

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

CONTRACT BETWEEN THE UNITED STATES
AND
THE STATE OF CALIFORNIA
PROVIDING FOR PROJECT WATER SERVICE TO THE MENDOTA WATERFOWL
MANAGEMENT AREA HEADQUARTERS
FROM THE 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 THE
12 STATE OF CALIFORNIA, represented by the CALIFORNIA DEPARTMENT OF FISH AND
13 WILDLIFE, hereinafter referred to as the Contractor, a public agency of the State of California,
14 duly organized, existing, and acting pursuant to the laws thereof, with its specific place of
15 business in Sacramento, California;

16 WITNESSETH, That:

17 EXPLANATORY RECITALS

18 [1st] WHEREAS, the United States has constructed and is operating the
19 California Central Valley Project (Project), for diversion, storage, carriage, distribution, and
20 beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and
21 wildlife mitigation, protection and restoration, generation and distribution of electric energy,
22 salinity control, navigation, and other beneficial uses, of waters of the Sacramento River,
23 the American River, the Trinity River, and the San Joaquin River and their tributaries;
24 and

25 [2nd] WHEREAS, the United States constructed the Delta Division Facilities,
26 including the San Luis Unit facilities (which include the San Luis Canal, the Coalinga
27 Canal, the Pleasant Valley Pumping Plant, and the Dos Amigos Pumping Plant), which
28 will be used in part for the furnishing of water to the Contractor pursuant to the terms of
29 this Contract; and

30 [3rd] WHEREAS, the rights to Project Water were acquired by the United
31 States pursuant to California law for operation of the Project; and

32 [4th] WHEREAS, the United States and the Contractor entered into
33 Contract No. 14-06-200-8033A, as amended, which provided the Contractor, Project Water
34 from the Project facilities from January 1, 1976, to December 31, 2008; and

[5th] WHEREAS, the United States and the Contractor have pursuant to
Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA),
subsequently entered into binding agreements identified as Binding Agreement No. 14-

06-200-8033A-BA, which sets out the terms pursuant to which the Contractor agreed to renew its contract before the expiration date after completion of the Programmatic Environmental Impact Statement (PEIS) and other appropriate environmental documentation and negotiation of a renewal contract; and which also sets out the consequences of a subsequent decision not to renew; and

35 [6th] WHEREAS, the United States and the Contractor entered into Delta
36 Division and San Luis Unit Contract Number 14-06-200-8033A-IR1 and subsequent Interim
37 Renewal Contracts 14-06-200-8033A-IR2 through 14-06-200-8033A-IR6, the last of which is
38 hereinafter referred to as the “Existing Contract”, which established terms for the delivery of
39 Project Water to the Contractor from the Delta Division and San Luis Unit, and which was in
40 effect the date the WIIN Act was enacted; and

41 [7th] WHEREAS, on December 16, 2016, the 114th Congress of the United
42 States of America enacted the WIIN Act; and

43 [8th] WHEREAS, Section 4011(a)(1) provides that “upon request of the
44 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
45 date of enactment of this subtitle and between the United States and a water users’ association
46 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
47 mutually agreeable terms and conditions.”; and

48 [9th] WHEREAS, Section 4011(a)(1) further provides that “the manner of
49 conversion under this paragraph shall be as follows: (A) Water service contracts that were
50 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under
51 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.

52 1195”); and “(B) Water service contracts that were entered under subsection (c)(2) of section 9
53 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be
54 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

55 [10th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered
56 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,
57 repayment, exchange and transfer contractual rights between the water users’ association
58 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the
59 water users’ association [Contractor] and their landowners as provided under State law.”; and

60 [11th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that
61 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water
62 service or repayment contractor to receive water; or (4) except as expressly provided in this
63 section, any obligations under the Federal Reclamation law, including the continuation of
64 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and
65 repayment contractors making prepayments pursuant to this section.”; and

66 [12th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
67 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water
68 service contracts into repayment contracts, amend existing repayment contracts, and allow
69 contractors to prepay their construction cost obligations pursuant to applicable Federal
70 Reclamation law; and

71 [13th] WHEREAS, the United States has determined that the Contractor
72 has fulfilled all of its obligations under the Existing Contract; and

73 [14th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
74 Contracting Officer that the Contractor has utilized the Project Water supplies available
75 to it for reasonable and beneficial use and expects to utilize fully for reasonable and
76 beneficial use the quantity of Project Water to be made available to it pursuant to this
77 Contract; and

78 [15th] WHEREAS, water obtained from the Project has been relied upon by
79 urban and agricultural areas within California for more than 50 years, and is considered
80 by the Contractor as an essential portion of its water supply; and

81 [16th] WHEREAS, at the time of execution of this Contract, the United States is
82 the sole source of water supply to the Contractor]; and

83 [17th] WHEREAS, the economies of regions within the Project, including the
84 Contractor's, depend upon the continued availability of water, including water service
85 from the Project; and

86 [18th] WHEREAS, the Secretary intends through coordination, cooperation, and
87 partnerships to pursue measures to improve water supply, water quality, and reliability of the
88 Project for all Project purposes; and

