

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

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

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

14          WITNESSETH, That:

EXPLANATORY RECITALS

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

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

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

[4<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-4173A, as amended, which provided the Contractor, Project Water from the Project facilities from October 28, 1968, to December 31, 2008; and

[5<sup>th</sup>] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into binding agreements identified as Binding Agreement No. 14-06-200-4173A-BA, which sets out the terms pursuant to which the Contractor agreed to

37 renew its contract before the expiration date after completion of the Programmatic  
38 Environmental Impact Statement (PEIS) and other appropriate environmental  
39 documentation and negotiation of a renewal contract; and which also sets out the  
40 consequences of a subsequent decision not to renew; and

41 [6<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Delta  
42 Division and San Luis Unit Contract Number 14-06-200-4173A-IR1 and subsequent Interim  
43 Renewal Contracts 14-06-200-4173A-IR2 through 14-06-200-4173A-IR6, the last of which is  
44 hereinafter referred to as the “Existing Contract”, which established terms for the delivery of  
45 Project Water to the Contractor from the Delta Division and San Luis Unit, and which was in  
46 effect the date the WIIN Act was enacted; and

47 [7<sup>th</sup>] WHEREAS, on December 16, 2016, the 114<sup>th</sup> Congress of the United  
48 States of America enacted the WIIN Act; and

49 [8<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the  
50 contractor, the Secretary of the Interior shall convert any water service contract in effect on the  
51 date of enactment of this subtitle and between the United States and a water users’ association  
52 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under  
53 mutually agreeable terms and conditions.”; and

54 [9<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of  
55 conversion under this paragraph shall be as follows: (A) Water service contracts that were  
56 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under  
57 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.  
58 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9

59 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be  
60 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

61 [10<sup>th</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered  
62 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,  
63 repayment, exchange and transfer contractual rights between the water users’ association  
64 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the  
65 water users’ association [Contractor] and their landowners as provided under State law.”; and

66 [11<sup>th</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that  
67 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water  
68 service or repayment contractor to receive water; or (4) except as expressly provided in this  
69 section, any obligations under the Federal Reclamation law, including the continuation of  
70 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and  
71 repayment contractors making prepayments pursuant to this section.”; and

72 [12<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the  
73 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water  
74 service contracts into repayment contracts, amend existing repayment contracts, and allow  
75 contractors to prepay their construction cost obligations pursuant to applicable Federal  
76 Reclamation law; and

77 [13<sup>th</sup>] WHEREAS, the United States has determined that the Contractor  
78 has fulfilled all of its obligations under the Existing Contract; and

79 [14<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
80 Contracting Officer that the Contractor has utilized the Project Water supplies available

81 to it for reasonable and beneficial use and expects to utilize fully for reasonable and  
82 beneficial use the quantity of Project Water to be made available to it pursuant to this  
83 Contract; and

84 [15<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by  
85 urban and agricultural areas within California for more than 50 years, and is considered  
86 by the Contractor as an essential portion of its water supply; and

87 [16<sup>th</sup>] WHEREAS, at the time of execution of this Contract, the United States is  
88 the sole source of water supply to the Contractor]; and

89 [17<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the  
90 Contractor's, depend upon the continued availability of water, including water service  
91 from the Project; and

92 [18<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
93 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
94 Project for all Project purposes; and

95 [19<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor  
96 include: to provide for reliable Project Water supplies; to control costs of those supplies;  
97 to achieve repayment of the Project as required by law; to guard reasonably against Project  
98 Water shortages; to achieve a reasonable balance among competing demands for use of  
99 Project Water; and to comply with all applicable environmental statutes, all consistent with  
100 the legal obligations of the United States relative to the Project; and

101 [20<sup>th</sup>] WHEREAS, the parties intend by this Contract to maintain a cooperative  
102 relationship in order to achieve their mutual goals; and

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

111 [22<sup>nd</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
112 assignments, rescheduling, and conveyance of Project Water and non-Project water under this  
113 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the  
114 beneficial use of water; and

115 [23<sup>rd</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
116 disincentive to the Contractor in continuing to carry out the beneficial activities set out in  
117 the Explanatory Recital immediately above; and

118 [24<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this  
119 Contract complies with Section 4011 of the WIIN Act; and

120 [25<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend  
121 and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal  
122 Reclamation law on the terms and conditions set forth below;

