERATION

18. (a) In order to further their mutual goals and objectives, the Contracting

Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the O&M of the Project. The communication, coordination, and cooperation regarding O&M shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

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

975 supply, water quality, and reliability of the Project for all Project purposes.

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

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

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

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

988 CHARGES FOR DELINQUENT PAYMENTS

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

999 (b) The interest rate charged shall be the greater of either the rate prescribed  
1000 quarterly in the Federal Register by the Department of the Treasury for application to overdue  
1001 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be  
1002 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 places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

PRIVACY ACT COMPLIANCE

23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting records required to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43 C.F.R. § 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's employees who are responsible for maintaining the certification and reporting records referenced in paragraph (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. § 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Department of the Interior Privacy Act regulations and the

Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholders' certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager responsible for making decisions on denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as an authority for the request.

(f) Upon complete payment of the Repayment Obligation by the Contractor, this Article 23 will no longer be applicable.

#### CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

24. 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

25. (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).



1146 Additionally, an effective water conservation and efficiency program shall be based on the  
1147 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
1148 the conservation and efficiency criteria for evaluating water conservation plans established under  
1149 Federal law. The water conservation and efficiency program shall contain definite water  
1150 conservation objectives, appropriate economically feasible water conservation measures, and  
1151 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1152 Contract shall be contingent upon the Contractor's continued implementation of such water  
1153 conservation program. In the event the Contractor's water conservation plan or any revised water  
1154 conservation plan completed pursuant to subdivision (d) of this Article 25 have not yet been  
1155 determined by the Contracting Officer to meet such criteria, due to circumstances which the  
1156 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be  
1157 made under this Contract so long as the Contractor diligently works with the Contracting Officer  
1158 to obtain such determination at the earliest practicable date, and thereafter the Contractor  
1159 immediately begins implementing its water conservation and efficiency program in accordance  
1160 with the time schedules therein.

1161 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1162 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1163 Contractor shall implement the Best Management Practices identified by the time frames issued  
1164 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I  
1165 Water unless any such practice is determined by the Contracting Officer to be inappropriate for  
1166 the Contractor.

(c) The Contractor shall submit to the Contracting Officer a report on the status of its implementation of the water conservation plan on the reporting dates specified in the 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

26. 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.

#### 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

1191 to the transferred works will remain in the name of the United States, unless otherwise provided  
1192 by the Congress of the United States.

1193 (b) The Contractor, without expense to the United States, will care for,  
1194 operate, and maintain the transferred works in full compliance with the terms of this Contract  
1195 and in such a manner that the transferred works remain in good and efficient condition.

1196 (c) Necessary repairs of the transferred works shall be made promptly by the  
1197 Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and  
1198 maintenance of the transferred works threatening or causing interruption of water service, the  
1199 Contracting Officer may issue to the Contractor a special written notice of those necessary  
1200 repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1)  
1201 make the necessary repairs; or 2) submit a plan for accomplishing the repairs acceptable to the  
1202 Contracting Officer that contains a timeframe for completing the necessary repairs. In the case  
1203 of an emergency the written notice of necessary repairs will include a timeframe for completion  
1204 of the repairs. If the Contractor fails to either: 1) make the necessary repairs within the identified  
1205 timeframe; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting  
1206 Officer within 60 days of receipt of the notice and accomplish the repairs within the timeframe  
1207 identified therein, the Contracting Officer may cause the repairs to be made, and the cost of those  
1208 repairs shall be paid by the Contractor as directed by the Contracting Officer.

1209 (d) The Contractor shall not make any substantial changes in the transferred  
1210 works without first obtaining written consent of the Contracting Officer. The Contractor will  
1211 take all reasonable measures to prevent any unauthorized encroachment on project land and  
1212 rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its  
1213 existence.

1214 (e) The Contractor agrees to indemnify the United States for, and hold the  
1215 United States and all of its representatives harmless from, all damages resulting from suits,  
1216 actions, or claims of any character, except for intentional torts committed by employees of the  
1217 United States, brought on account of any injury to any person or property arising out of any act,  
1218 omission, neglect, or misconduct in the manner or method of performing any construction, care,  
1219 operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or  
1220 the United States on transferred works required under this Contract, regardless of who performs  
1221 those duties.

