

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

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

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1        THIS CONTRACT, made this 29 day of September, 2020, in  
2        pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or  
3        supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
4        as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
5        July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
6        October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992  
7        (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act  
8        (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all  
9        collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES  
10       OF AMERICA, hereinafter referred to as the United States, represented by the officer executing  
11       this Contract, hereinafter referred to as the Contracting Officer, and DEL PUERTO WATER  
12       DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
13       duly organized, existing, and acting pursuant to the laws thereof;

14       WITNESSETH, That:

EXPLANATORY RECITALS

[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-Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[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. 14-06-200-922, as amended, which established terms for the delivery to the Contractor of Project Water from the Delta Division facilities from June 10, 1953, through February 28, 1994; and

[5<sup>th</sup>] WHEREAS, the United States and the following water districts entered into long-term water service contracts, which provided those districts Project Water from the Delta Division through the date of contract expiration listed below:

<u>District</u>	<u>Contract No.</u>	<u>Execution Date</u>	<u>Expiration Date</u>
Davis Water District	14-06-200-1458	10/03/53	02/28/94
Hospital Water District	14-06-200-923	06/10/53	02/28/94
Kem Canon Water District	14-06-200-924	06/10/53	02/28/94

38	Salada Water District	14-06-200-925	06/10/53	02/28/94
39	Sunflower Water District	14-06-200-1804	11/12/53	02/28/94
40	Mustang Water District	14-06-200-8103	12/07/59	02/28/95
41	Orestimba Water District	14-06-200-8091	11/27/59	02/28/95
42	Quinto Water District	14-06-200-8899	01/24/61	02/28/95
43	Romero Water District	14-06-200-7758	05/11/59	02/28/95
44	Foothill Water District	14-06-200-4323	05/31/55	02/29/96
45	; and			

46                   [6<sup>th</sup>] WHEREAS, the long-term water service contracts between the United  
47 States and Davis, Del Puerto, Hospital, Kern Canon, Salada, and Sunflower Water Districts  
48 provided for water service through February 28, 1994, and for which one-year interim renewal  
49 contracts were entered into providing for continued water service through February 28, 1995;  
50 and

51                   [7<sup>th</sup>] WHEREAS, all ten water districts including Davis, Foothill, Hospital,  
52 Kern Canon, Mustang, Orestimba, Quinto, Romero, Salada, and Sunflower Water Districts were  
53 assigned to the Contractor by separate "Assignments of Water Service Contract", dated February  
54 13, 1995; and

55                   [8<sup>th</sup>] WHEREAS, the Contractor and the United States entered into the interim  
56 renewal contract identified as Contract No. 14-06-200-922-IR2, which consolidated all of the  
57 Water Districts that were assigned to the Contractor, except Foothill Water District, and provided  
58 for the continued water service from March 1, 1995, through February 28, 1997; and

59                   [9<sup>th</sup>] WHEREAS, the long-term water service contract between Foothill Water  
60 District (Foothill) and the United States identified as Contract No. 14-06-200-4323, that was  
61 assigned to the Contractor, provided for water service through February 28, 1996, and for which

a one-year interim renewal contract identified as Contract No. 14-06-200-4323-IR1, provided water service from March 1, 1996, through February 28, 1997; and

[10<sup>th</sup>] WHEREAS, the Contractor requested subsequent renewal and consolidation of Contract No(s). 14-06-200-922-IR2 and 14-06-200-4323-IR1 pursuant to, Federal Reclamation law, and the laws of the State of California, for water service from the Central Valley Project; and

[11<sup>th</sup>] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-200-922-IR3 and subsequent Interim Renewal Contracts 14-06-200-922-IR4 through 14-06-200-922-IR10, which provided for water service to the Contractor from March 1, 1997 through February 28, 2006; and

[12<sup>th</sup>] WHEREAS, the United States and the Contractor entered into a long-term contract identified as Contract No. 14-06-200-922-LTR1, hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor following expiration of Contract No. 14-06-200-922-IR10, and which was in effect the date the WIIN Act was enacted; and

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

[14<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users’ association

[Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.”; and

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

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

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

[18<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water

service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

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

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

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

[22<sup>nd</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's, depend upon the continued availability of water, including water service from the Project; and

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

[24<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Project as required by law; to guard reasonably against Project Water



shortages; to achieve a reasonable balance among competing demands for use of Project Water; and to comply with all applicable environmental statutes, all consistent with the legal obligations of the United States relative to the Project; and