89 [19th] WHEREAS, the mutual goals of the United States and the Contractor
90 include: to provide for reliable Project Water supplies; to control costs of those supplies;
91 to achieve repayment of the Project as required by law; to guard reasonably against Project
92 Water shortages; to achieve a reasonable balance among competing demands for use of
93 Project Water; and to comply with all applicable environmental statutes, all consistent with
94 the legal obligations of the United States relative to the Project; and

95 [20th] WHEREAS, the parties intend by this Contract to maintain a cooperative
96 relationship in order to achieve their mutual goals; and

97 [21st] WHEREAS, in the CALFED Programmatic Record of Decision, dated
98 August 28, 2000, the United States and the State of California adopted a general target of
99 continuously improving Delta water quality for all uses. The CALFED Agencies' target for
100 providing safe, reliable, and affordable drinking water in a cost-effective way, is to achieve
101 either: (a) average concentrations at Clifton Forebay and other southern and central Delta
102 drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an
103 equivalent level of public health protection using a cost-effective combination of alternative
104 source waters, source control and treatment technologies; and

105 [22nd] WHEREAS, the Contractor has utilized or may utilize transfers, contract
106 assignments, rescheduling, and conveyance of Project Water and non-Project water under this
107 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the
108 beneficial use of water; and

109 [23rd] WHEREAS, the parties desire and intend that this Contract not provide a
110 disincentive to the Contractor in continuing to carry out the beneficial activities set out in
111 the Explanatory Recital immediately above; and

112 [24th] WHEREAS, the Contracting Officer and the Contractor agree that this
113 Contract complies with Section 4011 of the WIIN Act; and

114 [25th] WHEREAS, the Contracting Officer and the Contractor agree to amend
115 and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal
116 Reclamation law on the terms and conditions set forth below;

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

119 DEFINITIONS

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

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

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

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

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

135 (e) “Contracting Officer” shall mean the Secretary of the Interior's duly
136 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
137 or regulation;

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

140 (g) “Contractor's Service Area” shall mean the area to which the Contractor is
141 permitted to provide Project Water under this Contract as described in Exhibit “A”
142 attached hereto, which may be modified from time to time in accordance with Article 31
143 of this Contract without amendment of this Contract;

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

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

152 (j) Omitted

153 (k) Omitted

154 (l) “Existing Capital Obligation” shall mean the remaining amount of
155 construction costs or other capitalized costs allocable to the Contractor as described in section
156 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
157 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,
158 dated **Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to**
159 **address the intertie]**, as adjusted to reflect payments not reflected in such schedule. The

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

162 (m) “Full Cost Rate” shall mean an annual rate, as determined by the
163 Contracting Officer that shall amortize the expenditures for construction properly
164 allocable to the Project irrigation or M&I functions, as appropriate, of facilities in
165 service including all O&M deficits funded, less payments, over such periods as may be
166 required under Federal Reclamation law, or applicable contract provisions. Interest will
167 accrue on both the construction expenditures and funded O&M deficits from October 12,
168 1982, on costs outstanding at that date, or from the date incurred in the case of costs
169 arising subsequent to October 12 1982, and shall be calculated in accordance with
170 subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of 1982. The Full Cost
171 Rate includes actual operation, maintenance, and replacement costs consistent with
172 Section 426.2 of the Rules and Regulations for the Reclamation Reform Act of 1982;

173 (n) Omitted

174 (o) Omitted

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

178 (q) Omitted

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

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

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

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

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

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

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

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

206 (z) Omitted

207 (aa) “Repayment Obligation” for Water Delivered as Irrigation Water shall
208 mean the Existing Capital Obligation discounted by ½ of the Treasury rate, which shall be the
209 amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN
210 Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the
211 United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act;

212 (bb) “Secretary” shall mean the Secretary of the Interior, a duly appointed
213 successor, or an authorized representative acting pursuant to any authority of the
214 Secretary and through any agency of the Department of the Interior;

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

218 (dd) “Water Delivered” or “Delivered Water” shall mean Project Water
219 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
220 Officer;

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

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

227 and

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

230 TERM OF CONTRACT – RIGHT TO USE OF WATER

231 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the
232 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges
233 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.
234 1195) as applicable, and applicable law;

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

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

249 satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water
250 available and declaring Water Made Available pursuant to this Contract;

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

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

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

260 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

261 3. (a) During each Year, consistent with all applicable State water rights
262 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and
263 12 of this Contract, the Contracting Officer shall make available for delivery to the
264 Contractor 10 acre-feet of Project Water for M&I purposes. Water Delivered to the
265 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant
266 to the provisions of Articles 4 and 7 of this Contract.