1222 Provided, That, for the purposes of this Article 27(e), the term "intentional torts" includes acts or  
1223 omissions under California law that constitute gross or willful misconduct, gross or willful  
1224 negligence, and sole negligence; and, provided further, that the term "employees of the United  
1225 States," includes agents and independent contractors who are directly responsible to the United  
1226 States.

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

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

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

O&M BY THE SAN LUIS & DELTA – MENDOTA WATER AUTHORITY

28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota

Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or establishes for the Operation and Maintenance of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article.

(c) For so long as the O&M of any portion of the Project facilities serving the Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

(d) In the event the Operation and Maintenance of the Project facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water

Authority is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the Operation and Maintenance costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

O&M BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the California Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity California Department of Water Resources. This separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or assessments of any kind, including any assessment for reserve



funds, which Operating Non-Federal Entity California Department of Water Resources, or such successor determines, sets, or establishes for the O&M of the conveyance and conveyance pumping portion of the Project facilities operated and maintained by Operating Non-Federal Entity California Department of Water Resources, or such successor. Such direct payments to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor, shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of Article 28 of this Contract.

(c) For so long as the O&M of any portion of the Project facilities serving the Contractor is performed by Operating Non-Federal Entity California Department of Water Resources, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by Operating Non-Federal Entity California Department of Water Resources, or its successor.

(d) In the event the O&M of the Project facilities operated and maintained by Operating Non-Federal Entity California Department of Water Resources is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates and Charges, to be paid by the Contractor for Project Water under this Contract representing the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the



Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

PUMPING PLANTS, POWER FOR PUMPING PLANTS

28.2. (a) The United States shall furnish and install pumping plants and furnish the amount of Project power the Contracting Officer determines is necessary to deliver Project Water to the Contractor from the Delta-Mendota and San Luis Canals, at the point(s) of delivery identified pursuant to subdivision (a) of Article 5 of this Contract at heads and elevations sufficient to irrigate by gravity the areas within the Contractor's Service Area below 700 feet mean sea level elevation.

(b) With advance approval of the Contracting Officer, the Contractor may, at its own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to divert and deliver Project Water from the Delta-Mendota and San Luis Canals before the United States furnishes and installs all the pumping plants referred to in subdivision (a) of this Article. The United States shall furnish the amount of Project power needed to operate such pumping facilities; Provided, That the Contractor maintains an agreement with an entity to convey such power to such facilities, and the Contractor agrees to pay any and all charges assessed by that entity for such service.

(c) The furnishing of power by the United States shall be in conformance with operating criteria, rules, and regulations, including the Project use power policy, established by the Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the Project use power policy, established by the Contracting Officer shall not excuse the United States from its obligation under subdivision (a) of this Article. Such operating

criteria, rules, and regulations shall be developed in cooperation with the Contractor and shall be based on acceptable irrigation management practices and the power generation capacity available to the United States for the furnishing of Project Water to the Contractor.

(d) The Contracting Officer or his representative shall at all times have access to and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are being kept in safe and proper operating condition.

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

29 (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.

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

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

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

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

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

#### CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

#### BOOKS, RECORDS, AND REPORTS

31. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's financial transactions; water supply data; project operations, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting 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.

(c) At such time as the Contractor provides information to the Contracting Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating Non-Federal Entity(ies).

#### ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

32. (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

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

#### RESOLUTION OF DISPUTES

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

1472 OFFICIALS NOT TO BENEFIT  
1473 35. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
1474 the Contractor shall benefit from this Contract other than as a water user or landowner in the  
1475 same manner as other water users or landowners.

1476 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1477 36. (a) While this Contract is in effect, no change may be made in the  
1478 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other  
1479 changes which may affect the respective rights, obligations, privileges, and duties of either the  
1480 United States or the Contractor under this Contract, including, but not limited to, dissolution,  
1481 consolidation, or merger, except upon the Contracting Officer's written consent.

1482 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1483 Officer will notify the Contractor of any additional information required by the Contracting  
1484 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1485 schedule for timely completion of the process. Such process will analyze whether the proposed  
1486 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;  
1487 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or  
1488 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)  
1489 have an impact on any Project Water rights applications, permits, or licenses. In addition, the  
1490 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be  
1491 responsible for all costs incurred by the Contracting Officer in this process, and such costs will  
1492 be paid in accordance with Article 24 of this Contract.