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

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

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

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

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

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

#### DEFINITIONS

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

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

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

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

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

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

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

167 (g) "Contractor's Service Area" shall mean the area to which the Contractor is  
168 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
169 hereto, which may be modified from time to time in accordance with Article 34 of this Contract  
170 without amendment of this Contract;

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

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

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

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

(l) “Existing Capital Obligation” shall mean the remaining amount of construction costs or other capitalized costs allocable to the Contractor as described in Section 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, in the Final 2020 Ratebooks, as adjusted to reflect payments not reflected in such schedule. The Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit “C”, which is incorporated herein by reference;

(m) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting Officer that shall amortize the expenditures for construction properly allocable to the

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

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

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

(o) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

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

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

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

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

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

219 (u) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)  
220 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of  
221 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this  
222 Contract was entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota  
223 Water Authority;

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

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

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

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

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

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

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

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

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

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

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

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

TERM OF CONTRACT – RIGHT TO USE OF WATER

2. (a) This Contract shall be effective October 1, 2020, hereinafter known as the “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law;

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

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

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

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

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage limitations, reporting, and full cost pricing provisions of the Reclamation Reform Act of 1982, and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands, of Article 1 of this Contract shall no longer be applicable.

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

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

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 140,210 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.



(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement prepared pursuant to Section 3404(c) of the CVPIA projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years prior to execution of the Existing Contract, the Recent Historic Average Water Made Available to the Contractor was 92,258 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

(1) In the event any Project Contractor (other than a Cross Valley Contractor) that receives Project Water through the Delta Division Facilities obtains a contractual agreement that the Contracting Officer shall make Project Water available at a point or points of delivery in or north of the Delta, at the request of the Contractor and upon completion of any required environmental documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on mutually agreeable terms. Such amendments to this Contract shall be limited solely to those changes made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided, That the Contracting Officer's use

of the Harvey O. Banks Pumping Plant to deliver Project Water does not trigger this right of amendment.

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 25 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of any water service contract between the Contracting Officer and the Contractor in effect

immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of 51 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for any required biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under this Article during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term

contractual commitments, water rights, and operational constraints, long-term Project Contractors shall have a first right to acquire such water, including Project Water made available pursuant to Section 215 of the Reclamation Reform Act of 1982.

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

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

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

TIME FOR DELIVERY OF WATER

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

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

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

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

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

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

430                   (c)     The Contractor shall deliver Irrigation Water in accordance with any  
431     applicable land classification provisions of Federal Reclamation law and the associated  
432     regulations. The Contractor shall not deliver Project Water to land outside the Contractor's  
433     Service Area unless approved in advance by the Contracting Officer.

434                   (d)     All Water Delivered to the Contractor pursuant to this Contract shall be  
435     measured and recorded with equipment furnished, installed, operated, and maintained by the  
436     Contracting Officer either directly or indirectly through its written agreements(s) with the  
437     Operating Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the  
438     Contracting Officer at the point or points of delivery established pursuant to subdivision (a) of  
439     this Article. Upon the request of either party to this Contract, the Contracting Officer shall  
440     investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies), the  
441     accuracy of such measurements and shall take any necessary steps to adjust any errors appearing  
442     therein. For any period of time when accurate measurements have not been made, the  
443     Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal  
444     Entity(ies), if any, prior to making a final determination of the quantity delivered for that period  
445     of time.

446                   (e)     Absent a separate contrary written agreement with the Contractor, neither  
447     the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the  
448     control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor  
449     pursuant to this Contract beyond the point or points of delivery established pursuant to  
450     subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,  
451     employees, agents, and assigns on account of damage or claim of damage of any nature

whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies).

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water; to bill water users for water delivered by the Contractor; and, if



applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 25 of this Contract.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

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

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other obligations shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be

agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

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

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

(A) The amount due and payable to the United States, pursuant to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as set forth in Exhibit "C". The Repayment Obligation is due in lump sum by November 30, 2020 as provided by the WIIN Act. The Contractor must provide appropriate notice to the Contracting Officer in writing no later than thirty (30) days prior to the Effective Date, if electing to repay the amount due using the lump sum alternative. If such notice is not provided by such date, the Contractor shall be deemed to have elected the installment payment alternative, in which case, the first such payment shall be made no later than November 30, 2020. The second payment

shall be made no later than the first anniversary of the first payment date. The third payment shall be made no later than the second anniversary of the first payment date. The final payment shall be made no later than October 1, 2023. If the installment payment option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using the same methodology as was used to compute the initial annual installment payment amount, which is illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

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

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

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

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

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

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

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

(d) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the

Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or 60 days after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(e) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered

Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

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

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

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

(i) The Contracting Officer shall keep its accounts pertaining to the



administration of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so as to reflect the application of Project costs and revenues.