267 (b) Because the capacity of the Project to deliver Project Water has been
268 constrained in recent years and may be constrained in the future due to many factors
269 including hydrologic conditions and implementation of Federal and State laws, the
270 likelihood of the Contractor actually receiving the amount of Project Water set out in

271 subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's
272 modeling referenced in the PEIS projected that the Contract Total set forth in this Contract
273 will not be available to the Contractor in many years. Nothing in this subdivision (b) of this
274 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

277 (d) The Contractor shall make reasonable and beneficial use of all water
278 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or
279 in lieu), groundwater banking programs, surface water storage programs, and other
280 similar programs utilizing Project Water or other water furnished pursuant to this
281 Contract conducted within the Contractor's Service Area which are consistent with
282 applicable State law and result in use consistent with Federal Reclamation law will be
283 allowed; Provided, That any direct recharge program(s) is (are) described in the
284 Contractor's water conservation plan submitted pursuant to Article 22 of this Contract;
285 Provided, further, That such water conservation plan demonstrates sufficient lawful uses
286 exist in the Contractor's Service Area so that using a long-term average, the quantity of
287 Delivered Water is demonstrated to be reasonable for such uses and in compliance with
288 Federal Reclamation law. Groundwater recharge programs, groundwater banking
289 programs, surface water storage programs, and other similar programs utilizing Project
290 Water or other water furnished pursuant to this Contract conducted outside the
291 Contractor's Service Area may be permitted upon written approval of the Contracting
292 Officer, which approval will be based upon environmental documentation, Project Water

293 rights, and Project operational concerns. The Contracting Officer will address such
294 concerns in regulations, policies, or guidelines.

295 (e) The Contractor shall comply with requirements applicable to the
296 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
297 of any water service contract between the Contracting Officer and the Contractor in effect
298 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
299 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
300 implement. The Existing Contract, which evidences in excess of 32 years of diversions for
301 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
302 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
303 required biological assessment(s) prepared pursuant to the ESA, and any other needed
304 environmental review. Nothing herein shall be construed to prevent the Contractor from
305 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
306 biological opinion or other environmental documentation referred to in this Article.

307 (f) Following the declaration of Water Made Available under Article 4 of
308 this Contract, the Contracting Officer will make a determination whether Project Water, or
309 other water available to the Project, can be made available to the Contractor in addition to
310 the Contract Total under this Article during the Year without adversely impacting other
311 Project Contractors. At the request of the Contractor, the Contracting Officer will
312 consult with the Contractor prior to making such a determination. If the Contracting
313 Officer determines that Project Water, or other water available to the Project, can be
314 made available to the Contractor, the Contracting Officer will announce the availability of

315 such water and shall so notify the Contractor as soon as practical. The Contracting
316 Officer will thereafter meet with the Contractor and other Project Contractors capable of
317 taking such water to determine the most equitable and efficient allocation of such water.
318 If the Contractor requests the delivery of any quantity of such water, the Contracting
319 Officer shall make such water available to the Contractor in accordance with applicable
320 statutes, regulations, guidelines, and policies. Subject to existing long-term contractual
321 commitments, water rights and operational constraints, long-term Project Contractors shall
322 have a first right to acquire such water, including Project Water made available pursuant
323 to Section 215 of the Reclamation Reform Act of 1982.

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

331 (h) The Contractor’s right pursuant to Federal Reclamation law and
332 applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to
333 this Contract shall not be disturbed, and this Contract shall continue so long as the
334 Contractor pays applicable Rates and Charges under this Contract consistent with Section
335 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable

336 law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose
337 shortages under Article 11 or subdivision (b) of Article 11 of this Contract.

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

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

350 TIME FOR DELIVERY OF WATER

351 4. (a) On or about February 20 each Calendar Year, the Contracting Officer
352 shall announce the Contracting Officer's expected declaration of the Water Made
353 Available. Such declaration will be expressed in terms of Water Made Available and
354 will be updated monthly, and more frequently if necessary, based on the then-current
355 operational and hydrologic conditions and a new declaration with changes, if any, to the
356 Water Made Available will be made. The Contracting Officer shall provide forecasts of

357 Project operations and the basis of the estimate, with relevant supporting information,
358 upon the written request of the Contractor.

359 (b) On or before each March 1 and at such other times as necessary, the
360 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
361 Contracting Officer, showing the monthly quantities of Project Water to be delivered by
362 the United States to the Contractor pursuant to this Contract for the Year commencing
363 on such March 1. The Contracting Officer shall use all reasonable means to deliver
364 Project Water according to the approved schedule for the Year commencing on such
365 March 1.

366 (c) The Contractor shall not schedule Project Water in excess of the
367 quantity of Project Water the Contractor intends to put to reasonable and beneficial use
368 within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article
369 8 of this Contract during any Year.

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

376 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

377 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
378 Contract shall be delivered to the Contractor at Project facilities and any additional point or

379 points of delivery either on Project facilities or another location or locations mutually
380 agreed to in writing by the Contracting Officer and the Contractor.

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

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

388 (d) All Water Delivered to the Contractor pursuant to this Contract shall
389 be measured and recorded with equipment furnished, installed, operated, and maintained
390 by the Contracting Officer either directly or indirectly through its written agreements(s)
391 with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with
392 the consent of the Contracting Officer at the point or points of delivery established
393 pursuant to subdivision (a) of this Article. Upon the request of either party to this
394 Contract, the Contracting Officer shall investigate, or cause to be investigated by the
395 appropriate Operating Non-Federal Entity(ies), the accuracy of such measurements and
396 shall take any necessary steps to adjust any errors appearing therein. For any period of
397 time when accurate measurements have not been made, the Contracting Officer shall
398 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any,
399 prior to making a final determination of the quantity delivered for that period of time.