1493 FEDERAL LAWS

1494 37. By entering into this Contract, the Contractor does not waive its rights to contest  
1495 the validity or application in connection with the performance of the terms and conditions of this  
1496 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1497 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.

#### NOTICES

38. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Panoche Water District, 52027 West Althea Avenue, Firebaugh, CA 93622. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

#### EMERGENCY RESERVE FUND

39. (a) Commencing on July 1, 2021, 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 \$2,500 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 \$2,500 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.

(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 March 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 San Luis Unit facilities 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.

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

#### CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

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

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

(c) "Hazardous material" means (1) any substance falling within the definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §

9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal, State, local or Tribal law.

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

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

(f) The Contractor shall be liable for any response action or corrective measure necessary to protect public health and the environment or to restore Federal project lands, project waters, or project works that are adversely affected as a result of such violation, and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State, local, or Tribal laws and regulations concerning hazardous material. At the discretion of the Contracting Officer, the United States may also terminate this Contract, as a result of such violation.

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

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

#### RECLAMATION REFORM ACT OF 1982

42. (a) Upon a Contractor's compliance with and discharge of the Repayment Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

(b) The obligation of a Contractor to pay the Additional Capital Obligation shall not affect the Contractor's status as having repaid all of the construction costs assignable to

the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

#### CERTIFICATION OF NONSEGREGATED FACILITIES

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

#### NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

#### PEST MANAGEMENT

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

(b) The Contractor is responsible for effectively avoiding the introduction and spread of, and for otherwise controlling, undesirable plants and animals, as defined by the Contracting Officer, on or in Federal project lands, Federal project waters, and Federal project works for which and to the extent that the Contractor has operation and maintenance responsibility. The Contractor is responsible for exercising the level of precaution necessary in



meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for reproductive and vegetative parts, foreign soil, mud, or other debris that may cause the spread of weeds, invasive species and other pests, and removing such materials before moving its vehicles, watercraft, and equipment onto any Federal land, into any Federal project facility waters, or out of any area on Federal project land where work is performed.

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

(d) Programs for the control of undesirable plants and animals on Federal project lands, and in Federal project waters and Federal project works for which the Contractor has operation and maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Contractor will adhere to applicable Federal and State laws and regulations and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals, including but not limited to, the Department of the Interior Manual, Part 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3, 1999.

#### MEDIUM FOR TRANSMITTING PAYMENT

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

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

#### CONTRACT DRAFTING CONSIDERATIONS

46. This amended Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this amended Contract pertains. The double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by

1685 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1686 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.


1687 CONFIRMATION OF CONTRACT

1688 47. Promptly after the execution of this amended Contract, the Contractor will  
1689 provide to the Contracting Officer a certified copy of a final decree of a court of competent  
1690 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor  
1691 for the authorization of the execution of this amended Contract. This amended Contract shall not  
1692 be binding on the United States until the Contractor secures a final decree.




1693 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1694 and year first above written.

1695 UNITED STATES OF AMERICA

1696 By:   
1697 Regional Director  
1698 Interior Region 10: California-Great Basin  
1699 Bureau of Reclamation

1700 PANOCHÉ WATER DISTRICT  
1701 (SEAL)

1702 By:   
1703 President of the Board of Directors

1704 Attest:

1705 By:   
1706 Secretary of the Board of Directors

1693 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1694 and year first above written.

1695 UNITED STATES OF AMERICA

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY - REVIEWED BY:



OFFICE OF THE REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

TIME STAMP: 1:37 pm, May 14, 2020

1696 By: \_\_\_\_\_  
1697 Regional Director  
1698 Interior Region 10: California-Great Basin  
1699 Bureau of Reclamation

1700 PANOCHÉ WATER DISTRICT

1701 (SEAL)

1702 By: \_\_\_\_\_  
1703 President of the Board of Directors

1704 Attest:

1705 By: \_\_\_\_\_  
1706 Secretary of the Board of Directors

## **PANOCHÉ WATER DISTRICT RESOLUTION NO. 775-20**

### **RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION, AND DELIVERY OF THE CONTRACT BETWEEN THE UNITED STATES AND PANOCHÉ WATER DISTRICT PROVIDING FOR PROJECT WATER SERVICE SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT AND FILING A NOTICE OF STATUTORY AND CATEGORICAL EXEMPTIONS FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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WHEREAS, the Panoche Water District (the "District") entered into the Contract Between the United States and Panoche Water District for Water Service on August 16, 1955 (the "Original Contract"), for the delivery of 94,000 acre-feet of Central Valley Project ("CVP") water ("Project Water") through August 15, 1995; and