The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

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

Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

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

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

(l) For the term of this Contract, Rates applied under the respective ratesetting policies will be established to recover only reimbursable O&M (including any deficits) and capital costs of the Project, as those terms are used in the then-current Project

694 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is  
695 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in  
696 practices which implement the Contracting Officer's ratesetting policies will not be implemented  
697 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,  
698 need, and impact of the proposed change.

699 (m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
700 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates,  
701 in accordance with the applicable Project ratesetting policy, adjusted upward or downward to  
702 reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the  
703 transferred Project Water to the transferee's point of delivery. If the Contractor is receiving  
704 lower Rates and Charges because of inability to pay and is transferring Project Water to another  
705 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges  
706 for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

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

709 (o) With respect to the Rates for M&I Water, the Contractor asserts that it is  
710 not legally obligated to pay any Project deficits claimed by the United States to have accrued as  
711 of the date of this Contract or deficit-related interest charges thereon. By entering into this  
712 Contract, the Contractor does not waive any legal rights or remedies that it may have with  
713 respect to such disputed issues. Notwithstanding the execution of this Contract and payments  
714 made hereunder, the Contractor may challenge in the appropriate administrative or judicial  
715 forums; (1) the existence, computation, or imposition of any deficit charges accruing during the

term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, provided that the basis for such ruling is applicable to the Contractor.

NON-INTEREST BEARING O&M DEFICITS

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

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic

and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

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

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins, or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water

through existing facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's

advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

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

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

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

the United States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

(c) In any Year in which there may occur a Condition of Shortage for any of the reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the Contracting Officer will first allocate the available Project Water consistent with the Project M&I Water Shortage Policy as finally adopted after environmental review for determining the amount of Project Water Available for delivery to the Project Contractors. Subject to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting Officer shall then apportion Project Water among the Contractor and others entitled to Project Water from Delta Division Facilities under long-term water service or repayment contracts (or renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

(1) The Contracting Officer shall make an initial and subsequent



determination as necessary of the total quantity of Project Water estimated to be scheduled or actually scheduled under subdivision (b) of Article 4 of this Contract and under all other interim renewal, long-term water service or repayment contracts then in force for the delivery of Project Water by the United States from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter referred to as the scheduled total;

(2) A determination shall be made of the total quantity of Project Water that is available for meeting the scheduled total, the quantity so determined being hereinafter referred to as the available supply;

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

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

(d) By entering into this Contract, the Contractor does not waive any legal

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

#### UNAVOIDABLE GROUNDWATER PERCOLATION

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

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

#### COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

#### PROTECTION OF WATER AND AIR QUALITY

15. (a) Omitted

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

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

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

(e) Omitted

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

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

904 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-  
 905 Project water are (were) constructed with funds made available pursuant to Federal Reclamation  
 906 law, the non-Project water will be subject to the acreage limitation provisions of Federal  
 907 Reclamation law, unless the Contractor pays to the United States the incremental fee described in  
 908 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate  
 909 annually the cost to the Federal Government, including interest, of storing or delivering non-  
 910 Project water, which for purposes of this Contract shall be determined as follows: The quotient  
 911 shall be the unpaid distribution system costs divided by the total irrigable acreage within the  
 912 Contractor's Service Area. The incremental fee per acre is the mathematical result of such  
 913 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982  
 914 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full-cost land  
 915 within the Contractor's Service Area that receives non-Project water through Federally financed  
 916 or constructed facilities. The incremental fee calculation methodology will continue during the  
 917 term of this Contract absent the promulgation of a contrary Bureau of Reclamation-wide rule,  
 918 regulation, or policy adopted after the Contractor has been afforded the opportunity to review  
 919 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is  
 920 adopted, it shall supersede this provision.

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

926                   (1)     The Contractor may introduce non-Project water into Project  
927 facilities and deliver said water to lands within the Contractor's Service Area, including  
928 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating  
929 Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting  
930 policy, the Reclamation Reform Act of 1982, and the Project use power policy, if such Project  
931 use power policy is applicable, each as amended, modified, or superseded from time to time.

