

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

CONTRACT BETWEEN THE UNITED STATES
AND
CITY OF AVENAL
PROVIDING FOR PROJECT WATER SERVICE
SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT

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1 THIS CONTRACT, made this ____ day of _____, 20XX, in
2 pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or
3 supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
4 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
5 July 2, 1956 (70 Stat. 483), June 3 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12,
6 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of
7 October 30, 1992 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for
8 the Nation Act (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f)
9 (“WIIN Act”), all collectively hereinafter referred to as Federal Reclamation law, between the
10 UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by
11 the officer executing this Contract, hereinafter referred to as the Contracting Officer, and CITY
12 OF AVENAL, hereinafter referred to as the Contractor, a public agency of the State of
13 California, duly organized, existing, and acting pursuant to the laws thereof;

14 WITNESSETH, That:

EXPLANATORY RECITALS

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

[2nd] WHEREAS, the United States constructed the 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

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

[4th] WHEREAS, on June 23, 1986, the Contractor assumed Contract No. 14-06-200-4619A between the United States of America and Avenal Community Services District; and

[5th] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-4619A, as amended, which provided the Contractor, Project Water from the Project facilities from November 29, 1969, to December 31, 2008; and

36 [6th] WHEREAS, the United States and the Contractor have pursuant to
37 Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA),
38 subsequently entered into binding agreements identified as Binding Agreement No. 14-
39 06-200-4619A-BA, which sets out the terms pursuant to which the Contractor agreed to
40 renew its contract before the expiration date after completion of the Programmatic
41 Environmental Impact Statement (PEIS) and other appropriate environmental
42 documentation and negotiation of a renewal contract; and which also sets out the
43 consequences of a subsequent decision not to renew; and

44 [7th] WHEREAS, the United States and the Contractor entered into Delta
45 Division and San Luis Unit Contract Number 14-06-200-4619A-IR1 and subsequent Interim
46 Renewal Contracts 14-06-200-4619A-IR2 through 14-06-200-4619A-IR6, the last of which is
47 hereinafter referred to as the “Existing Contract”, which established terms for the delivery of
48 Project Water to the Contractor from the Delta Division and San Luis Unit, and which was in
49 effect the date the WIIN Act was enacted; and

50 [8th] WHEREAS, on December 16, 2016, the 114th Congress of the United
51 States of America enacted the WIIN Act; and

52 [9th] WHEREAS, Section 4011(a)(1) provides that “upon request of the
53 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
54 date of enactment of this subtitle and between the United States and a water users’ association
55 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
56 mutually agreeable terms and conditions.”; and

57 [10th] WHEREAS, Section 4011(a)(1) further provides that “the manner of
58 conversion under this paragraph shall be as follows: (A) Water service contracts that were
59 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under
60 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.
61 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9
62 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be
63 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

64 [11th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered
65 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,
66 repayment, exchange and transfer contractual rights between the water users’ association
67 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the
68 water users’ association [Contractor] and their landowners as provided under State law.”; and

69 [12th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that
70 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water
71 service or repayment contractor to receive water; or (4) except as expressly provided in this
72 section, any obligations under the Federal Reclamation law, including the continuation of
73 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and
74 repayment contractors making prepayments pursuant to this section.”; and

75 [13th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
76 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water
77 service contracts into repayment contracts, amend existing repayment contracts, and allow

78 contractors to prepay their construction cost obligations pursuant to applicable Federal
79 Reclamation law; and

80 [14th] WHEREAS, the United States has determined that the Contractor
81 has fulfilled all of its obligations under the Existing Contract; and

82 [15th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
83 Contracting Officer that the Contractor has utilized the Project Water supplies available
84 to it for reasonable and beneficial use and expects to utilize fully for reasonable and
85 beneficial use the quantity of Project Water to be made available to it pursuant to this
86 Contract; and

87 [16th] WHEREAS, water obtained from the Project has been relied upon by
88 urban and agricultural areas within California for more than 50 years, and is considered
89 by the Contractor as an essential portion of its water supply; and

90 [17th] WHEREAS, at the time of execution of this Contract, the United States is
91 the sole source of water supply to the Contractor]; and

92 [18th] WHEREAS, the economies of regions within the Project, including the
93 Contractor's, depend upon the continued availability of water, including water service
94 from the Project; and

95 [19th] WHEREAS, the Secretary intends through coordination, cooperation, and
96 partnerships to pursue measures to improve water supply, water quality, and reliability of the
97 Project for all Project purposes; and

98 [20th] WHEREAS, the mutual goals of the United States and the Contractor
99 include: to provide for reliable Project Water supplies; to control costs of those supplies;

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

104 [21st] WHEREAS, the parties intend by this Contract to maintain a cooperative
105 relationship in order to achieve their mutual goals; and

106 [22nd] WHEREAS, in the CALFED Programmatic Record of Decision, dated
107 August 28, 2000, the United States and the State of California adopted a general target of
108 continuously improving Delta water quality for all uses. The CALFED Agencies' target for
109 providing safe, reliable, and affordable drinking water in a cost-effective way, is to achieve
110 either: (a) average concentrations at Clifton Forebay and other southern and central Delta
111 drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an
112 equivalent level of public health protection using a cost-effective combination of alternative
113 source waters, source control and treatment technologies; and

114 [23rd] WHEREAS, the Contractor has utilized or may utilize transfers, contract
115 assignments, rescheduling, and conveyance of Project Water and non-Project water under this
116 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the
117 beneficial use of water; and

118 [24th] WHEREAS, the parties desire and intend that this Contract not provide a
119 disincentive to the Contractor in continuing to carry out the beneficial activities set out in
120 the Explanatory Recital immediately above; and

121 [25th] WHEREAS, the Contracting Officer and the Contractor agree that this
122 Contract complies with Section 4011 of the WIIN Act; and

123 [26th] WHEREAS, the Contracting Officer and the Contractor agree to amend
124 and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal
125 Reclamation law on the terms and conditions set forth below;

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

128 DEFINITIONS

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

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

136 (b) “Calendar Year” shall mean the period January 1 through December 31,
137 both dates inclusive;

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

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

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

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

149 (g) "Contractor's Service Area" shall mean the area to which the Contractor is
150 permitted to provide Project Water under this Contract as described in Exhibit "A"
151 attached hereto, which may be modified from time to time in accordance with Article 33
152 of this Contract without amendment of this Contract;