WHEREAS, the Panoche Water District (the "District") amended the Original Contract when it entered into Contract No. 14-06-200-7864A with the United States on August 30, 1974, for the continued delivery of 94,000 acre-feet of Project Water through December 31, 2008; and

WHEREAS, the United States and the District have, pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act, subsequently entered into interim renewal contracts identified as Contract Nos. 14-06-200-7864A-IR1 through 14-06-200-7864A-IR6 (collectively, the "Interim Contracts"), the last of which is hereinafter referred to as the "Existing Contract", and which will have provided for the delivery of 94,000 acre-feet of Project Water annually to the District from January 1, 2009, through February 28, 2021; and

WHEREAS, with the Existing Contract set to expire on February 28, 2021, the District and the United States have negotiated and performed the necessary analyses required, including those required under the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA"), to enter into Contract No. 14-06-200-7864A-IR7 ("IRC7"), which, if entered into, shall serve as the District's interim renewal contract from March 1, 2021 through February 28, 2023; and

WHEREAS, the Existing Contract provides for the United States to deliver 94,000 acre-feet per year of Project Water to the District; and

WHEREAS, on December 16, 2016, the 114<sup>th</sup> Congress of the United States of America enacted the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (the "WIIN Act"); and

WHEREAS, Section 4011(a)(1) of the WIIN Act 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

to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions"; and

WHEREAS, the District is a "water user association" as that term is used in the WIIN Act; and

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) (the "1939 Act"), to be converted under this section shall be converted to repayment contracts under section 9(d) of [the 1939 Act]"; and

WHEREAS, Section 4011(a)(4)(C) 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, and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association and their landowners as provided under State law"; and

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

WHEREAS, on or about March 28, 2018, pursuant to Section 4011(a)(1), of the WIIN Act, the District requested that the United States, through the United States Bureau of Reclamation ("Reclamation"), initiate the process to convert its Water Service Contract, which was executed under Section 9(e) of the 1939 Act, to a repayment contract under Section 9(d) of the 1939 Act; and

WHEREAS, pursuant to and consistent with the WIIN Act, Reclamation and the District negotiated terms and conditions that amend and convert the Existing Contract to a repayment contract, and those terms and conditions are reflected in the attached CONTRACT BETWEEN THE UNITED STATES AND PANOCHÉ WATER DISTRICT PROVIDING FOR PROJECT WATER SERVICE SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT (the "Repayment Contract"); and

WHEREAS, should the District and the United States enter into IRC7, then IRC7 shall be and shall be referred to as the "Existing Contract" for purposes of conversion to the Repayment Contract under the WIIN Act; and

WHEREAS, the Repayment Contract also reflects the current standard terms and conditions required by the Reclamation Manual; and

WHEREAS, the Repayment Contract continues Project Water service to the District in the same amounts as the Existing Contract, and within certain established parameters, in the same scope and nature as ongoing CVP operations and its existing facilities; and

WHEREAS, Project Water made available under the Repayment Contract will be diverted through the same CVP facilities as the water provided under the Original Contract, the Interim Renewal Contracts, and the Existing Contract; and

WHEREAS, the District has fully utilized, for reasonable and beneficial use, all water provided under the Interim Water Service Contract by receiving and delivering such water to lands within the District's boundaries for irrigation purposes, or putting such water to beneficial use through conservation and transfer in accordance with California law and expects to fully utilize, for reasonable and beneficial use, the quantity of Project Water to be made available to it pursuant to the Repayment Contract; and

WHEREAS, the District has relied on water obtained from the CVP for more than fifty years, and therefore it is imperative to the District and its landowners that the District continue to deliver the same quantity of water service to its lands through a contract with the United States pursuant to Reclamation Law and more particularly the Act of Congress of July 2, 1956 (70 Stat. 483) and the Act of Congress of October 30, 1992 (96 Stat. 1262); and

WHEREAS, the District maintains in its records copies of contracts, water delivery reports, crop information and other data supporting these factual findings; and

WHEREAS, Reclamation initiated a 60-day public comment period for the Repayment Contract, which period has ended; and

WHEREAS, Reclamation has reviewed all public comments and has approved the Repayment Contract for execution by the District; and