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

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

946                   (4)     Diversion of such non-Project water into Project facilities shall be  
947 consistent with all applicable laws, and if involving groundwater, consistent with any applicable

groundwater management plan for the area from which it was extracted.

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

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

#### OPINIONS AND DETERMINATIONS

17. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

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

COORDINATION AND COOPERATION

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

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

(c) In light of the factors referred to in subdivision (b) of Article 3 of this

Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

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

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

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

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

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

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



CHARGES FOR DELINQUENT PAYMENTS

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

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

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

(c) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has

1049 inquired about, discussed, or disclosed the compensation of the employee or applicant or another  
1050 employee or applicant. This provision shall not apply to instances in which an employee who  
1051 has access to the compensation information of other employees or applicants as part of such  
1052 employee's essential job functions discloses the compensation of such other employees or  
1053 applicants to individuals who do not otherwise have access to such information, unless such  
1054 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,  
1055 proceeding, hearing, or action, including an investigation conducted by the employer, or is  
1056 consistent with the Contractor's legal duty to furnish information.

1057 (d) The Contractor will send to each labor union or representative of workers  
1058 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1059 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1060 the Contractor's commitments under Section 202 of Executive Order No. 11246 of September  
1061 24, 1965, and shall post copies of the notice in conspicuous places available to employees and  
1062 applicants for employment.

1063 (e) The Contractor will comply with all provisions of Executive Order No.  
1064 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of  
1065 Labor.

1066 (f) The Contractor will furnish all information and reports required by  
1067 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the  
1068 Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts  
1069 by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain  
1070 compliance with such rules, regulations, and orders.

1071 (g) In the event of the Contractor's noncompliance with the nondiscrimination  
1072 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be  
1073 canceled, terminated, or suspended in whole or in part and the Contractor may be declared  
1074 ineligible for further Government contracts in accordance with procedures authorized in  
1075 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and  
1076 remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule,  
1077 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1078 (h) The Contractor will include the provisions of paragraphs (a) through (g) in  
1079 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1080 Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24,  
1081 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1082 will take such action with respect to any subcontract or purchase order as may be directed by the  
1083 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1084 noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is  
1085 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1086 Contractor may request the United States to enter into such litigation to protect the interests of  
1087 the United States.

GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

agreements made in this Article and that the United States reserves the right to seek judicial enforcement thereof.

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

PRIVACY ACT COMPLIANCE

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

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

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Department of the Interior Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholders' certification and reporting records.

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

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

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

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

25. (a) Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations). Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of this Article 25 have not yet been

determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

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

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

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

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

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

(b) The Contracting Officer has previously notified the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under

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

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

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the



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

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

BOOKS, RECORDS, AND REPORTS

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

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

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

SEVERABILITY

31. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).

The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

#### RESOLUTION OF DISPUTES

32. 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.

#### OFFICIALS NOT TO BENEFIT

33. 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.

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

34. (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.

(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 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 24 of this Contract.

#### FEDERAL LAWS

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

RECLAMATION REFORM ACT OF 1982

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

(b) The obligation of a Contractor to pay the Additional Capital Obligation shall not affect the Contractor's status as having repaid all of the construction costs assignable to the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

CERTIFICATION OF NONSEGREGATED FACILITIES

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

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment

1374 Opportunity clause. The certification may be submitted either for each subcontract or for all  
1375 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
1376 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1377 NOTICES

1378 38. Any notice, demand, or request authorized or required by this Contract shall be  
1379 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1380 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
1381 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,  
1382 postage prepaid, or delivered to the Board of Directors of the Del Puerto Water District, P. O.  
1383 Box 1596, Patterson, California 95363-1596. The designation of the addressee or the address  
1384 may be changed by notice given in the same manner as provided in this Article for other notices.

1385 MEDIUM FOR TRANSMITTING PAYMENT

1386 39. (a) All payments from the Contractor to the United States under this Contract  
1387 shall be by the medium requested by the United States on or before the date payment is due. The  
1388 required method of payment may include checks, wire transfers, or other types of payment  
1389 specified by the United States.

1390 (b) Upon execution of this Contract, the Contractor shall furnish the  
1391 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1392 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1393 out of the Contractor's relationship with the United States.

1394 CONTRACT DRAFTING CONSIDERATIONS

1395 40. This amended Contract has been negotiated and reviewed by the parties hereto,  
1396 each of whom is sophisticated in the matters to which this amended Contract pertains. The  
1397 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by  
1398 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1399 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.