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

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

161 (j) Omitted

162 (k) Omitted

163 (l) “Existing Capital Obligation” shall mean the remaining amount of
164 construction costs or other capitalized costs allocable to the Contractor as described in Section
165 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
166 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,
167 dated Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to
168 address the intertie], as adjusted to reflect payments not reflected in such schedule. The
169 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in
170 Exhibit “C”, which is incorporated herein by reference;

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

182 (n) Omitted

183 (o) Omitted

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

187 (q) Omitted

188 (r) "Municipal and Industrial (M&I) Water" shall mean the use of Project
189 Water for municipal, industrial, and miscellaneous other purposes not falling under the
190 definition of "Irrigation Water" or within another category of water use under an
191 applicable Federal authority;

192 (s) "M&I Full Cost Water Rate" shall mean the Full Cost Rate
193 applicable to the delivery of M&I Water;

194 (t) "Operation and Maintenance" or "O&M" shall mean normal and
195 reasonable care, control, operation, repair, replacement (other than capital replacement),
196 and maintenance of Project facilities;

197 (u) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)
198 successors or assigns, which has (have) the obligation to operate and maintain all or a
199 portion of the Delta Division Facilities pursuant to written agreement(s) with the United
200 States. When this Contract was entered into, the Operating Non-Federal Entities were the
201 San Luis & Delta-Mendota Water Authority and, with respect to San Luis Unit facilities,
202 the California Department of Water Resources, and Westlands Water District;

203 (v) "Project" shall mean the Central Valley Project owned by the United
204 States and managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

215 (z) Omitted

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

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

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

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

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

233 (ff) “Water Scheduled” shall mean Project Water made available to the
234 Contractor for which times and quantities for delivery have been established by the
235 Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract;
236 and

237 (gg) “Year” shall mean the period from and including March 1 of each
238 Calendar Year through the last day of February of the following Calendar Year.

239 TERM OF CONTRACT – RIGHT TO USE OF WATER

240 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the
241 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges
242 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.
243 1195) as applicable, and applicable law;

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

250 (2) Provided, further, That the Contracting Officer shall not seek to
251 suspend making water available or declaring Water Made Available pursuant to this Contract for

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

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

262 (b) Upon complete payment of the Repayment Obligation by the Contractor,
263 and notwithstanding any Additional Capital Obligation that may later be established, the acreage
264 limitations, reporting, and Full Cost pricing provisions of the Reclamation Reform Act of 1982
265 shall no longer be applicable to the Contractor pursuant to this Contract.

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

269 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

270 3. (a) During each Year, consistent with all applicable State water rights
271 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 10 and
272 11 of this Contract, the Contracting Officer shall make available for delivery to the
273 Contractor 3,500 acre-feet of Project Water for M&I purposes. Water Delivered to the

274 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant
275 to the provisions of Articles 4 and 7 of this Contract.

276 (b) Because the capacity of the Project to deliver Project Water has been
277 constrained in recent years and may be constrained in the future due to many factors
278 including hydrologic conditions and implementation of Federal and State laws, the
279 likelihood of the Contractor actually receiving the amount of Project Water set out in
280 subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's
281 modeling referenced in the PEIS projected that the Contract Total set forth in this Contract
282 will not be available to the Contractor in many years. Nothing in this subdivision (b) of this
283 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

286 (d) The Contractor shall make reasonable and beneficial use of all water
287 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or
288 in lieu), groundwater banking programs, surface water storage programs, and other
289 similar programs utilizing Project Water or other water furnished pursuant to this
290 Contract conducted within the Contractor's Service Area which are consistent with
291 applicable State law and result in use consistent with Federal Reclamation law will be
292 allowed; Provided, That any direct recharge program(s) is (are) described in the
293 Contractor's water conservation plan submitted pursuant to Article 22 of this Contract;
294 Provided, further, That such water conservation plan demonstrates sufficient lawful uses
295 exist in the Contractor's Service Area so that using a long-term average, the quantity of

296 Delivered Water is demonstrated to be reasonable for such uses and in compliance with
297 Federal Reclamation law. Groundwater recharge programs, groundwater banking
298 programs, surface water storage programs, and other similar programs utilizing Project
299 Water or other water furnished pursuant to this Contract conducted outside the
300 Contractor's Service Area may be permitted upon written approval of the Contracting
301 Officer, which approval will be based upon environmental documentation, Project Water
302 rights, and Project operational concerns. The Contracting Officer will address such
303 concerns in regulations, policies, or guidelines.

304 (e) The Contractor shall comply with requirements applicable to the
305 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
306 of any water service contract between the Contracting Officer and the Contractor in effect
307 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
308 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
309 implement. The Existing Contract, which evidences in excess of 39 years of diversions for
310 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
311 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
312 required biological assessment(s) prepared pursuant to the ESA, and any other needed
313 environmental review. Nothing herein shall be construed to prevent the Contractor from
314 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
315 biological opinion or other environmental documentation referred to in this Article.

316 (f) Following the declaration of Water Made Available under Article 4 of
317 this Contract, the Contracting Officer will make a determination whether Project Water, or

318 other water available to the Project, can be made available to the Contractor in addition to
319 the Contract Total under this Article during the Year without adversely impacting other
320 Project Contractors. At the request of the Contractor, the Contracting Officer will
321 consult with the Contractor prior to making such a determination. If the Contracting
322 Officer determines that Project Water, or other water available to the Project, can be
323 made available to the Contractor, the Contracting Officer will announce the availability of
324 such water and shall so notify the Contractor as soon as practical. The Contracting
325 Officer will thereafter meet with the Contractor and other Project Contractors capable of
326 taking such water to determine the most equitable and efficient allocation of such water.
327 If the Contractor requests the delivery of any quantity of such water, the Contracting
328 Officer shall make such water available to the Contractor in accordance with applicable
329 statutes, regulations, guidelines, and policies. Subject to existing long-term contractual
330 commitments, water rights and operational constraints, long-term Project Contractors shall
331 have a first right to acquire such water, including Project Water made available pursuant
332 to Section 215 of the Reclamation Reform Act of 1982.

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

340 (h) The Contractor's right pursuant to Federal Reclamation law and
341 applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to
342 this Contract shall not be disturbed, and this Contract shall continue so long as the
343 Contractor pays applicable Rates and Charges under this Contract consistent with Section
344 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable
345 law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose
346 shortages under Article 10 or subdivision (b) of Article 11 of this Contract.