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

418 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

419 6. (a) The Contractor has established a measuring program satisfactory to
420 the Contracting Officer. The Contractor shall ensure that, unless the Contractor establishes
421 an alternative measurement program satisfactory to the Contracting Officer, all surface

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

436 (b) To the extent the information has not otherwise been provided, upon
437 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
438 report describing the measurement devices or water measuring methods being used or to
439 be used to implement subdivision (a) of this Article and identifying M&I service
440 connections or alternative measurement programs approved by the Contracting Officer,
441 at which such measurement devices or water measuring methods are being used, and, if
442 applicable, identifying the locations at which such devices and/or methods are not yet
443 being used including a time schedule for implementation at such locations. The

444 Contracting Officer shall advise the Contractor in writing within 60 days as to the
445 adequacy and necessary modifications, if any, of the measuring devices or water
446 measuring methods identified in the Contractor's report and if the Contracting Officer
447 does not respond in such time, they shall be deemed adequate. If the Contracting
448 Officer notifies the Contractor that the measuring devices or methods are inadequate, the
449 parties shall within 60 days following the Contracting Officer's response, negotiate in good
450 faith the earliest practicable date by which the Contractor shall modify said measuring
451 devices and/or measuring methods as required by the Contracting Officer to ensure
452 compliance with subdivision (a) of this Article.

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

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

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

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

464 7. (a) Notwithstanding the Contractor's full prepayment of the
465 Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

583 (f) The Contractor shall pay for any Water Delivered under subdivision
584 (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer
585 pursuant to applicable statutes, associated regulations, any applicable provisions of
586 guidelines or ratesetting policies; Provided, That the Rate for Water Delivered under
587 subdivision (f) of Article 3 of this Contract shall be no more than the otherwise
588 applicable Rate for M&I Water under subdivision (a) of this Article.

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

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

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

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

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

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

615 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
616 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
617 Contract Total, shall equal one-half of the difference between the Rate established under
618 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
619 Rate. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90
620 percent of the Contract Total shall equal the difference between (i) the Rate established under
621 subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
622 Water Rate.

623 (2) Omitted.

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

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

631 (1) For the term of this Contract, Rates applied under the respective
632 ratesetting policies will be established to recover only reimbursable O&M (including any
633 deficits) and capital costs of the Project, as those terms are used in the then-current Project
634 ratesetting policies, and interest, where appropriate, except in instances where a minimum
635 Rate is applicable in accordance with the relevant Project ratesetting policy. Changes of
636 significance in practices which implement the Contracting Officer's ratesetting policies will

637 not be implemented until the Contracting Officer has provided the Contractor an opportunity
638 to discuss the nature, need, and impact of the proposed change.

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

644 (n-o) Omitted

645 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

658 (b) In order to facilitate efficient water management by means of water

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

673 (c) For a water transfer to qualify under subdivision (b) of this Article, such
674 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
675 years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater
676 activities, surface water storage, or fish and wildlife resources; not lead to land
677 conversion; and be delivered to established cropland, wildlife refuges, groundwater basins, or
678 M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing
679 buyer; (iv) convey water through existing facilities with no new construction or
680 modifications to facilities and be between existing Project Contractors and/or the Contractor

681 and the United States, Department of the Interior; and (v) comply with all applicable
682 Federal, State, and local or tribal laws and requirements imposed for protection of the
683 environment and Indian Trust Assets, as defined under Federal law.

684 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

697 (b) All advances for miscellaneous costs incurred for work requested by the
698 Contractor pursuant to Article 21 of this Contract shall be adjusted to reflect the actual
699 costs when the work has been completed. If the advances exceed the actual costs incurred, the
700 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
701 advances, the Contractor will be billed for the additional costs pursuant to Article 21 of this
702 Contract.

703 TEMPORARY REDUCTIONS – RETURN FLOWS

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

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

721 (c) The United States reserves the right to all seepage and return flow
722 water derived from Water Delivered to the Contractor hereunder which escapes or is
723 discharged beyond the Contractor's Service Area; Provided, That this shall not be construed
724 as claiming for the United States any right to seepage or return flow being put to

725 reasonable and beneficial use pursuant to this Contract within the Contractor's Service
726 Area by the Contractor or those claiming by, through, or under the Contractor.

727 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

752 invalidate the Project M&I Water Shortage Policy.