1400 CONFIRMATION OF CONTRACT

1401 41. Promptly after the execution of this amended Contract, the Contractor will  
1402 provide to the Contracting Officer a certified copy of a final decree of a court of competent  
1403 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor  
1404 for the authorization of the execution of this amended Contract. This amended Contract shall not  
1405 be binding on the United States until the Contractor secures a final decree.


1406

1407 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1408 day and year first above written.

1409 UNITED STATES OF AMERICA

1410 By:   
1411 Regional Director  
1412 Interior Region 10: California-Great Basin  
1413 Bureau of Reclamation

1414 DEL PUERTO WATER DISTRICT  
1415 (SEAL)


1416 By:   
1417 President of the Board of Directors

1418 Attest:

1419 By:   
1420 Secretary of the Board of Directors

1407 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1408 day and year first above written.

1409 UNITED STATES OF AMERICA

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY - REVIEWED BY:  
 Digitally signed by  
BRIAN HUGHES  
Date: 2020.09.25  
13:30:54 -07'00'

OFFICE OF THE REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR  
TIME STAMP: 1:37 pm, May 11 2020

1410 By: \_\_\_\_\_  
1411 Regional Director  
1412 Interior Region 10: California-Great Basin  
1413 Bureau of Reclamation

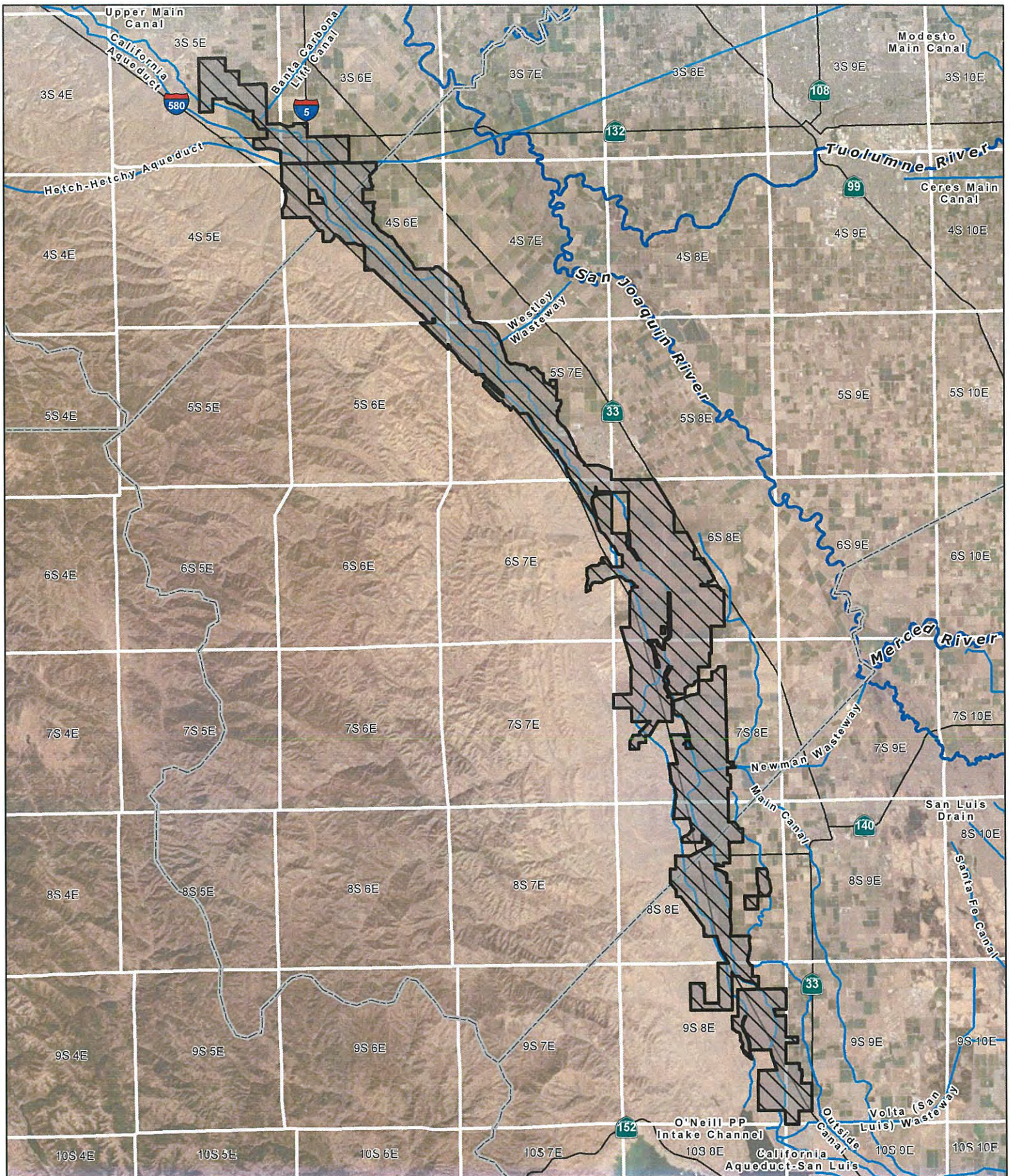
1414 DEL PUERTO WATER DISTRICT  
1415 (SEAL)