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

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

359 TIME FOR DELIVERY OF WATER

360 4. (a) On or about February 20 each Calendar Year, the Contracting Officer
361 shall announce the Contracting Officer's expected declaration of the Water Made

362 Available. Such declaration will be expressed in terms of Water Made Available and
363 will be updated monthly, and more frequently if necessary, based on the then-current
364 operational and hydrologic conditions and a new declaration with changes, if any, to the
365 Water Made Available will be made. The Contracting Officer shall provide forecasts of
366 Project operations and the basis of the estimate, with relevant supporting information,
367 upon the written request of the Contractor.

368 (b) On or before each March 1 and at such other times as necessary, the
369 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
370 Contracting Officer, showing the monthly quantities of Project Water to be delivered by
371 the United States to the Contractor pursuant to this Contract for the Year commencing
372 on such March 1. The Contracting Officer shall use all reasonable means to deliver
373 Project Water according to the approved schedule for the Year commencing on such
374 March 1.

375 (c) The Contractor shall not schedule Project Water in excess of the
376 quantity of Project Water the Contractor intends to put to reasonable and beneficial use
377 within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article
378 8 of this Contract during any Year.

379 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
380 Contract, the United States shall deliver Project Water to the Contractor in accordance
381 with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this
382 Article, or any written revision(s) thereto satisfactory to the Contracting Officer, submitted

383 within a reasonable time prior to the date(s) on which the requested change(s) is/are to be
384 implemented.

385 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

386 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
387 Contract shall be delivered to the Contractor at Project facilities and any additional point or
388 points of delivery either on Project facilities or another location or locations mutually
389 agreed to in writing by the Contracting Officer and the Contractor.

390 (b) The Contracting Officer, either directly or indirectly through its
391 written agreements(s) with the Operating Non-Federal Entity(ies), shall make all
392 reasonable efforts to maintain sufficient flows and levels of water in the Project facilities
393 to deliver Project Water to the Contractor at the point or points of delivery established
394 pursuant to subdivision (a) of this Article.

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

397 (d) All Water Delivered to the Contractor pursuant to this Contract shall
398 be measured and recorded with equipment furnished, installed, operated, and maintained
399 by the Contracting Officer either directly or indirectly through its written agreements(s)
400 with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with
401 the consent of the Contracting Officer at the point or points of delivery established
402 pursuant to subdivision (a) of this Article. Upon the request of either party to this
403 Contract, the Contracting Officer shall investigate, or cause to be investigated by the
404 appropriate Operating Non-Federal Entity(ies), the accuracy of such measurements and

405 shall take any necessary steps to adjust any errors appearing therein. For any period of
406 time when accurate measurements have not been made, the Contracting Officer shall
407 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any,
408 prior to making a final determination of the quantity delivered for that period of time.

409 (e) Absent a separate contrary written agreement with the Contractor,
410 neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be
411 responsible for the control, carriage, handling, use, disposal, or distribution of Water
412 Delivered to the Contractor pursuant to this Contract beyond the point or points of
413 delivery established pursuant to subdivision (a) of this Article. The Contractor shall
414 indemnify the United States, its officers, employees, agents, and assigns on account of
415 damage or claim of damage of any nature whatsoever for which there is legal
416 responsibility, including property damage, personal injury, or death arising out of or
417 connected with the control, carriage, handling, use, disposal, or distribution of such Water
418 Delivered beyond such point or points of delivery except for any damage or claim arising
419 out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees,
420 agents, and assigns, including any responsible Operating Non-Federal Entity(ies) with the
421 intent of creating the situation resulting in any damage or claim; (ii) willful misconduct
422 of the Contracting Officer or any of its officers, employees, agents, and assigns, including
423 any responsible Operating Non-Federal Entity(ies); (iii) negligence of the Contracting
424 Officer or any of its officers, employees, agents, and assigns, including the Operating Non-
425 Federal Entity(ies); (iv) damage or claims resulting from a malfunction of facilities owned
426 and/or operated by the United States or responsible Operating Non-Federal Entity(ies).

427 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

428 6. (a) The Contractor has established a measuring program satisfactory to
429 the Contracting Officer. The Contractor shall ensure that, unless the Contractor establishes
430 an alternative measurement program satisfactory to the Contracting Officer, all surface
431 water delivered for M&I purposes is measured at each M&I service connection. The
432 water measuring devices or water measuring methods of comparable effectiveness must
433 be acceptable to the Contracting Officer. The Contractor shall be responsible for
434 installing, operating, maintaining, and repairing all such measuring devices and
435 implementing all such water measuring methods at no cost to the United States. The
436 Contractor shall use the information obtained from such water measuring devices or
437 water measuring methods to ensure its proper management of the water; to bill water users for
438 water delivered by the Contractor; and, if applicable, to record water delivered for M&I
439 purposes by customer class as defined in the Contractor's water conservation plan
440 provided for in Article 22 of this Contract. Nothing herein contained, however, shall
441 preclude the Contractor from establishing and collecting any charges, assessments, or
442 other revenues authorized by California law. The Contractor shall include a summary of
443 all its annual surface water deliveries in the annual report described in subdivision (c) of
444 Article 22 of this Contract.

445 (b) To the extent the information has not otherwise been provided, upon
446 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
447 report describing the measurement devices or water measuring methods being used or to
448 be used to implement subdivision (a) of this Article and identifying M&I service

449 connections or alternative measurement programs approved by the Contracting Officer,
450 at which such measurement devices or water measuring methods are being used, and, if
451 applicable, identifying the locations at which such devices and/or methods are not yet
452 being used including a time schedule for implementation at such locations. The
453 Contracting Officer shall advise the Contractor in writing within 60 days as to the
454 adequacy and necessary modifications, if any, of the measuring devices or water
455 measuring methods identified in the Contractor's report and if the Contracting Officer
456 does not respond in such time, they shall be deemed adequate. If the Contracting
457 Officer notifies the Contractor that the measuring devices or methods are inadequate, the
458 parties shall within 60 days following the Contracting Officer's response, negotiate in good
459 faith the earliest practicable date by which the Contractor shall modify said measuring
460 devices and/or measuring methods as required by the Contracting Officer to ensure
461 compliance with subdivision (a) of this Article.