WHEREAS, the District has reviewed the terms and conditions of the Repayment Contract and finds the form and content thereof to be acceptable to the District and appropriate for execution, and therefore proposes to enter into the Repayment Contract; and

WHEREAS, the District has reviewed the Repayment Contract and the provisions of CEQA and has considered whether any direct or indirect physical change to the environment will result from converting to the Repayment Contract, and has considered whether converting to the Repayment Contract may possibly have a significant effect on the environment; and

WHEREAS, pursuant to the Ralph M. Brown Act (Gov. Code sections 54950, et seq.) the District timely posted its agenda for this special meeting held on December 28, 2020, at 10:00 am, in accordance with the Governor's Executive Order N-29-20, at least twenty-four hours prior to said special meeting and by a direct link on its publicly accessible website, indicating that the District's Board of Directors would be considering approval of and authorization for execution of the Repayment Contract.

NOW, THEREFORE, it is hereby resolved by the Board of Directors of the Panoche Water District that:

1. The above recitals are true and correct, and this Board so finds and determines.

2. Executing the Repayment Contract is statutorily exempt from compliance with CEQA as provided in the California Public Resources Code and implemented through Title 14 of the California Code of Regulations, Sections 15260 through 15285, with particular reference to Section 15261, subdivision (a), because it is merely a continuation of a project approved, funded, and fully operated prior to November 23, 1970, and no modification or alteration in the CVP or the amount of Project Water delivered is proposed.

3. To the extent that the Repayment Contract may involve a change in rates, tolls, fares, or other charges necessary to repay the capital costs for the CVP facilities, the Repayment Contract is also statutorily exempt from CEQA pursuant to Title 14 of the California Code of Regulations Section 15273.

4. Executing the Repayment Contract is also subject to the "common sense" categorical exemption from CEQA as provided in Title 14 of the California Code of Regulations section 15061, subd. (b)(3), because it merely contemplates water delivery in the same nature and scope as prior contracts, which have been in place for over fifty years, and therefore continues existing operations within established parameters and will not result in any further significant effects on the environment.

5. Execution of the Repayment Contract is categorically exempt from CEQA as provided in Title 14 of the California Code of Regulations, Section 15300 through 15333, with particular reference to Section 15301, because it provides for the continued operation of existing facilities with no expansion of the District's current water use or infrastructure.

6. The Repayment Contract does not present unusual circumstances and will not create any effects or impacts specified in Title 14 of the California Code of Regulations, Section 15300.2.

7. Execution of the Repayment Contract is exempt from CEQA based on its record of proceedings showing that the Repayment Contract continues water service to the District in the same amounts as the Existing Contract, within established parameters, in the same scope and nature as ongoing CVP operations and its existing facilities; it involves no increase in existing service; and no new construction, expansion, or any modification to the existing distribution system; nor any change in the source of water to be delivered, or the uses to which such supplies will be put.

8. The Repayment Contract, as finalized by Reclamation, presented to the Board and on file with the Secretary hereof, is hereby approved. The District's Board President is hereby authorized to execute and deliver the Conversion Contract in the form attached hereto as Exhibit "A."

9. The District shall prepare and file a Notice of Exemption with the Fresno County Clerk and the Office of Planning and Research as provided for in Title 14 of the California Code of Regulations, Section §§ 15062(c)(2) and (e), in substantially the form attached hereto as Exhibit "B".



10. The District's officers, staff, and consultants are hereby authorized and directed to take all additional actions they deem necessary or appropriate to carry out the intent of this resolution and to ensure continued water service to the District and its water users.

11. A certified copy of this resolution shall be prepared and transmitted by the District's Secretary to the United State Bureau of Reclamation.

PASSED AND ADOPTED this 28<sup>th</sup> day of December, 2020, by the following vote, to wit:

AYES:	Bennett, Redfern-West, Stearns, Linneman, Koda
NOES:	None
ABSENT:	None
ABSTAIN:	None

  
\_\_\_\_\_  
John Bennett, President  
Panoche Water District

Attest:

  
\_\_\_\_\_  
Michael Stearns, Secretary

**CERTIFICATE OF SECRETARY  
OF  
PANOCHÉ WATER DISTRICT,  
A California Water District**

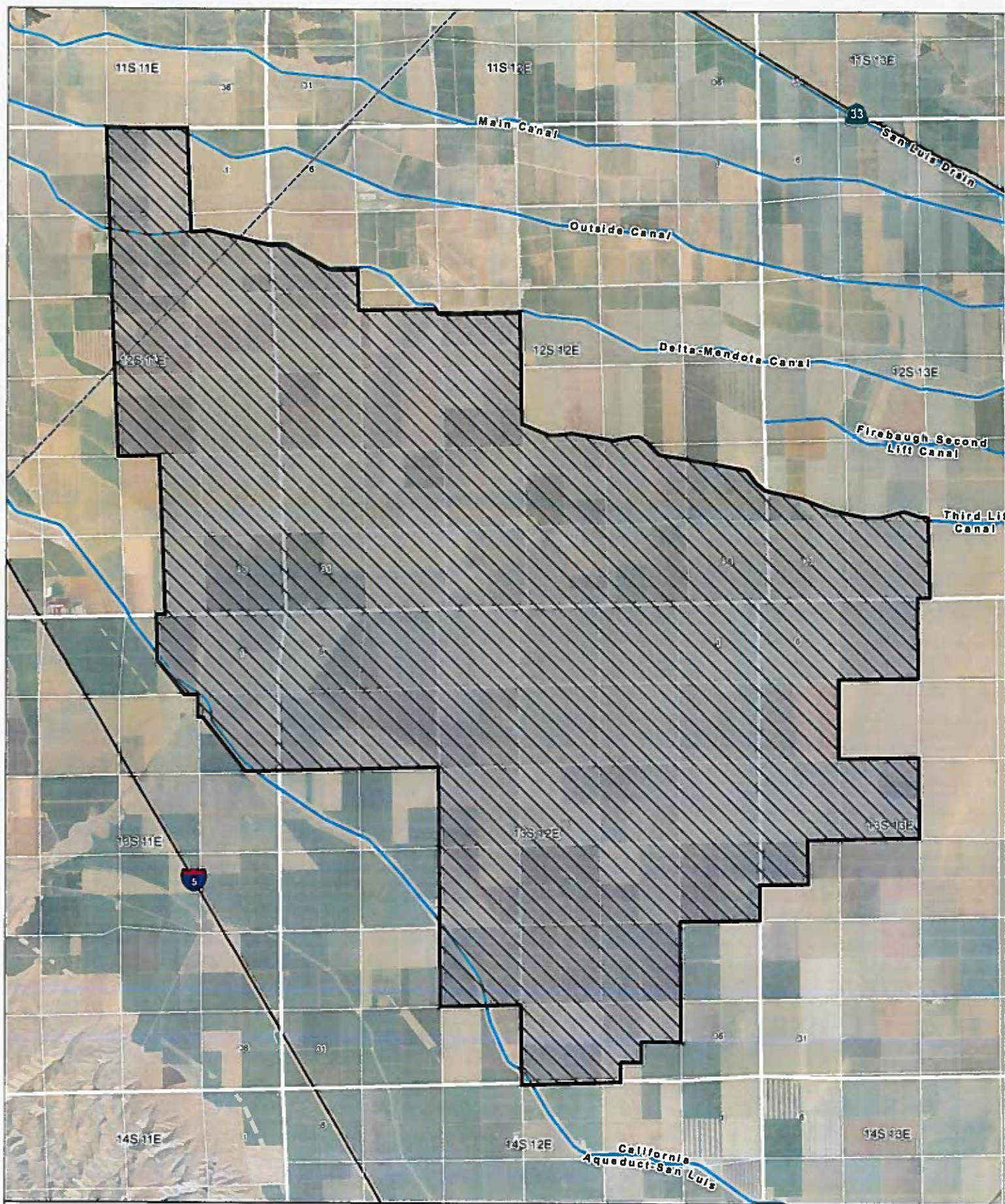
I, Michael Stearns, do hereby certify that I am the duly authorized and appointed Secretary of the Panoche Water District, a California Water District (the "District"); that the following is a true and correct copy of that certain resolution duly and unanimously adopted and approved by the Board of Directors of the District on the 28<sup>th</sup> day of December, 2020; and that said resolution has not been modified or rescinded and remains in full force and effect as the date hereof:



IN WITNESS WHEREOF, I have executed this Certificate on this 28<sup>th</sup> day of December, 2020.

A handwritten signature in black ink, appearing to read 'Michael Stearns', is written over a horizontal line.