753 RULES, REGULATIONS, AND DETERMINATIONS

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

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

763 PROTECTION OF WATER AND AIR QUALITY

764 13. (a) Omitted

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

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

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

779 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED
780 STATES

781 14. (a) Omitted

782 (b) Water or water rights now owned or hereafter acquired by the
783 Contractor, other than from the United States may be stored, conveyed, and/or diverted

784 through Project facilities, subject to the completion of appropriate environmental
785 documentation, with the approval of the Contracting Officer and the execution of any
786 contract determined by the Contracting Officer to be necessary, consistent with the
787 following provisions:

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

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

802 (3) Neither the United States nor the Operating Non-Federal
803 Entity(ies) shall be responsible for control, care, or distribution of the non-Project water
804 before it is introduced into or after it is delivered from the Project facilities. The
805 Contractor hereby releases and agrees to defend and indemnify the United States and the

806 Operating Non-Federal Entity(ies), and their respective officers, agents, and employees,
807 from any claim for damage to persons or property, direct or indirect, resulting from the
808 act(s) of the Contractor, its officers, employees, agents, or assigns, in (i) extracting or
809 diverting non-Project water from any source, or (ii) diverting such non-Project water into
810 Project facilities.

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

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

823 OPINIONS AND DETERMINATIONS

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

828 provisions of this Contract, expressly reserve the right to seek relief from and appropriate
829 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination.

830 Each opinion or determination by either party shall be provided in a timely manner.

831 Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the
832 standard of judicial review applicable under Federal law to any opinion or determination
833 implementing a specific provision of Federal law embodied in statute or regulation.

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

839 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

871 (5) The Contracting Officer shall periodically, but not less than

872 annually, hold division-level meetings to discuss Project operations, division-level water
873 management activities, and other issues as appropriate.

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

879 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

899 EQUAL EMPLOYMENT OPPORTUNITY

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

901 (a) The Contractor will not discriminate against any employee or applicant
902 for employment because of race, color, religion, sex, sexual orientation, gender identity, or

903 national origin. The Contractor will take affirmative action to ensure that applicants are
904 employed, and that employees are treated during employment, without regard to their race,
905 color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall
906 include, but not be limited to, the following: employment, upgrading, demotion, or
907 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
908 forms of compensation; and selection for training, including apprenticeship. The Contractor
909 agrees to post in conspicuous places, available to employees and applicants for employment,
910 notices to be provided by the Contracting Officer setting forth the provisions of this
911 nondiscrimination clause.

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

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

926 (d) The Contractor will send to each labor union or representative of
927 workers with which it has a collective bargaining agreement or other contract or understanding,
928 a notice, to be provided by the Contracting Officer, advising the labor union or workers'
929 representative of the Contractor's commitments under Section 202 of Executive Order No.
930 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places
931 available to employees and applicants for employment.

932 (e) The Contractor will comply with all provisions of Executive Order No.
933 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
934 of Labor.

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

940 (g) In the event of the Contractor's noncompliance with the
941 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this
942 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may
943 be declared ineligible for further Government contracts in accordance with procedures
944 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may
945 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,
946 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by
947 law.

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

958 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

972 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

973 20. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
974 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
975 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title

976 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
977 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
978 applicable implementing regulations and any guidelines imposed by the U.S.
979 Department of the Interior and/or Bureau of Reclamation.

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

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

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

997 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

998 21. In addition to all other payments to be made by the Contractor pursuant to this
999 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill
1000 and detailed statement submitted by the Contracting Officer to the Contractor for such
1001 specific items of direct cost incurred by the United States for work requested by the
1002 Contractor associated with this Contract plus indirect costs in accordance with applicable
1003 Bureau of Reclamation policies and procedures. All such amounts referred to in this
1004 Article shall not exceed the amount agreed to in writing in advance by the Contractor.
1005 This Article shall not apply to costs for routine contract administration.

1006

WATER CONSERVATION

1007 22. (a) Prior to the delivery of water provided from or conveyed through
1008 Federally constructed or Federally financed facilities pursuant to this Contract, the
1009 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the
1010 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1011 Regulations).

1012 Additionally, an effective water conservation and efficiency program shall be based on the
1013 Contractor's water conservation plan that has been determined by the Contracting Officer to
1014 meet the conservation and efficiency criteria for evaluating water conservation plans
1015 established under Federal law. The water conservation and efficiency program shall
1016 contain definite water conservation objectives, appropriate economically feasible water
1017 conservation measures, and time schedules for meeting those objectives. Continued
1018 Project Water delivery pursuant to this Contract shall be contingent upon the
1019 Contractor's continued implementation of such water conservation program. In the
1020 event the Contractor's water conservation plan or any revised water conservation plan
1021 completed pursuant to subdivision (d) of this Article 22 have not yet been determined by
1022 the Contracting Officer to meet such criteria, due to circumstances which the
1023 Contracting Officer determines are beyond the control of the Contractor, water deliveries
1024 shall be made under this Contract so long as the Contractor diligently works with the
1025 Contracting Officer to obtain such determination at the earliest practicable date, and
1026 thereafter the Contractor immediately begins implementing its water conservation and
1027 efficiency program in accordance with the time schedules therein.

1028 (b) Should the amount of M&I Water delivered pursuant to subdivision
1029 (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year,

1030 the Contractor shall implement the Best Management Practices identified by the time
1031 frames issued by the Mid-Pacific Region's then-existing conservation and efficiency
1032 criteria for such M&I Water unless any such practice is determined by the Contracting
1033 Officer to be inappropriate for the Contractor.