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

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

468 (e) The Contractor shall inform the Contracting Officer and the Operating
469 Non-Federal Entity(ies) on or before the 20th calendar day of each month of the quantity
470 of M&I Water taken during the preceding month.

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

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473 7. (a) Notwithstanding the Contractor’s full prepayment of the
474 Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection
475 (a)(3)(A) of the WIIN Act, as set forth in Exhibit “C”, and any payments required
476 pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for
477 the final cost allocation as described in this Article, subsection (b), the Contractor’s
478 Project construction and other obligations shall be determined in accordance with: (i)
479 the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN
480 Act; and such ratesetting policies shall be amended, modified, or superseded only
481 through a public notice and comment procedure; (ii) applicable Federal Reclamation law
482 and associated rules and regulations, or policies, and (iii) other applicable provisions of
483 this Contract. Payments shall be made by cash transaction, electronic funds transfers, or
484 any other mechanism as may be agreed to in writing by the Contractor and the
485 Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to
486 the Contractor upon execution of this Contract are set forth in Exhibit “B”, as may be
487 revised annually.

488 (1) The Contractor shall pay the United States as provided for in this
489 Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing
490 Component in accordance with policies for M&I Water. The Contractor’s Rates shall be
491 established to recover its estimated reimbursable costs included in the operation and maintenance

492 component of the Rate and amounts established to recover deficits and other charges, if any,
493 including construction costs as identified in the following subdivisions.

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

496 (A) The amount due and payable to the United States, pursuant
497 to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been
498 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth
499 as a lump sum payment for M&I as set forth in Exhibit "C". The Repayment Obligation is due
500 in lump sum by [Month, Day, Year] as provided by the WIIN Act. Notwithstanding any
501 Additional Capital Obligation that may later be established, receipt of the Contractor's payment
502 of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing
503 Capital Obligation.

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

514 Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the
515 WIIN Act, subject to the following:

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

522 (2) If the collective Additional Capital Obligation
523 properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act
524 is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs
525 properly assignable to the Contractor shall be repaid as provided by applicable Federal
526 Reclamation law and Project ratesetting policy; *Provided, That* the reference to the amount of
527 five million dollars (\$5,000,000) shall not be a precedent in any other context.

528 (b) In the event that the final cost allocation referenced in Section 4011(b) of
529 the WIIN Act determines that the costs properly assignable to the Contractor are greater than
530 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining
531 allocated costs. The term of such additional repayment contract shall be not less than one (1)
532 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate
533 of repayment of such amount may be developed by the Contractor and Contracting Officer. In
534 the event that the final cost allocation indicates that the costs properly assignable to the
535 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such

536 overpayment as an offset against any outstanding or future obligations of the Contractor, with the
537 exception of Restoration Fund charges pursuant to Section 3407(d) of Pub. L. 102-575.

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

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

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

556 (d) At the time the Contractor submits the initial schedule for the delivery of
557 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the

558 Contractor shall make an advance payment to the United States equal to the total amount
559 payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the
560 Project Water scheduled to be delivered pursuant to this Contract during the first two
561 calendar months of the Year. Before the end of the first month and before the end of
562 each calendar month thereafter, the Contractor shall make an advance payment to the
563 United States, at the Rate(s) set under subdivision (a) of this Article, for the Water
564 Scheduled to be delivered pursuant to this Contract during the second month
565 immediately following. Adjustments between advance payments for Water Scheduled
566 and payments at Rates due for Water Delivered shall be made before the end of the
567 following month; *Provided, That* any revised schedule submitted by the Contractor
568 pursuant to Article 4 of this Contract which increases the amount of Water Delivered
569 pursuant to this Contract during any month shall be accompanied with appropriate
570 advance payment, at the Rates then in effect, to assure that Project Water is not
571 delivered to the Contractor in advance of such payment. In any month in which the
572 quantity of Water Delivered to the Contractor pursuant to this Contract equals the
573 quantity of Water Scheduled and paid for by the Contractor, no additional Project Water
574 shall be delivered to the Contractor unless and until an advance payment at the Rates
575 then in effect for such additional Project Water is made. Final adjustment between the
576 advance payments for the Water Scheduled and payments for the quantities of Water
577 Delivered during each Year pursuant to this Contract shall be made as soon as
578 practicable but no later than April 30th of the following Year, or 60 days after the
579 delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract

580 if such water is not delivered by the last day of February.

581 (e) The Contractor shall also make a payment in addition to the Rate(s) in
582 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the
583 appropriate Tiered Pricing Component then in effect, before the end of the month of delivery.
584 The payments shall be consistent with the quantities of M&I Water Delivered as shown in the
585 water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or,
586 if there is no Operating Non-Federal Entity(ies), by the Contracting Officer. The water delivery
587 report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing
588 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges
589 shall be made through the adjustment of payments due to the United States for Charges for the
590 next month. Any amount to be paid for past due payment of Charges and Tiered Pricing
591 Component shall be computed pursuant to Article 17 of this Contract.

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

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

600 (h) All revenues received by the United States from the Contractor
601 relating to the delivery of Project Water or the delivery of non-Project water through

602 Project facilities shall be allocated and applied in accordance with Federal Reclamation
603 law and the associated rules or regulations, and the then-current Project ratesetting policies
604 for M&I Water.

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

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

621 (k) (1) Beginning at such time as deliveries of Project Water in a Year
622 exceed 80 percent of the Contract Total, then before the end of the month following the month of
623 delivery the Contractor shall make an additional payment to the United States equal to the

624 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
625 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
626 Contract Total, shall equal one-half of the difference between the Rate established under
627 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
628 Rate.. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90
629 percent of the Contract Total shall equal the difference between (i) the Rate established under
630 subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
631 Water Rate.

632 (2) Omitted.

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

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

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

651 (n-o) Omitted

652 SALES, TRANSFERS, OR EXCHANGES OF WATER

653 8. (a) The right to receive Project Water provided for in this Contract may be
654 sold, transferred, or exchanged to others for reasonable and beneficial uses within the
655 State of California if such sale, transfer, or exchange is authorized by applicable Federal
656 and State laws, and applicable guidelines or regulations then in effect. No sale, transfer,
657 or exchange of Project Water under this Contract may take place without the prior
658 written approval of the Contracting Officer, except as provided for in subdivision (b) of
659 this Article, and no such sales, transfers, or exchanges shall be approved absent all
660 appropriate environmental documentation, including, but not limited to, documents
661 prepared pursuant to the NEPA and ESA. Such environmental documentation should
662 include, as appropriate, an analysis of groundwater impacts and economic and social
663 effects, including environmental justice, of the proposed water transfers on both the
664 transferor and transferee.