MICHAEL STEARNS  
Secretary of Panoche Water District





-  District Boundary
-  Contractor's Service Area

## Panoche Water District

Contract No. 14-06-200-7864-IR1-P  
Exhibit A



— BUREAU OF —  
RECLAMATION

Date: 7/6/2020  
File Name: N:\Districts\Contract\panoche\panoche\_20200706.mxd

0 0.5 1 Miles



805-202-12



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

	Delta-Mendota Canal		San Luis Canal - Tracy	
	Irrigation Water	M&I Water	Irrigation Water	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>				
Construction Costs	\$0.00	\$0.00	\$0.00	\$0.00
DMC Aqueduct Intertie	\$0.00		\$0.00	
O&M Components				
Water Marketing	\$8.97	\$6.12	\$8.97	\$6.12
Storage	\$18.01	\$14.99	\$18.01	\$14.99
Conveyance				
Conveyance Pumping				
Direct Pumping			\$0.01	
Deficit Cost Component (American Recovery and Reinvestment Act (ARRA) included)	\$0.00	\$1.56	\$0.00	\$2.71
<b>TOTAL COS RATE</b>	<b>\$26.98</b>	<b>\$22.67</b>	<b>\$26.99</b>	<b>\$23.82</b>
<b>IRRIGATION FULL-COST RATE (RRA)</b>				
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	TBD		TBD	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	TBD		TBD	
<b>M&amp;I FULL COST RATE</b>		TBD		TBD
<b>CHARGES AND ASSESSMENTS</b> <i>(Payments in addition to Rates)</i>				
<b>P.L. 102-575 Surcharge</b> (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$10.91	\$21.82	\$10.91	\$21.82
<b>P.L. 106-377 Assessment</b> (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12	\$0.12	\$0.12	\$0.12

**EXPLANATORY NOTES**

The CVP M&I Water Shortage Policy per EIS/EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre feet (AF) are revised as follows: 2006 = 77 AF; 2011 = 68 AF; 2017 = 133 AF; which equals a M&I Historic use average quantity of 93 AF.

Additional detail of rate components is available on the Internet at:  
<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

## Exhibit C<sup>a</sup>

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

Unpaid Construction Cost from the 2020 Water Rate Books*
--

**Contractor:** Panoche Water District  
**Facility:** Delta-Mendota Canal (San Luis Canal - Tracy provided separate)  
**Contract:** 14-06-200-7864A-IR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost		Discount
Construction Cost	~	\$ 2,159,713	
2019 Repayment **		\$ 695,759	
2020 Repayment (Estimate) **		\$ 116,041	
Adjusted Construction Cost		\$ 1,347,913	\$ 1,295,679
Intertie Construction Cost (N/A):		\$ 249,095	\$ 213,761
<b>Total</b>		<b>\$ 1,597,008</b>	<b>\$ 1,509,440</b>
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1	1/1/2021		\$ 384,129
Payment 2	1/1/2022		\$ 384,129
Payment 3	1/1/2023		\$ 384,129
Payment 4	1/1/2024		\$ 384,129
<b>Total Installment Payments</b>			<b>\$ 1,536,517</b>
20 yr CMT Rates - 12/14/2020 (to be adjusted to effective date of contract)*			
			1.430%
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))			
			0.715%

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

**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	\$ 1,347,913	\$ 134,791	\$ 133,126	\$ 249,095	\$ 5,793	\$ 5,721	\$ 138,847
2022	\$ 1,213,121	\$ 134,791	\$ 132,884	\$ 243,302	\$ 5,793	\$ 5,711	\$ 138,595
2023	\$ 1,078,330	\$ 134,791	\$ 131,941	\$ 237,509	\$ 5,793	\$ 5,670	\$ 137,611
2024	\$ 943,539	\$ 134,791	\$ 131,004	\$ 231,716	\$ 5,793	\$ 5,630	\$ 136,634
2025	\$ 808,748	\$ 134,791	\$ 130,074	\$ 225,923	\$ 5,793	\$ 5,590	\$ 135,664
2026	\$ 673,956	\$ 134,791	\$ 129,151	\$ 220,130	\$ 5,793	\$ 5,550	\$ 134,701
2027	\$ 539,165	\$ 134,791	\$ 128,234	\$ 214,338	\$ 5,793	\$ 5,511	\$ 133,745
2028	\$ 404,374	\$ 134,791	\$ 127,323	\$ 208,545	\$ 5,793	\$ 5,472	\$ 132,795
2029	\$ 269,583	\$ 134,791	\$ 126,420	\$ 202,752	\$ 5,793	\$ 5,433	\$ 131,853
2030	\$ 134,791	\$ 134,791	\$ 125,522	\$ 196,959	\$ 5,793	\$ 5,395	\$ 130,917
2031-63				\$ 191,166	\$ 191,166	\$ 158,076	\$ 158,076
<b>Total, Lump Sum Payment</b>			<b>\$ 1,295,679</b>			<b>\$ 213,761</b>	<b>\$ 1,509,440</b>