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



DEFINITIONS

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1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:
- (a) “Additional Capital Obligation” shall mean construction costs or other capitalized costs incurred after the Effective Date or not reflected in the Existing Capital Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (“WIIN Act”);
  - (b) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;
  - (c) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;
  - (d) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract;
  - (e) “Contracting Officer” shall mean the Secretary of the Interior's duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;
  - (f) “Contract Total” shall mean the maximum amount of water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

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

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

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

158 (j) Omitted

159 (k) Omitted

160 (l) “Existing Capital Obligation” shall mean the remaining amount of  
161 construction costs or other capitalized costs allocable to the Contractor as described in Section  
162 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central  
163 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,  
164 dated **Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to**  
165 **address the intertie]**, as adjusted to reflect payments not reflected in such schedule. The  
166 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in  
167 Exhibit “C”, which is incorporated herein by reference;

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

179 (n) Omitted

180 (o) Omitted

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

184 (q) Omitted

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

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

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

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

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

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

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

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

212 (z) Omitted

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

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

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

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

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

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

233 and

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

236 TERM OF CONTRACT – RIGHT TO USE OF WATER

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

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

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

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

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

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

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

266 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

267 3. (a) During each Year, consistent with all applicable State water rights  
268 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and  
269 12 of this Contract, the Contracting Officer shall make available for delivery to the  
270 Contractor 10,000 acre-feet of Project Water for M&I purposes. Water Delivered to the  
271 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant  
272 to the provisions of Articles 4 and 7 of this Contract.

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

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

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

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



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

301 (e) The Contractor shall comply with requirements applicable to the  
302 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
303 of any water service contract between the Contracting Officer and the Contractor in effect  
304 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered  
305 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to  
306 implement. The Existing Contract, which evidences in excess of 40 years of diversions for  
307 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of  
308 Article 3 of this Contract, will be considered in developing an appropriate baseline for any  
309 required biological assessment(s) prepared pursuant to the ESA, and any other needed  
310 environmental review. Nothing herein shall be construed to prevent the Contractor from  
311 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any  
312 biological opinion or other environmental documentation referred to in this Article.

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

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

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

337 (h) The Contractor’s right pursuant to Federal Reclamation law and  
338 applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to  
339 this Contract shall not be disturbed, and this Contract shall continue so long as the  
340 Contractor pays applicable Rates and Charges under this Contract consistent with Section  
341 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable

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

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

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

356 TIME FOR DELIVERY OF WATER

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

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

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

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

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

382 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

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

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

424 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

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

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

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

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

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

465 (e) The Contractor shall inform the Contracting Officer and the Operating  
466 Non-Federal Entity(ies) on or before the 20<sup>th</sup> calendar day of each month of the quantity  
467 of M&I Water taken during the preceding month.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

629 (2) Omitted.

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

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

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



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

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

650 (n-o) Omitted

651 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

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

690 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

709 TEMPORARY REDUCTIONS – RETURN FLOWS

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

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

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

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

733 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

758 invalidate the Project M&I Water Shortage Policy.

759 RULES, REGULATIONS, AND DETERMINATIONS

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

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

769 PROTECTION OF WATER AND AIR QUALITY

770 13. (a) Omitted

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

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

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

785 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED  
786 STATES

787 14. (a) Omitted

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

790 through Project facilities, subject to the completion of appropriate environmental  
791 documentation, with the approval of the Contracting Officer and the execution of any  
792 contract determined by the Contracting Officer to be necessary, consistent with the  
793 following provisions:

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

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

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

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

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

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

829 OPINIONS AND DETERMINATIONS

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



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

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

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

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

845 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

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

885 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

905 EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

946 (g) In the event of the Contractor's noncompliance with the  
947 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this  
948 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may  
949 be declared ineligible for further Government contracts in accordance with procedures  
950 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may  
951 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,  
952 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by  
953 law.

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

964 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

978 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

982 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-  
983 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
984 applicable implementing regulations and any guidelines imposed by the U.S.  
985 Department of the Interior and/or Bureau of Reclamation.

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

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

1001 (d) Complaints of discrimination against the Contractor shall be investigated  
1002 by the Contracting Officer's Office of Civil Rights.

1003 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1004 21. In addition to all other payments to be made by the Contractor pursuant to this  
1005 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill  
1006 and detailed statement submitted by the Contracting Officer to the Contractor for such  
1007 specific items of direct cost incurred by the United States for work requested by the  
1008 Contractor associated with this Contract plus indirect costs in accordance with applicable  
1009 Bureau of Reclamation policies and procedures. All such amounts referred to in this  
1010 Article shall not exceed the amount agreed to in writing in advance by the Contractor.  
1011 This Article shall not apply to costs for routine contract administration.