1416 By: \_\_\_\_\_  
1417 President of the Board of Directors

1418 Attest:

1419 By: \_\_\_\_\_  
1420 Secretary of the Board of Directors





-  District Boundary
-  Contractor's Service Area

## Del Puerto Water District

Contract No. 14-06-200-922-LTR1-P

EXHIBIT A



— BUREAU OF —  
RECLAMATION





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

	Irrigation Water	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>		
Construction Costs	\$43.99	
DMC Aqueduct Intertie	\$1.06	
O&M Components		
Water Marketing	\$8.97	\$6.12
Storage	\$18.01	\$14.99
Deficit Cost	\$0.00	\$0.00
<b>TOTAL COS RATE (Tier 1 Rate)</b>	<b>\$72.03</b>	<b>\$21.11</b>
<b>IRRIGATION FULL-COST RATE</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	TBD	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	TBD	
<b>M&amp;I FULL COST RATE</b>		TBD
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>		
<b>IRRIGATION</b>		
Tier 2 Rate : >80% <=90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate]/2 (Amount to be added to Tier 1 Rate)	TBD	
Tier 3 Rate : >90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate] (Amount to be added to Tier 1 Rate)	TBD	
<b>M&amp;I</b>		
Tier 2 Rate : >80% <=90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)		TBD
Tier 3 Rate : >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to Be Added to Tier 1 Rate)		TBD
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>		
<b>P.L. 102-575 Surcharge (Restoration Fund Payment)</b> [Section 3407(d)(2)(A)]	\$10.91	\$21.82
<b>P.L. 106-377 Assessment (Trinity Public Utilities District)</b> [Appendix B, Section 203]	\$0.12	\$0.12

**EXPLANATORY NOTES**

The CVP M&I Water Shortage Policy per EIS/EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre feet (AF) are revised as follows: 2006 = 32 AF; 2011 = 21 AF; 2017 = 8 AF; which equals a M&I Historic use average quantity of 20 AF.

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

# Exhibit C<sup>@</sup>

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

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

Contractor: Del Puerto WD  
Facility: Delta Mendota Canal  
Contract: 14-06-200-922-LTR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost	Discount	
Construction Cost	~ \$ 16,545,438		
2019 Repayment (Estimate) **	\$ 3,370,196		
Adjusted Construction Cost	\$ 13,175,242	\$ 12,735,870	
Intertie Construction Cost (N/A):	\$ 1,588,962	\$ 1,393,719	
Total	\$ 14,764,204	\$ 14,129,589	
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1 10/1/2020		\$ 3,586,430	
Payment 2 10/1/2021		\$ 3,586,430	
Payment 3 10/1/2022		\$ 3,586,430	
Payment 4 10/1/2023		\$ 3,586,430	
Total Installment Payments		\$ 14,345,720	
20 yr CMT Rates - 09/17/2020 (to be adjusted to effective date of contract) <sup>@</sup>			
		1.220%	
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))			
		0.610%	

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

Calculation Support: Irrigation Lump Sum or First Payment\*\*\*\* 10/1/2020  
Days Until the End of the Fiscal Year 364