1034 (c) The Contractor shall submit to the Contracting Officer a report on the
1035 status of its implementation of the water conservation plan on the reporting dates specified in the
1036 then-existing conservation and efficiency criteria established under Federal law.

1037 (d) At five (5)-year intervals, the Contractor shall revise its water
1038 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1039 water conservation plans established under Federal law and submit such revised water
1040 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1041 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1042 existing conservation and efficiency criteria for evaluating water conservation plans established
1043 under Federal law.

1044 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1045 shall be described in the Contractor's water conservation plan.

1046 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1047 23. Except as specifically provided in Article 14 of this Contract, the provisions
1048 of this Contract shall not be applicable to or affect non-Project water or water rights now owned
1049 or hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1050 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1051 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or

1052 any water user within the Contractor's Service Area acquires or has available under any other
1053 contract pursuant to Federal Reclamation law.

1054 O&M BY THE SAN LUIS & DELTA – MENDOTA WATER AUTHORITY

1055 24. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1056 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1057 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1058 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1059 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1060 affect the rights or obligations of the Contractor or the United States hereunder.

1061 (b) The Contracting Officer has previously notified the Contractor in
1062 writing that the Operation and Maintenance of a portion of the Project facilities which
1063 serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis &
1064 Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the
1065 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1066 successor approved by the Contracting Officer under the terms and conditions of the
1067 separate agreement between the United States and the Operating Non-Federal Entity San
1068 Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates,
1069 charges, or assessments of any kind, including any assessment for reserve funds, which the
1070 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor
1071 determines, sets, or establishes for the Operation and Maintenance of the portion of the Project
1072 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-
1073 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal

1074 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the
1075 Contractor of its obligation to pay directly to the United States the Contractor's share of
1076 the Project Rates, Charges, and Tiered Pricing Component except to the extent the
1077 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments
1078 on behalf of the United States in accordance with the separate agreement identified in
1079 subdivision (a) of this Article.

1080 (c) For so long as the O&M of any portion of the Project facilities
1081 serving the Contractor is performed by Operating Non-Federal Entity San Luis &
1082 Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer
1083 shall adjust those components of the Rates for Water Delivered under this Contract
1084 representing the cost associated with the activity being performed by Operating Non-
1085 Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

1086 (d) In the event the Operation and Maintenance of the Project facilities
1087 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota
1088 Water Authority is re-assumed by the United States during the term of this Contract, the
1089 Contracting Officer shall so notify the Contractor, in writing, and present to the
1090 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid
1091 by the Contractor for Project Water under this Contract representing the Operation and
1092 Maintenance costs of the portion of such Project facilities which have been re-assumed. The
1093 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to
1094 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised
1095 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1096 O&M BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

1097 24.1 (a) The O&M of a portion of the Project facilities which serve the Contractor,
1098 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1099 California Department of Water Resources, an Operating Non-Federal Entity by a separate
1100 agreement (14-06-200-9755) between the United States and Operating Non-Federal
1101 Entity California Department of Water Resources. This separate agreement shall not
1102 interfere with or affect the rights or obligations of the Contractor or the United States
1103 hereunder.

1104 (b) The Contracting Officer has previously notified the Contractor in writing
1105 that the O&M of a portion of the Project facilities which serve the Contractor has been
1106 transferred to the Operating Non-Federal Entity California Department of Water
1107 Resources, and the Contractor shall pay directly to Operating Non-Federal Entity San
1108 Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting
1109 Officer under the terms and conditions of the separate agreement between the United
1110 States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1111 described in subdivision (a) of Article 25 of this Contract, all rates, charges, or assessments of
1112 any kind, including any assessment for reserve funds, which Operating Non-Federal Entity
1113 California Department of Water Resources, or such successor determines, sets, or establishes for
1114 the O&M of the conveyance and conveyance pumping portion of the Project facilities
1115 operated and maintained by Operating Non-Federal Entity California Department of
1116 Water Resources, or such successor. Such direct payments to Operating Non-Federal
1117 Entity San Luis & Delta-Mendota Water Authority, or such successor, shall not relieve

1118 the Contractor of its obligation to pay directly to the United States the Contractor's
1119 share of the Project Rates, Charges, and Tiered Pricing Component except to the extent
1120 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1121 payments on behalf of the United States in accordance with the separate agreement
1122 identified in subdivision (a) of Article 25 of this Contract.

1123 (c) For so long as the O&M of any portion of the Project facilities serving
1124 the Contractor is performed by Operating Non-Federal Entity California Department of
1125 Water Resources, or any successor thereto, the Contracting Officer shall adjust those
1126 components of the Rates for Water Delivered under this Contract representing the cost associated
1127 with the activity being performed by Operating Non-Federal Entity California Department of
1128 Water Resources, or its successor.

1129 (d) In the event the O&M of the Project facilities operated and maintained by
1130 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1131 United States during the term of this Contract, the Contracting Officer shall so notify the
1132 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall
1133 include the portion of the Rates and Charges, to be paid by the Contractor for Project
1134 Water under this Contract representing the O&M costs of the portion of such Project
1135 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of
1136 written notification from the Contracting Officer to the contrary, pay the Rates, Charges,
1137 and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1138 States in compliance with Article 7 of this Contract.