665 (b) In order to facilitate efficient water management by means of water
666 transfers of the type historically carried out among Project Contractors located within the
667 same geographical area and to allow the Contractor to participate in an accelerated water

668 transfer program during the term of this Contract, the Contracting Officer shall prepare, as
669 appropriate, all necessary environmental documentation, including, but not limited to,
670 documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within
671 such geographical areas and the Contracting Officer shall determine whether such
672 transfers comply with applicable law. Following the completion of the environmental
673 documentation, such transfers addressed in such documentation shall be conducted with
674 advance notice to the Contracting Officer, but shall not require prior written approval by
675 the Contracting Officer. Such environmental documentation and the Contracting
676 Officer's compliance determination shall be reviewed every five years and updated, as
677 necessary, prior to the expiration of the then existing five (5)-year period. All subsequent
678 environmental documentation shall include an alternative to evaluate not less than the quantity of
679 Project Water historically transferred within the same geographical area.

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

690 environment and Indian Trust Assets, as defined under Federal law.

691 APPLICATION OF PAYMENTS AND ADJUSTMENTS

692 9. (a) The amount of any overpayment by the Contractor of the Contractor's
693 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
694 liabilities of the Contractor arising out of this Contract then due and payable.
695 Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a
696 refund, any amount of such overpayment, at the option of the Contractor, may be credited
697 against amounts to become due to the United States by the Contractor. With respect to
698 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or
699 anyone having or claiming to have the right to the use of any of the Project Water supply
700 provided for in this Contract. All credits and refunds of overpayments shall be made
701 within 30 days of the Contracting Officer obtaining direction as to how to credit or
702 refund such overpayment in response to the notice to the Contractor that it has finalized the
703 accounts for the Year in which the overpayment was made.

704 (b) All advances for miscellaneous costs incurred for work requested by the
705 Contractor pursuant to Article 21 of this Contract shall be adjusted to reflect the actual
706 costs when the work has been completed. If the advances exceed the actual costs incurred, the
707 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
708 advances, the Contractor will be billed for the additional costs pursuant to Article 21 of this
709 Contract.

710 TEMPORARY REDUCTIONS – RETURN FLOWS

711 10. (a) Subject to: (i) the authorized purposes and priorities of the Project and the

712 requirements of Federal law, and (ii) the obligations of the United States under existing
713 contracts, or renewals thereof, providing for water deliveries from the Project, the
714 Contracting Officer shall make all reasonable efforts to optimize Project Water deliveries to
715 the Contractor as provided in this Contract.

716 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may
717 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as
718 herein provided for the purposes of investigation, inspection, maintenance, repair, or
719 replacement of any of the Project facilities or any part thereof necessary for the delivery of
720 Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating
721 Non-Federal Entity(ies) will give the Contractor due notice in advance of such temporary
722 discontinuance or reduction, except in case of emergency, in which case no notice need be
723 given; Provided, That the United States shall use its best efforts to avoid any
724 discontinuance or reduction in such service. Upon resumption of service after such
725 discontinuance or reduction, and if requested by the Contractor, the United States will, if
726 possible, deliver the quantity of Project Water which would have been delivered
727 hereunder in the absence of such discontinuance or reduction.

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

734 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

740 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting
741 or other similar operational errors affecting the Project; drought and other physical or natural
742 causes beyond the control of the Contracting Officer; or actions taken by the Contracting
743 Officer to meet current and future legal obligations, then, except as provided in subdivision (a) of
744 Article 15 of this Contract, no liability shall accrue against the United States or any of its
745 officers, agents, or employees for any damage, direct or indirect, arising therefrom.

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

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

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RULES, REGULATIONS, AND DETERMINATIONS

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

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

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PROTECTION OF WATER AND AIR QUALITY

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13. (a) Omitted

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(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.

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(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.

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

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WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

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14. (a) Omitted

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(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

792 documentation, with the approval of the Contracting Officer and the execution of any
793 contract determined by the Contracting Officer to be necessary, consistent with the
794 following provisions:

795 (1) The Contractor may introduce non-Project water into Project
796 facilities and deliver said water to lands within the Contractor's Service Area, subject to
797 payment to the United States and/or to any applicable Operating Non-Federal Entity of
798 an appropriate rate as determined by the applicable Project ratesetting policy, the
799 Reclamation Reform Act of 1982, each as amended, modified, or superseded from time
800 to time. In addition, if electrical power is required to pump non-Project water through the
801 facilities, the Contractor shall be responsible for obtaining the necessary power and paying the
802 necessary charges therefore.

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

809 (3) Neither the United States nor the Operating Non-Federal
810 Entity(ies) shall be responsible for control, care, or distribution of the non-Project water
811 before it is introduced into or after it is delivered from the Project facilities. The
812 Contractor hereby releases and agrees to defend and indemnify the United States and the
813 Operating Non-Federal Entity(ies), and their respective officers, agents, and employees,

814 from any claim for damage to persons or property, direct or indirect, resulting from the
815 act(s) of the Contractor, its officers, employees, agents, or assigns, in (i) extracting or
816 diverting non-Project water from any source, or (ii) diverting such non-Project water into
817 Project facilities.

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

821 (5) After Project purposes are met, as determined by the
822 Contracting Officer, the United States and Project Contractors entitled to Project Water
823 from Delta Division Facilities shall share priority to utilize the remaining capacity of the
824 facilities declared to be available by the Contracting Officer for conveyance and
825 transportation of non-Project water prior to any such remaining capacity being made
826 available to non-Project contractors. Other Project Contractors shall have a second priority
827 to any remaining capacity of facilities declared to be available by the Contracting Officer
828 for conveyance and transportation of non-Project water prior to any such remaining
829 capacity being made available to non-Project contractors.

830 OPINIONS AND DETERMINATIONS

831 15. (a) Where the terms of this Contract provide for actions to be based upon
832 the opinion or determination of either party to this Contract, said terms shall not be
833 construed as permitting such action to be predicated upon arbitrary, capricious, or
834 unreasonable opinions or determinations. Both parties, notwithstanding any other
835 provisions of this Contract, expressly reserve the right to seek relief from and appropriate

836 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination.
837 Each opinion or determination by either party shall be provided in a timely manner.
838 Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the
839 standard of judicial review applicable under Federal law to any opinion or determination
840 implementing a specific provision of Federal law embodied in statute or regulation.