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
2021	\$ 13,175,242	\$ 1,317,524	\$ 1,301,618	\$ 1,588,962	\$ 36,953	\$ 36,506	\$ 1,338,124
2022	\$ 11,857,718	\$ 1,317,524	\$ 1,301,596	\$ 1,552,009	\$ 36,953	\$ 36,506	\$ 1,338,102
2023	\$ 10,540,194	\$ 1,317,524	\$ 1,293,705	\$ 1,515,057	\$ 36,953	\$ 36,285	\$ 1,329,989
2024	\$ 9,222,669	\$ 1,317,524	\$ 1,285,861	\$ 1,478,104	\$ 36,953	\$ 36,065	\$ 1,321,925
2025	\$ 7,905,145	\$ 1,317,524	\$ 1,278,065	\$ 1,441,152	\$ 36,953	\$ 35,846	\$ 1,313,911
2026	\$ 6,587,621	\$ 1,317,524	\$ 1,270,316	\$ 1,404,199	\$ 36,953	\$ 35,629	\$ 1,305,944
2027	\$ 5,270,097	\$ 1,317,524	\$ 1,262,614	\$ 1,367,246	\$ 36,953	\$ 35,413	\$ 1,298,026
2028	\$ 3,952,573	\$ 1,317,524	\$ 1,254,959	\$ 1,330,294	\$ 36,953	\$ 35,198	\$ 1,290,156
2029	\$ 2,635,048	\$ 1,317,524	\$ 1,247,350	\$ 1,293,341	\$ 36,953	\$ 34,984	\$ 1,282,334
2030	\$ 1,317,524	\$ 1,317,524	\$ 1,239,787	\$ 1,256,389	\$ 36,953	\$ 34,772	\$ 1,274,559
2031-63				\$ 1,219,436	\$ 1,219,436	\$ 1,036,516	\$ 1,036,516
Total, Lump Sum Payment		\$ 12,735,870				\$ 1,393,719	\$ 14,129,589

Amount of Reduction, Lump Sum \$ 439,372 \$ 195,243 \$ 634,615

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

\*\* 2019 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

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

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

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

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

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

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

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

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

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 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
6        October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992  
7        (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act  
8        (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all  
9        collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES  
10       OF AMERICA, hereinafter referred to as the United States, represented by the officer executing  
11       this Contract, hereinafter referred to as the Contracting Officer, and DEL PUERTO WATER  
12       DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
13       duly organized, existing, and acting pursuant to the laws thereof;

14       WITNESSETH, That:

37	Hospital Water District	14-06-200-923	06/10/53	02/28/94
38	Kern Canon Water District	14-06-200-924	06/10/53	02/28/94
39	Salada Water District	14-06-200-925	06/10/53	02/28/94
40	Sunflower Water District	14-06-200-1804	11/12/53	02/28/94
41	Mustang Water District	14-06-200-8103	12/07/59	02/28/95
42	Orestimba Water District	14-06-200-8091	11/27/59	02/28/95
43	Quinto Water District	14-06-200-8899	01/24/61	02/28/95
44	Romero Water District	14-06-200-7758	05/11/59	02/28/95
45	Foothill Water District	14-06-200-4323	05/31/55	02/29/96
46	; and			

47                   [6<sup>th</sup>]   WHEREAS, the long-term water service contracts between the United  
48 States and Davis, Del Puerto, Hospital, Kern Canon, Salada, and Sunflower Water Districts  
49 provided for water service through February 28, 1994, and for which one-year interim renewal  
50 contracts were entered into providing for continued water service through February 28, 1995;  
51 and

52                   [7<sup>th</sup>]   WHEREAS, all ten water districts including Davis, Foothill, Hospital,  
53 Kern Canon, Mustang, Orestimba, Quinto, Romero, Salada, and Sunflower Water Districts were  
54 assigned to the Contractor by separate "Assignments of Water Service Contract", dated February  
55 13, 1995; and

56                   [8<sup>th</sup>]   WHEREAS, the Contractor and the United States entered into the interim  
57 renewal contract identified as Contract No. 14-06-200-922-IR2, which consolidated all of the  
58 Water Districts that were assigned to the Contractor, except Foothill Water District, and provided  
59 for the continued water service from March 1, 1995, through February 28, 1997; and

60                   [9<sup>th</sup>]   WHEREAS, the long-term water service contract between Foothill Water  
61 District (Foothill) and the United States identified as Contract No. 14-06-200-4323, that was  
62 assigned to the Contractor, provided for water service through February 28, 1996, and for which

85 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under  
86 mutually agreeable terms and conditions.”; and

87 [15<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of  
88 conversion under this paragraph shall be as follows: (A) Water service contracts that were  
89 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under  
90 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.  
91 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9  
92 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be  
93 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

94 [16<sup>th</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered  
95 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,  
96 repayment, exchange and transfer contractual rights between the water users’ association  
97 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the  
98 water users’ association [Contractor] and their landowners as provided under State law.”; and