1139 OPERATION AND MAINTENANCE BY WESTLANDS WATER DISTRICT

1140 24.2 (a) The O&M of a portion of the Project facilities which serve the Contractor,
1141 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1142 Westlands Water District, the Operating Non-Federal Entity Westlands Water District by a
1143 separate contract (14-06-200-2020A) between the United States and Westlands Water District,
1144 the Operating Non-Federal Entity Westlands Water District. That above-referenced contract
1145 shall not interfere with or affect the rights or obligations of the Contractor or the United States
1146 hereunder.

1147 (b) The Contracting Officer has previously notified the Contractor in
1148 writing that the O&M of a portion of the Project facilities which serve the Contractor has
1149 been transferred to the Operating Non-Federal Entity Westlands Water District. Therefore,
1150 the Contractor has entered into a separate agreement with the Operating Non-Federal Entity
1151 Westlands Water District providing the terms and conditions pursuant to which the
1152 Operating Non-Federal Entity Westlands Water District will deliver Project Water to the
1153 Contractor through the portion of the Project facilities operated and maintained by the
1154 Operating Non-Federal Entity Westlands Water District, including the amount(s) the
1155 Contractor is to pay the Operating Non-Federal Entity Westlands Water District for that
1156 service. The Contractor shall pay directly to the Operating Non-Federal Entity Westlands
1157 Water District, or to any successor approved by the Contracting Officer, all rates, charges,
1158 or assessments of any kind, including any assessment for reserve funds, described in the
1159 separate agreement referred to above or any amendatory or replacement agreement
1160 approved by the Contracting Officer, which the Operating Non-Federal Entity Westlands

1161 Water District and or such successor determines, sets, or establishes for the Operating Non-
1162 Federal Entity Westlands Water District or such successor. Such direct payments to the
1163 Operating Non-Federal Entity Westlands Water District or such successor shall not relieve
1164 the Contractor of its obligation to pay directly to the United States the Contractor's share of
1165 the Project Rates and Charges referred to in this Contract.

1166 (c) For so long as the O&M of any portion of the Project facilities serving
1167 the Contractor is performed by the Operating Non-Federal Entity Westlands Water District,
1168 or any successor thereto, the Contracting Officer shall adjust those components of the Rates
1169 for Water Delivered under this Contract representing the cost associated with the activity
1170 being performed by the Operating Non-Federal Entity Westlands Water District or its
1171 successor.

1172 (d) In the event the O&M of the Project facilities operated and maintained
1173 by the Operating Non-Federal Entity Westlands Water District is re-assumed by the United
1174 States during the term of this Contract, the Contracting Officer shall so notify the
1175 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall
1176 include the portion of the Rates and Charges to be paid by the Contractor for Project Water
1177 under this Contract representing the O&M costs of the portion of such Project facilities
1178 which have been re-assumed. The Contractor shall, thereafter, in the absence of written
1179 notification from the Contracting Officer to the contrary, pay the Rates and Charges
1180 specified in the revised Exhibit "B" directly to the United States in compliance with Article
1181 7 of this Contract.

1182

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1183 25. The expenditure or advance of any money or the performance of any obligation of
1184 the United States under this Contract shall be contingent upon appropriation or allotment
1185 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor
1186 from any obligations under this Contract. No liability shall accrue to the United States in case
1187 funds are not appropriated or allotted.

1188

BOOKS, RECORDS, AND REPORTS

1189 26. (a) The Contractor shall establish and maintain accounts and other books and
1190 records pertaining to administration of the terms and conditions of this Contract, including
1191 the Contractor's financial transactions; water supply data; project operations, maintenance, and
1192 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1193 census), land-ownership, land-leasing, and water-use data; and other matters that the
1194 Contracting Officer may require. Reports shall be furnished to the Contracting Officer
1195 in such form and on such date or dates as the Contracting Officer may require. Subject to
1196 applicable Federal laws and regulations, each party to this Contract shall have the right during
1197 office hours to examine and make copies of the other party's books and records relating to
1198 matters covered by this Contract.

1199 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1200 books, records, or other information shall be requested from the Contractor by the
1201 Contracting Officer unless such books, records, or information are reasonably related to the
1202 administration or performance of this Contract. Any such request shall allow the Contractor a
1203 reasonable period of time within which to provide the requested books, records, or
1204 information.

1205 (c) At such time as the Contractor provides information to the Contracting
1206 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1207 to the Operating Non-Federal Entity(ies).

1208

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1209 27. (a) The provisions of this Contract shall apply to and bind the successors and
1210 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1211 therein by either party shall be valid until approved in writing by the other party.

1212 (b) The assignment of any right or interest in this Contract by either party
1213 shall not interfere with the rights or obligations of the other party to this Contract absent the
1214 written concurrence of said other party.

1215 (c) The Contracting Officer shall not unreasonably condition or withhold
1216 approval of any proposed assignment.