1012

WATER CONSERVATION

1013           22.   (a)    Prior to the delivery of water provided from or conveyed through  
1014 Federally constructed or Federally financed facilities pursuant to this Contract, the  
1015 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the  
1016 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and  
1017 Regulations).

1018   Additionally, an effective water conservation and efficiency program shall be based on the  
1019 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1020 meet the conservation and efficiency criteria for evaluating water conservation plans  
1021 established under Federal law. The water conservation and efficiency program shall  
1022 contain definite water conservation objectives, appropriate economically feasible water  
1023 conservation measures, and time schedules for meeting those objectives. Continued  
1024 Project Water delivery pursuant to this Contract shall be contingent upon the  
1025 Contractor's continued implementation of such water conservation program. In the  
1026 event the Contractor's water conservation plan or any revised water conservation plan  
1027 completed pursuant to subdivision (d) of this Article 22 have not yet been determined by  
1028 the Contracting Officer to meet such criteria, due to circumstances which the  
1029 Contracting Officer determines are beyond the control of the Contractor, water deliveries  
1030 shall be made under this Contract so long as the Contractor diligently works with the  
1031 Contracting Officer to obtain such determination at the earliest practicable date, and  
1032 thereafter the Contractor immediately begins implementing its water conservation and  
1033 efficiency program in accordance with the time schedules therein.

1034           (b)    Should the amount of M&I Water delivered pursuant to subdivision  
1035 (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year,

1036 the Contractor shall implement the Best Management Practices identified by the time  
1037 frames issued by the Mid-Pacific Region's then-existing conservation and efficiency  
1038 criteria for such M&I Water unless any such practice is determined by the Contracting  
1039 Officer to be inappropriate for the Contractor.

1040 (c) The Contractor shall submit to the Contracting Officer a report on the  
1041 status of its implementation of the water conservation plan on the reporting dates specified in the  
1042 then-existing conservation and efficiency criteria established under Federal law.

1043 (d) At five (5)-year intervals, the Contractor shall revise its water  
1044 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1045 water conservation plans established under Federal law and submit such revised water  
1046 management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1047 will then determine if the water conservation plan meets the Bureau of Reclamation's then-  
1048 existing conservation and efficiency criteria for evaluating water conservation plans established  
1049 under Federal law.

1050 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1051 shall be described in the Contractor's water conservation plan.

1052 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1053 23. Except as specifically provided in Article 14 of this Contract, the provisions  
1054 of this Contract shall not be applicable to or affect non-Project water or water rights now owned  
1055 or hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1056 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1057 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or



1058 any water user within the Contractor's Service Area acquires or has available under any other  
1059 contract pursuant to Federal Reclamation law.

1060 O&M BY THE SAN LUIS & DELTA – MENDOTA WATER AUTHORITY

1061 24. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1062 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1063 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate  
1064 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San  
1065 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or  
1066 affect the rights or obligations of the Contractor or the United States hereunder.

1067 (b) The Contracting Officer has previously notified the Contractor in  
1068 writing that the Operation and Maintenance of a portion of the Project facilities which  
1069 serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis &  
1070 Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the  
1071 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any  
1072 successor approved by the Contracting Officer under the terms and conditions of the  
1073 separate agreement between the United States and the Operating Non-Federal Entity San  
1074 Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates,  
1075 charges, or assessments of any kind, including any assessment for reserve funds, which the  
1076 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor  
1077 determines, sets, or establishes for the Operation and Maintenance of the portion of the Project  
1078 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-  
1079 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal

1080 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the  
1081 Contractor of its obligation to pay directly to the United States the Contractor's share of  
1082 the Project Rates, Charges, and Tiered Pricing Component except to the extent the  
1083 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments  
1084 on behalf of the United States in accordance with the separate agreement identified in  
1085 subdivision (a) of this Article.