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

846 COORDINATION AND COOPERATION

847 16. (a) In order to further their mutual goals and objectives, the Contracting
848 Officer and the Contractor shall communicate, coordinate, and cooperate with each other,
849 and with other affected Project Contractors, in order to improve the O&M of the
850 Project. The communication, coordination, and cooperation regarding O&M shall
851 include, but not be limited to, any action which will or may materially affect the quantity
852 or quality of Project Water supply, the allocation of Project Water supply, and Project
853 financial matters including, but not limited to, budget issues. The communication,
854 coordination, and cooperation provided for hereunder shall extend to all provisions of
855 this Contract. Each party shall retain exclusive decision making authority for all actions,
856 opinions, and determinations to be made by the respective party.

857 (b) Within 120 days following the Effective Date, the Contractor, other

858 affected Project Contractors, and the Contracting Officer shall arrange to meet with
859 interested Project Contractors to develop a mutually agreeable, written Project-wide
860 process, which may be amended as necessary separate and apart from this Contract. The
861 goal of this process shall be to provide, to the extent practicable, the means of mutual
862 communication and interaction regarding significant decisions concerning Project O&M
863 on a real-time basis.

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

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

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

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

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

878 (5) The Contracting Officer shall periodically, but not less than
879 annually, hold division-level meetings to discuss Project operations, division-level water

880 management activities, and other issues as appropriate.

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

886 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

906 EQUAL EMPLOYMENT OPPORTUNITY

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

908 (a) The Contractor will not discriminate against any employee or applicant
909 for employment because of race, color, religion, sex, sexual orientation, gender identity, or
910 national origin. The Contractor will take affirmative action to ensure that applicants are
911 employed, and that employees are treated during employment, without regard to their race,

912 color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall
913 include, but not be limited to, the following: employment, upgrading, demotion, or
914 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
915 forms of compensation; and selection for training, including apprenticeship. The Contractor
916 agrees to post in conspicuous places, available to employees and applicants for employment,
917 notices to be provided by the Contracting Officer setting forth the provisions of this
918 nondiscrimination clause.

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

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

933 (d) The Contractor will send to each labor union or representative of
934 workers with which it has a collective bargaining agreement or other contract or understanding,
935 a notice, to be provided by the Contracting Officer, advising the labor union or workers'
936 representative of the Contractor's commitments under Section 202 of Executive Order No.
937 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places
938 available to employees and applicants for employment.

939 (e) The Contractor will comply with all provisions of Executive Order No.
940 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
941 of Labor.

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

947 (g) In the event of the Contractor's noncompliance with the
948 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this
949 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may

950 be declared ineligible for further Government contracts in accordance with procedures
951 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may
952 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,
953 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by
954 law.

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

965 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

979 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

980 20. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
981 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
982 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
983 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
984 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the

985 applicable implementing regulations and any guidelines imposed by the U.S.
986 Department of the Interior and/or Bureau of Reclamation.

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

994 (c) The Contractor makes this Contract in consideration of and for the
995 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
996 Federal financial assistance extended after the date hereof to the Contractor by the Bureau
997 of Reclamation, including installment payments after such date on account of
998 arrangements for Federal financial assistance which were approved before such date.
999 The Contractor recognizes and agrees that such Federal assistance will be extended in
1000 reliance on the representations and agreements made in this Article and that the United
1001 States reserves the right to seek judicial enforcement thereof.

1002 (d) Complaints of discrimination against the Contractor shall be investigated
1003 by the Contracting Officer's Office of Civil Rights.

1004 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1005 21. In addition to all other payments to be made by the Contractor pursuant to this
1006 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill
1007 and detailed statement submitted by the Contracting Officer to the Contractor for such
1008 specific items of direct cost incurred by the United States for work requested by the
1009 Contractor associated with this Contract plus indirect costs in accordance with applicable
1010 Bureau of Reclamation policies and procedures. All such amounts referred to in this
1011 Article shall not exceed the amount agreed to in writing in advance by the Contractor.
1012 This Article shall not apply to costs for routine contract administration.

1013

WATER CONSERVATION

1014 22. (a) Prior to the delivery of water provided from or conveyed through
1015 Federally constructed or Federally financed facilities pursuant to this Contract, the
1016 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the
1017 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1018 Regulations).

1019 Additionally, an effective water conservation and efficiency program shall be based on the
1020 Contractor's water conservation plan that has been determined by the Contracting Officer to
1021 meet the conservation and efficiency criteria for evaluating water conservation plans
1022 established under Federal law. The water conservation and efficiency program shall
1023 contain definite water conservation objectives, appropriate economically feasible water
1024 conservation measures, and time schedules for meeting those objectives. Continued
1025 Project Water delivery pursuant to this Contract shall be contingent upon the
1026 Contractor's continued implementation of such water conservation program. In the
1027 event the Contractor's water conservation plan or any revised water conservation plan
1028 completed pursuant to subdivision (d) of this Article 22 have not yet been determined by
1029 the Contracting Officer to meet such criteria, due to circumstances which the
1030 Contracting Officer determines are beyond the control of the Contractor, water deliveries
1031 shall be made under this Contract so long as the Contractor diligently works with the
1032 Contracting Officer to obtain such determination at the earliest practicable date, and
1033 thereafter the Contractor immediately begins implementing its water conservation and
1034 efficiency program in accordance with the time schedules therein.

1035 (b) Should the amount of M&I Water delivered pursuant to subdivision
1036 (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year,

1037 the Contractor shall implement the Best Management Practices identified by the time
1038 frames issued by the Mid-Pacific Region's then-existing conservation and efficiency
1039 criteria for such M&I Water unless any such practice is determined by the Contracting
1040 Officer to be inappropriate for the Contractor.

1041 (c) The Contractor shall submit to the Contracting Officer a report on the
1042 status of its implementation of the water conservation plan on the reporting dates specified in the
1043 then-existing conservation and efficiency criteria established under Federal law.

1044 (d) At five (5)-year intervals, the Contractor shall revise its water
1045 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1046 water conservation plans established under Federal law and submit such revised water
1047 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1048 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1049 existing conservation and efficiency criteria for evaluating water conservation plans established
1050 under Federal law.