Amount of Reduction, Lump Sum \$ 52,234 \$ 35,334 \$ 87,568

\* 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.

2020 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

\*\*\* 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.

\*To be updated. The WIIN Act requires us to have a Constant Maturity Treasury rate based on the effective date of the contract.

# Exhibit C<sup>a</sup>

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

### Unpaid Construction Cost from the 2020 Water Rate Books\*

Contractor: Panoche Water District  
Facility: San Luis Canal - Tracy (Delta-Mendota Canal provided separate)  
Contract: 14-06-200-7864A-IR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost	Discount	
Construction Cost	\$ 13,146,248		
2019 Repayment **	\$ 2,759,109		
2020 Repayment (Estimate) **	\$ 1,010,968		
Adjusted Construction Cost	\$ 9,376,171	\$ 9,012,829	
Intertie Construction Cost (N/A):	\$ 758,100	\$ 650,563	
Total	\$ 10,134,271	\$ 9,663,392	
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1	1/1/2021	\$ 2,459,185	
Payment 2	1/1/2022	\$ 2,459,185	
Payment 3	1/1/2023	\$ 2,459,185	
Payment 4	1/1/2024	\$ 2,459,185	
Total Installment Payments		\$ 9,836,740	
20 yr CMT Rates - 12/14/2020 (to be adjusted to effective date of contract) <sup>g</sup>			
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))			
		1.430%	
		0.715%	

M&I Construction Cost (2020 M&I Ratebook, Sch A-2Ba)			
	Unpaid Cost		
Construction Cost:	\$ 3,885		
2019 Repayment **	\$ -		
2020 Repayment (Estimate) **	\$ 592		
Adjusted Construction Cost***:	\$ 3,293		

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	\$ 9,376,171	\$ 937,617	\$ 926,031	\$ 758,100	\$ 17,630	\$ 17,412	\$ 943,444
2022	\$ 8,438,554	\$ 937,617	\$ 924,352	\$ 740,470	\$ 17,630	\$ 17,381	\$ 941,732
2023	\$ 7,500,937	\$ 937,617	\$ 917,789	\$ 722,840	\$ 17,630	\$ 17,257	\$ 935,047
2024	\$ 6,563,320	\$ 937,617	\$ 911,274	\$ 705,209	\$ 17,630	\$ 17,135	\$ 928,409
2025	\$ 5,625,703	\$ 937,617	\$ 904,804	\$ 687,579	\$ 17,630	\$ 17,013	\$ 921,818
2026	\$ 4,688,086	\$ 937,617	\$ 898,381	\$ 669,949	\$ 17,630	\$ 16,892	\$ 915,274
2027	\$ 3,750,469	\$ 937,617	\$ 892,003	\$ 652,319	\$ 17,630	\$ 16,773	\$ 908,776
2028	\$ 2,812,851	\$ 937,617	\$ 885,671	\$ 634,688	\$ 17,630	\$ 16,653	\$ 902,324
2029	\$ 1,875,234	\$ 937,617	\$ 879,383	\$ 617,058	\$ 17,630	\$ 16,535	\$ 895,918
2030	\$ 937,617	\$ 937,617	\$ 873,140	\$ 599,428	\$ 17,630	\$ 16,418	\$ 889,558
2031-63				\$ 581,798	\$ 581,798	\$ 481,093	\$ 481,093
Total, Lump Sum Payment		\$ 9,012,829				\$ 650,563	\$ 9,663,392

Amount of Reduction, Lump Sum \$ 363,342 \$ 107,537 \$ 470,880

\* 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.

2020 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

\*\*\* 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.

<sup>g</sup>To be updated. The WIIN Act requires us to have a Constant Maturity Treasury rate based on the effective date of the contract.