1086 (c) For so long as the O&M of any portion of the Project facilities  
1087 serving the Contractor is performed by Operating Non-Federal Entity San Luis &  
1088 Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer  
1089 shall adjust those components of the Rates for Water Delivered under this Contract  
1090 representing the cost associated with the activity being performed by Operating Non-  
1091 Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

1092 (d) In the event the Operation and Maintenance of the Project facilities  
1093 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota  
1094 Water Authority is re-assumed by the United States during the term of this Contract, the  
1095 Contracting Officer shall so notify the Contractor, in writing, and present to the  
1096 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid  
1097 by the Contractor for Project Water under this Contract representing the Operation and  
1098 Maintenance costs of the portion of such Project facilities which have been re-assumed. The  
1099 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to  
1100 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised  
1101 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1102 O&M BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

1103 24.1 (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1104 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1105 California Department of Water Resources, an Operating Non-Federal Entity by a separate  
1106 agreement (14-06-200-9755) between the United States and Operating Non-Federal  
1107 Entity California Department of Water Resources. This separate agreement shall not  
1108 interfere with or affect the rights or obligations of the Contractor or the United States  
1109 hereunder.

1110 (b) The Contracting Officer has previously notified the Contractor in writing  
1111 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1112 transferred to the Operating Non-Federal Entity California Department of Water  
1113 Resources, and the Contractor shall pay directly to Operating Non-Federal Entity San  
1114 Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting  
1115 Officer under the terms and conditions of the separate agreement between the United  
1116 States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,  
1117 described in subdivision (a) of Article 25 of this Contract, all rates, charges, or assessments of  
1118 any kind, including any assessment for reserve funds, which Operating Non-Federal Entity  
1119 California Department of Water Resources, or such successor determines, sets, or establishes for  
1120 the O&M of the conveyance and conveyance pumping portion of the Project facilities  
1121 operated and maintained by Operating Non-Federal Entity California Department of  
1122 Water Resources, or such successor. Such direct payments to Operating Non-Federal  
1123 Entity San Luis & Delta-Mendota Water Authority, or such successor, shall not relieve

1124 the Contractor of its obligation to pay directly to the United States the Contractor's  
1125 share of the Project Rates, Charges, and Tiered Pricing Component except to the extent  
1126 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects  
1127 payments on behalf of the United States in accordance with the separate agreement  
1128 identified in subdivision (a) of Article 25 of this Contract.

1129 (c) For so long as the O&M of any portion of the Project facilities serving  
1130 the Contractor is performed by Operating Non-Federal Entity California Department of  
1131 Water Resources, or any successor thereto, the Contracting Officer shall adjust those  
1132 components of the Rates for Water Delivered under this Contract representing the cost associated  
1133 with the activity being performed by Operating Non-Federal Entity California Department of  
1134 Water Resources, or its successor.

1135 (d) In the event the O&M of the Project facilities operated and maintained by  
1136 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the  
1137 United States during the term of this Contract, the Contracting Officer shall so notify the  
1138 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall  
1139 include the portion of the Rates and Charges, to be paid by the Contractor for Project  
1140 Water under this Contract representing the O&M costs of the portion of such Project  
1141 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of  
1142 written notification from the Contracting Officer to the contrary, pay the Rates, Charges,  
1143 and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United  
1144 States in compliance with Article 7 of this Contract.

1145                   OPERATION AND MAINTENANCE BY WESTLANDS WATER DISTRICT

1146                   24.2   (a)     The O&M of a portion of the Project facilities which serve the Contractor,  
1147 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1148 Westlands Water District, the Operating Non-Federal Entity Westlands Water District by a  
1149 separate contract (14-06-200-2020A) between the United States and Westlands Water District,  
1150 the Operating Non-Federal Entity Westlands Water District. That above-referenced contract  
1151 shall not interfere with or affect the rights or obligations of the Contractor or the United States  
1152 hereunder.

1153                   (b)     The Contracting Officer has previously notified the Contractor in  
1154 writing that the O&M of a portion of the Project facilities which serve the Contractor has  
1155 been transferred to the Operating Non-Federal Entity Westlands Water District. Therefore,  
1156 the Contractor has entered into a separate agreement with the Operating Non-Federal Entity  
1157 Westlands Water District providing the terms and conditions pursuant to which the  
1158 Operating Non-Federal Entity Westlands Water District will deliver Project Water to the  
1159 Contractor through the portion of the Project facilities operated and maintained by the  
1160 Operating Non-Federal Entity Westlands Water District, including the amount(s) the  
1161 Contractor is to pay the Operating Non-Federal Entity Westlands Water District for that  
1162 service. The Contractor shall pay directly to the Operating Non-Federal Entity Westlands  
1163 Water District, or to any successor approved by the Contracting Officer, all rates, charges,  
1164 or assessments of any kind, including any assessment for reserve funds, described in the  
1165 separate agreement referred to above or any amendatory or replacement agreement  
1166 approved by the Contracting Officer, which the Operating Non-Federal Entity Westlands

1167 Water District and or such successor determines, sets, or establishes for the Operating Non-  
1168 Federal Entity Westlands Water District or such successor. Such direct payments to the  
1169 Operating Non-Federal Entity Westlands Water District or such successor shall not relieve  
1170 the Contractor of its obligation to pay directly to the United States the Contractor's share of  
1171 the Project Rates and Charges referred to in this Contract.