1217 SEVERABILITY

1218 28. In the event that a person or entity who is neither (i) a party to a Project contract,
1219 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1220 an association or other form of organization whose primary function is to represent parties to
1221 Project contracts, brings an action in a court of competent jurisdiction challenging the
1222 legality or enforceability of a provision included in this Contract and said person, entity,
1223 association, or organization obtains a final court decision holding that such provision is
1224 legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in
1225 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i)
1226 within 30 days of the date of such final court decision identify by mutual agreement the
1227 provisions in this Contract which must be revised and (ii) within three months thereafter
1228 promptly agree on the appropriate revision(s). The time periods specified above may be
1229 extended by mutual agreement of the parties. Pending the completion of the actions
1230 designated above, to the extent it can do so without violating any applicable provisions of
1231 law, the United States shall continue to make the quantities of Project Water specified in this
1232 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1233 found to be legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

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

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OFFICIALS NOT TO BENEFIT

1246 30. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1247 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1248 same manner as other water users or landowners.

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CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1250 31. (a) While this Contract is in effect, no change may be made in the
1251 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1252 changes which may affect the respective rights, obligations, privileges, and duties of either the
1253 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1254 consolidation, or merger, except upon the Contracting Officer's written consent.

1255 (b) Within 30 days of receipt of a request for such a change, the Contracting
1256 Officer will notify the Contractor of any additional information required by the Contracting
1257 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1258 schedule for timely completion of the process. Such process will analyze whether the proposed

1259 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1260 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1261 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1262 have an impact on any Project Water rights applications, permits, or licenses. In addition,
1263 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will
1264 be responsible for all costs incurred by the Contracting Officer in this process, and such
1265 costs will be paid in accordance with Article 21 of this Contract.

1266 FEDERAL LAWS

1267 32. By entering into this Contract, the Contractor does not waive its rights to contest
1268 the validity or application in connection with the performance of the terms and
1269 conditions of this Contract of any Federal law or regulation; *Provided, That* the
1270 Contractor agrees to comply with the terms and conditions of this Contract unless and
1271 until relief from application of such Federal law or regulation to the implementing
1272 provision of the Contract is granted by a court of competent jurisdiction.

1273 NOTICES

1274 33. Any notice, demand, or request authorized or required by this Contract shall be
1275 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1276 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1277 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1278 postage prepaid, or delivered to the Department of Fish and Wildlife, Office of the General
1279 Council, 1416 Ninth Street, 12th floor, Sacramento, California 95814. The designation of the
1280 addressee or the address may be changed by notice given in the same manner as provided in this
1281 Article for other notices.

1282 CERTIFICATION OF NONSEGREGATED FACILITIES

1283 34. The Contractor hereby certifies that it does not maintain or provide for its
1284 employees any segregated facilities at any of its establishments and that it does not permit its
1285 employees to perform their services at any location under its control where segregated facilities

1286 are maintained. It certifies further that it will not maintain or provide for its employees any
1287 segregated facilities at any of its establishments and that it will not permit its employees to
1288 perform their services at any location under its control where segregated facilities are
1289 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
1290 Employment Opportunity clause in this Contract. As used in this certification, the term
1291 “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms,
1292 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
1293 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
1294 facilities provided for employees which are segregated by explicit directive or are in fact
1295 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1296 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1297 identical certifications from proposed subcontractors for specific time periods) it will obtain
1298 identical certifications from proposed subcontractors prior to the award of subcontracts
1299 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1300 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1301 following notice to such proposed subcontractors (except where the proposed subcontractors
1302 have submitted identical certifications for specific time periods):

1303 **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**
1304 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

1305 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1306 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1307 Opportunity clause. The certification may be submitted either for each subcontract or for all
1308 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1309 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1310 **MEDIUM FOR TRANSMITTING PAYMENT**

1311 35. (a) All payments from the Contractor to the United States under this Contract
1312 shall be by the medium requested by the United States on or before the date payment is due. The
1313 required method of payment may include checks, wire transfers, or other types of payment
1314 specified by the United States.

1315 (b) Upon execution of this Contract, the Contractor shall furnish the
1316 Contracting Officer with the Contractor’s taxpayer’s identification number (TIN). The purpose
1317 for requiring the Contractor’s TIN is for collecting and reporting any delinquent amounts arising
1318 out of the Contractor’s relationship with the United States.

1319 **CONTRACT DRAFTING CONSIDERATIONS**

1320 36. This amended Contract has been negotiated and reviewed by the parties hereto,
1321 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1322 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by

1323 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1324 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1325 CONFIRMATION OF CONTRACT

1326 37. Promptly after the execution of this Contract, the Contractor will provide
1327 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1328 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the
1329 Contractor. This Contract will not be binding on the United States until the Contractor
1330 provides evidence to the Contracting Officer's satisfaction. In addition to other forms of
1331 evidence to meet the requirements of this Article, the Contractor may provide or the
1332 Contracting Officer may require a certified copy of a final decree of a court of competent
1333 jurisdiction in the State of California, confirming the proceedings on the part of the
1334 Contractor for the authorization of the execution of this Contract.

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