1051 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1052 shall be described in the Contractor's water conservation plan.

1053 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1054 23. Except as specifically provided in Article 14 of this Contract, the provisions
1055 of this Contract shall not be applicable to or affect non-Project water or water rights now owned
1056 or hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1057 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1058 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or

1059 any water user within the Contractor's Service Area acquires or has available under any other
1060 contract pursuant to Federal Reclamation law.

1061 O&M BY THE SAN LUIS & DELTA – MENDOTA WATER AUTHORITY

1062 24. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1063 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1064 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1065 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1066 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1067 affect the rights or obligations of the Contractor or the United States hereunder.

1068 (b) The Contracting Officer has previously notified the Contractor in
1069 writing that the Operation and Maintenance of a portion of the Project facilities which
1070 serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis &
1071 Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the
1072 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1073 successor approved by the Contracting Officer under the terms and conditions of the
1074 separate agreement between the United States and the Operating Non-Federal Entity San
1075 Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates,
1076 charges, or assessments of any kind, including any assessment for reserve funds, which the
1077 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor
1078 determines, sets, or establishes for the Operation and Maintenance of the portion of the Project
1079 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-
1080 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal

1081 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the
1082 Contractor of its obligation to pay directly to the United States the Contractor's share of
1083 the Project Rates, Charges, and Tiered Pricing Component except to the extent the
1084 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments
1085 on behalf of the United States in accordance with the separate agreement identified in
1086 subdivision (a) of this Article.

1087 (c) For so long as the O&M of any portion of the Project facilities
1088 serving the Contractor is performed by Operating Non-Federal Entity San Luis &
1089 Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer
1090 shall adjust those components of the Rates for Water Delivered under this Contract
1091 representing the cost associated with the activity being performed by Operating Non-
1092 Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

1093 (d) In the event the Operation and Maintenance of the Project facilities
1094 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota
1095 Water Authority is re-assumed by the United States during the term of this Contract, the
1096 Contracting Officer shall so notify the Contractor, in writing, and present to the
1097 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid
1098 by the Contractor for Project Water under this Contract representing the Operation and
1099 Maintenance costs of the portion of such Project facilities which have been re-assumed. The
1100 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to
1101 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised
1102 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1103 O&M BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

1104 25. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1105 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1106 California Department of Water Resources, an Operating Non-Federal Entity by a separate
1107 agreement (14-06-200-9755) between the United States and Operating Non-Federal
1108 Entity California Department of Water Resources. This separate agreement shall not
1109 interfere with or affect the rights or obligations of the Contractor or the United States
1110 hereunder.

1111 (b) The Contracting Officer has previously notified the Contractor in writing
1112 that the O&M of a portion of the Project facilities which serve the Contractor has been
1113 transferred to the Operating Non-Federal Entity California Department of Water
1114 Resources, and the Contractor shall pay directly to Operating Non-Federal Entity San
1115 Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting
1116 Officer under the terms and conditions of the separate agreement between the United
1117 States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1118 described in subdivision (a) of Article 24 of this Contract, all rates, charges, or assessments of
1119 any kind, including any assessment for reserve funds, which Operating Non-Federal Entity
1120 California Department of Water Resources, or such successor determines, sets, or establishes for
1121 the O&M of the conveyance and conveyance pumping portion of the Project facilities
1122 operated and maintained by Operating Non-Federal Entity California Department of
1123 Water Resources, or such successor. Such direct payments to Operating Non-Federal
1124 Entity San Luis & Delta-Mendota Water Authority, or such successor, shall not relieve

1125 the Contractor of its obligation to pay directly to the United States the Contractor's
1126 share of the Project Rates, Charges, and Tiered Pricing Component except to the extent
1127 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1128 payments on behalf of the United States in accordance with the separate agreement
1129 identified in subdivision (a) of Article 24 of this Contract.

1130 (c) For so long as the O&M of any portion of the Project facilities serving
1131 the Contractor is performed by Operating Non-Federal Entity California Department of
1132 Water Resources, or any successor thereto, the Contracting Officer shall adjust those
1133 components of the Rates for Water Delivered under this Contract representing the cost associated
1134 with the activity being performed by Operating Non-Federal Entity California Department of
1135 Water Resources, or its successor.

1136 (d) In the event the O&M of the Project facilities operated and maintained by
1137 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1138 United States during the term of this Contract, the Contracting Officer shall so notify the
1139 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall
1140 include the portion of the Rates and Charges, to be paid by the Contractor for Project
1141 Water under this Contract representing the O&M costs of the portion of such Project
1142 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of
1143 written notification from the Contracting Officer to the contrary, pay the Rates, Charges,
1144 and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1145 States in compliance with Article 7 of this Contract.

1146

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1147 26. The expenditure or advance of any money or the performance of any obligation of
1148 the United States under this Contract shall be contingent upon appropriation or allotment
1149 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor
1150 from any obligations under this Contract. No liability shall accrue to the United States in case
1151 funds are not appropriated or allotted.

1152

BOOKS, RECORDS, AND REPORTS

1153 27. (a) The Contractor shall establish and maintain accounts and other books and
1154 records pertaining to administration of the terms and conditions of this Contract, including
1155 the Contractor's financial transactions; water supply data; project operations, maintenance, and
1156 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1157 census), land-ownership, land-leasing, and water-use data; and other matters that the
1158 Contracting Officer may require. Reports shall be furnished to the Contracting Officer
1159 in such form and on such date or dates as the Contracting Officer may require. Subject to
1160 applicable Federal laws and regulations, each party to this Contract shall have the right during
1161 office hours to examine and make copies of the other party's books and records relating to
1162 matters covered by this Contract.

1163 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1164 books, records, or other information shall be requested from the Contractor by the
1165 Contracting Officer unless such books, records, or information are reasonably related to the
1166 administration or performance of this Contract. Any such request shall allow the Contractor a
1167 reasonable period of time within which to provide the requested books, records, or
1168 information.

1169 (c) At such time as the Contractor provides information to the Contracting
1170 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1171 to the Operating Non-Federal Entity(ies).

1172

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1173 28. (a) The provisions of this Contract shall apply to and bind the successors and
1174 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1175 therein by either party shall be valid until approved in writing by the other party.