1172 (c) For so long as the O&M of any portion of the Project facilities serving  
1173 the Contractor is performed by the Operating Non-Federal Entity Westlands Water District,  
1174 or any successor thereto, the Contracting Officer shall adjust those components of the Rates  
1175 for Water Delivered under this Contract representing the cost associated with the activity  
1176 being performed by the Operating Non-Federal Entity Westlands Water District or its  
1177 successor.

1178 (d) In the event the O&M of the Project facilities operated and maintained  
1179 by the Operating Non-Federal Entity Westlands Water District is re-assumed by the United  
1180 States during the term of this Contract, the Contracting Officer shall so notify the  
1181 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall  
1182 include the portion of the Rates and Charges to be paid by the Contractor for Project Water  
1183 under this Contract representing the O&M costs of the portion of such Project facilities  
1184 which have been re-assumed. The Contractor shall, thereafter, in the absence of written  
1185 notification from the Contracting Officer to the contrary, pay the Rates and Charges  
1186 specified in the revised Exhibit "B" directly to the United States in compliance with Article  
1187 7 of this Contract.

1188

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1189           25.     The expenditure or advance of any money or the performance of any obligation of  
1190 the United States under this Contract shall be contingent upon appropriation or allotment  
1191 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor  
1192 from any obligations under this Contract. No liability shall accrue to the United States in case  
1193 funds are not appropriated or allotted.

1194

BOOKS, RECORDS, AND REPORTS

1195           26.     (a)     The Contractor shall establish and maintain accounts and other books and  
1196 records pertaining to administration of the terms and conditions of this Contract, including  
1197 the Contractor's financial transactions; water supply data; project operations, maintenance, and  
1198 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
1199 census), land-ownership, land-leasing, and water-use data; and other matters that the  
1200 Contracting Officer may require. Reports shall be furnished to the Contracting Officer  
1201 in such form and on such date or dates as the Contracting Officer may require. Subject to  
1202 applicable Federal laws and regulations, each party to this Contract shall have the right during  
1203 office hours to examine and make copies of the other party's books and records relating to  
1204 matters covered by this Contract.

1205                   (b)     Notwithstanding the provisions of subdivision (a) of this Article, no  
1206 books, records, or other information shall be requested from the Contractor by the  
1207 Contracting Officer unless such books, records, or information are reasonably related to the  
1208 administration or performance of this Contract. Any such request shall allow the Contractor a  
1209 reasonable period of time within which to provide the requested books, records, or  
1210 information.

1211                   (c)     At such time as the Contractor provides information to the Contracting  
1212 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided  
1213 to the Operating Non-Federal Entity(ies).

1214

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1215           27.     (a)     The provisions of this Contract shall apply to and bind the successors and  
1216 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1217 therein by either party shall be valid until approved in writing by the other party.

1218 (b) The assignment of any right or interest in this Contract by either party  
1219 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1220 written concurrence of said other party.

1221 (c) The Contracting Officer shall not unreasonably condition or withhold  
1222 approval of any proposed assignment.

1223 SEVERABILITY

1224 28. In the event that a person or entity who is neither (i) a party to a Project contract,  
1225 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)  
1226 an association or other form of organization whose primary function is to represent parties to  
1227 Project contracts, brings an action in a court of competent jurisdiction challenging the  
1228 legality or enforceability of a provision included in this Contract and said person, entity,  
1229 association, or organization obtains a final court decision holding that such provision is  
1230 legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in  
1231 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i)  
1232 within 30 days of the date of such final court decision identify by mutual agreement the  
1233 provisions in this Contract which must be revised and (ii) within three months thereafter  
1234 promptly agree on the appropriate revision(s). The time periods specified above may be  
1235 extended by mutual agreement of the parties. Pending the completion of the actions  
1236 designated above, to the extent it can do so without violating any applicable provisions of  
1237 law, the United States shall continue to make the quantities of Project Water specified in this  
1238 Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1239 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

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

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CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

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

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

1265 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;  
1266 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or  
1267 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)  
1268 have an impact on any Project Water rights applications, permits, or licenses. In addition,  
1269 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will  
1270 be responsible for all costs incurred by the Contracting Officer in this process, and such  
1271 costs will be paid in accordance with Article 21 of this Contract.

1272 FEDERAL LAWS

1273 32. By entering into this Contract, the Contractor does not waive its rights to contest  
1274 the validity or application in connection with the performance of the terms and  
1275 conditions of this Contract of any Federal law or regulation; *Provided, That* the  
1276 Contractor agrees to comply with the terms and conditions of this Contract unless and  
1277 until relief from application of such Federal law or regulation to the implementing  
1278 provision of the Contract is granted by a court of competent jurisdiction.

1279 NOTICES

1280 33. Any notice, demand, or request authorized or required by this Contract shall be  
1281 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1282 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
1283 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,  
1284 postage prepaid, or delivered to the City of Coalinga, 155 West Durian Avenue, Coalinga,  
1285 California 93210. The designation of the addressee or the address may be changed by notice  
1286 given in the same manner as provided in this Article for other notices.

1287 CERTIFICATION OF NONSEGREGATED FACILITIES

1288 34. The Contractor hereby certifies that it does not maintain or provide for its  
1289 employees any segregated facilities at any of its establishments and that it does not permit its  
1290 employees to perform their services at any location under its control where segregated facilities  
1291 are maintained. It certifies further that it will not maintain or provide for its employees any

1292 segregated facilities at any of its establishments and that it will not permit its employees to  
1293 perform their services at any location under its control where segregated facilities are  
1294 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
1295 Employment Opportunity clause in this Contract. As used in this certification, the term  
1296 “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms,  
1297 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
1298 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
1299 facilities provided for employees which are segregated by explicit directive or are in fact  
1300 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
1301 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
1302 identical certifications from proposed subcontractors for specific time periods) it will obtain  
1303 identical certifications from proposed subcontractors prior to the award of subcontracts  
1304 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
1305 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
1306 following notice to such proposed subcontractors (except where the proposed subcontractors  
1307 have submitted identical certifications for specific time periods):

1308                   NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
1309                   CERTIFICATIONS OF NONSEGREGATED FACILITIES

1310 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract  
1311 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment  
1312 Opportunity clause. The certification may be submitted either for each subcontract or for all  
1313 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
1314 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1315                   MEDIUM FOR TRANSMITTING PAYMENT

1316           35.   (a)   All payments from the Contractor to the United States under this Contract  
1317 shall be by the medium requested by the United States on or before the date payment is due. The  
1318 required method of payment may include checks, wire transfers, or other types of payment  
1319 specified by the United States.

1320                   (b)   Upon execution of this Contract, the Contractor shall furnish the  
1321 Contracting Officer with the Contractor’s taxpayer’s identification number (TIN). The purpose  
1322 for requiring the Contractor’s TIN is for collecting and reporting any delinquent amounts arising  
1323 out of the Contractor’s relationship with the United States.

1324                   CONTRACT DRAFTING CONSIDERATIONS

1325           36.   This amended Contract has been negotiated and reviewed by the parties hereto,  
1326 each of whom is sophisticated in the matters to which this amended Contract pertains. The  
1327 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by

1328 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1329 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1330 CONFIRMATION OF CONTRACT

1331 37. Promptly after the execution of this Contract, the Contractor will provide  
1332 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the  
1333 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the  
1334 Contractor. This Contract will not be binding on the United States until the Contractor  
1335 provides evidence to the Contracting Officer's satisfaction. In addition to other forms of  
1336 evidence to meet the requirements of this Article, the Contractor may provide or the  
1337 Contracting Officer may require a certified copy of a final decree of a court of competent  
1338 jurisdiction in the State of California, confirming the proceedings on the part of the  
1339 Contractor for the authorization of the execution of this Contract.

1340

1341 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1342 day and year first above written.

1343 UNITED STATES OF AMERICA

1344 By: \_\_\_\_\_  
1345 Regional Director  
1346 Interior Region 10: California-Great Basin  
1347 Bureau of Reclamation

1348 CITY OF COALINGA  
1349 (SEAL)

1350 By: \_\_\_\_\_  
1351 Mayor

1352 Attest:

1353 By: \_\_\_\_\_  
1354 City Clerk