1176 (b) The assignment of any right or interest in this Contract by either party
1177 shall not interfere with the rights or obligations of the other party to this Contract absent the
1178 written concurrence of said other party.

1179 (c) The Contracting Officer shall not unreasonably condition or withhold
1180 approval of any proposed assignment.

1181 SEVERABILITY

1182 29. In the event that a person or entity who is neither (i) a party to a Project contract,
1183 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1184 an association or other form of organization whose primary function is to represent parties to
1185 Project contracts, brings an action in a court of competent jurisdiction challenging the
1186 legality or enforceability of a provision included in this Contract and said person, entity,
1187 association, or organization obtains a final court decision holding that such provision is
1188 legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in
1189 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i)
1190 within 30 days of the date of such final court decision identify by mutual agreement the
1191 provisions in this Contract which must be revised and (ii) within three months thereafter
1192 promptly agree on the appropriate revision(s). The time periods specified above may be
1193 extended by mutual agreement of the parties. Pending the completion of the actions
1194 designated above, to the extent it can do so without violating any applicable provisions of
1195 law, the United States shall continue to make the quantities of Project Water specified in this
1196 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1197 found to be legally invalid or unenforceable in the final court decision.

1198

RESOLUTION OF DISPUTES

1199 30. Should any dispute arise concerning any provisions of this Contract, or the
1200 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt
1201 to resolve the dispute. Prior to the Contractor commencing any legal action, or the
1202 Contracting Officer referring any matter to the Department of Justice, the party shall
1203 provide to the other party 30 days' written notice of the intent to take such action;
1204 *Provided, That* such notice shall not be required where a delay in commencing an action
1205 would prejudice the interests of the party that intends to file suit. During the 30-day
1206 notice period, the Contractor and the Contracting Officer shall meet and confer in an
1207 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended
1208 to waive or abridge any right or remedy that the Contractor or the United States may have.

1209

OFFICIALS NOT TO BENEFIT

1210 31. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1211 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1212 same manner as other water users or landowners.

1213

CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1214 32. (a) While this Contract is in effect, no change may be made in the
1215 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1216 changes which may affect the respective rights, obligations, privileges, and duties of either the
1217 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1218 consolidation, or merger, except upon the Contracting Officer's written consent.

1219 (b) Within 30 days of receipt of a request for such a change, the Contracting
1220 Officer will notify the Contractor of any additional information required by the Contracting
1221 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1222 schedule for timely completion of the process. Such process will analyze whether the proposed

1223 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1224 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1225 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1226 have an impact on any Project Water rights applications, permits, or licenses. In addition,
1227 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will
1228 be responsible for all costs incurred by the Contracting Officer in this process, and such
1229 costs will be paid in accordance with Article 21 of this Contract.

1230 FEDERAL LAWS

1231 33. By entering into this Contract, the Contractor does not waive its rights to contest
1232 the validity or application in connection with the performance of the terms and
1233 conditions of this Contract of any Federal law or regulation; *Provided, That* the
1234 Contractor agrees to comply with the terms and conditions of this Contract unless and
1235 until relief from application of such Federal law or regulation to the implementing
1236 provision of the Contract is granted by a court of competent jurisdiction.

1237 NOTICES

1238 34. Any notice, demand, or request authorized or required by this Contract shall be
1239 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1240 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1241 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1242 postage prepaid, or delivered to the City of Avenal, 919 Skyline Boulevard, Avenal, California
1243 93204. The designation of the addressee or the address may be changed by notice given in the
1244 same manner as provided in this Article for other notices.

1245 CERTIFICATION OF NONSEGREGATED FACILITIES

1246 35. The Contractor hereby certifies that it does not maintain or provide for its
1247 employees any segregated facilities at any of its establishments and that it does not permit its
1248 employees to perform their services at any location under its control where segregated facilities
1249 are maintained. It certifies further that it will not maintain or provide for its employees any

1250 segregated facilities at any of its establishments and that it will not permit its employees to
1251 perform their services at any location under its control where segregated facilities are
1252 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
1253 Employment Opportunity clause in this Contract. As used in this certification, the term
1254 “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms,
1255 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
1256 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
1257 facilities provided for employees which are segregated by explicit directive or are in fact
1258 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1259 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1260 identical certifications from proposed subcontractors for specific time periods) it will obtain
1261 identical certifications from proposed subcontractors prior to the award of subcontracts
1262 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1263 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1264 following notice to such proposed subcontractors (except where the proposed subcontractors
1265 have submitted identical certifications for specific time periods):

1266 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
1267 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1268 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1269 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1270 Opportunity clause. The certification may be submitted either for each subcontract or for all
1271 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1272 making false statements in offers is prescribed in 18 U.S.C.§ 1001.

1273 MEDIUM FOR TRANSMITTING PAYMENT

1274 36. (a) All payments from the Contractor to the United States under this Contract
1275 shall be by the medium requested by the United States on or before the date payment is due. The
1276 required method of payment may include checks, wire transfers, or other types of payment
1277 specified by the United States.

1278 (b) Upon execution of this Contract, the Contractor shall furnish the
1279 Contracting Officer with the Contractor’s taxpayer’s identification number (TIN). The purpose
1280 for requiring the Contractor’s TIN is for collecting and reporting any delinquent amounts arising
1281 out of the Contractor’s relationship with the United States.

1282 CONTRACT DRAFTING CONSIDERATIONS

1283 37. This amended Contract has been negotiated and reviewed by the parties hereto,
1284 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1285 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by

1286 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1287 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1288 CONFIRMATION OF CONTRACT

1289 38. Promptly after the execution of this Contract, the Contractor will provide
1290 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1291 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the
1292 Contractor. This Contract will not be binding on the United States until the Contractor
1293 provides evidence to the Contracting Officer's satisfaction. In addition to other forms of
1294 evidence to meet the requirements of this Article, the Contractor may provide or the
1295 Contracting Officer may require a certified copy of a final decree of a court of competent
1296 jurisdiction in the State of California, confirming the proceedings on the part of the
1297 Contractor for the authorization of the execution of this Contract.

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

1298 UNITED STATES OF AMERICA

1299 By: _____
1300 Regional Director
1301 Interior Region 10: California-Great Basin
1302 Bureau of Reclamation

1303 CITY OF AVENAL

1304 (SEAL)

1305 By: _____
1306 Mayor

1307 Attest:

1308 By: _____
1309 City Clerk