99 [17<sup>th</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that  
100 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water  
101 service or repayment contractor to receive water; or (4) except as expressly provided in this  
102 section, any obligations under the Federal Reclamation law, including the continuation of  
103 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and  
104 repayment contractors making prepayments pursuant to this section.”; and

105 [18<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the  
106 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water

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

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

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

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

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

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

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



(g) "Contractor's Service Area" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto, which may be modified from time to time in accordance with Article 34 of this Contract without amendment of this Contract;

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

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

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

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

(l) "Existing Capital Obligation" shall mean the remaining amount of construction costs or other capitalized costs allocable to the Contractor as described in section 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,

214 (q) "Landholder" shall mean a party that directly or indirectly owns or  
215 leases nonexempt land, as provided in 43 CFR 426.2;

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

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

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

225 (u) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)  
226 successors or assigns, which has (have) the obligation to operate and maintain all or a  
227 portion of the Delta Division Facilities pursuant to written agreement(s) with the United  
228 States. When this Contract was entered into, the Operating Non-Federal Entity was the  
229 San Luis & Delta-Mendota Water Authority;

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

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

235 (x) "Project Water" shall mean all water that is developed, diverted,  
236 stored, or delivered by the Secretary in accordance with the statutes authorizing the

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

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

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

TERM OF CONTRACT – RIGHT TO USE OF WATER

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

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

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

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 140,210 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement prepared pursuant to Section 3404(c) of the CVPIA projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years prior to execution of the Existing Contract, the Recent Historic Average Water Made Available to the Contractor was 92,258 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

(1) In the event any Project Contractor (other than a Cross Valley Contractor) that receives Project Water through the Delta Division Facilities obtains a

346 Contractor's Service Area may be permitted upon written approval of the Contracting  
347 Officer, which approval will be based upon environmental documentation, Project Water  
348 rights, and Project operational concerns. The Contracting Officer will address such  
349 concerns in regulations, policies, or guidelines.

350           (e)     The Contractor shall comply with requirements applicable to the  
351 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
352 of any water service contract between the Contracting Officer and the Contractor in effect  
353 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered  
354 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to  
355 implement. The Existing Contract, which evidences in excess of 51 years of diversions for  
356 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of  
357 Article 3 of this Contract, will be considered in developing an appropriate baseline for any  
358 required biological assessment(s) prepared pursuant to the ESA, and any other needed  
359 environmental review. Nothing herein shall be construed to prevent the Contractor from  
360 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any  
361 biological opinion or other environmental documentation referred to in this Article.

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

9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

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

#### TIME FOR DELIVERY OF WATER

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

434 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

435           5.       (a)     Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
436 Contract shall be delivered to the Contractor at a point or points on the Delta-Mendota  
437 Canal and any additional point or points of delivery either on Project facilities or another  
438 location or locations mutually agreed to in writing by the Contracting Officer and the  
439 Contractor.

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

445                       (c)     The Contractor shall deliver Irrigation Water in accordance with any  
446 applicable land classification provisions of Federal Reclamation law and the associated  
447 regulations. The Contractor shall not deliver Project Water to land outside the  
448 Contractor's Service Area unless approved in advance by the Contracting Officer.

449                       (d)     All Water Delivered to the Contractor pursuant to this Contract shall  
450 be measured and recorded with equipment furnished, installed, operated, and maintained  
451 by the Contracting Officer either directly or indirectly through its written agreements(s)  
452 with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with  
453 the consent of the Contracting Officer at the point or points of delivery established  
454 pursuant to subdivision (a) of this Article. Upon the request of either party to this  
455 Contract, the Contracting Officer shall investigate, or cause to be investigated by the

(iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies).

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water; to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 25 of this Contract.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written



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

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

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required pursuant to section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other obligations shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing

first payment date. The final payment shall be made no later than **[Month Day, Year] [no later than the third anniversary of the effective date of the contract]**. If the installment payment option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using the same methodology as was used to compute the initial annual installment payment amount, which is illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

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

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

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

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

626 (d) At the time the Contractor submits the initial schedule for the delivery of  
627 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
628 Contractor shall make an advance payment to the United States equal to the total amount  
629 payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the

subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

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

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

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

applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

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

(3) For purposes of determining the applicability of the Tiered Pricing Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor transfers to others but shall not include Project Water transferred to the Contractor,

not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence, computation, or imposition of any deficit charges accruing during the term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, provided that the basis for such ruling is applicable to the Contractor.

NON-INTEREST BEARING O&M DEFICITS

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

SALES, TRANSFERS, OR EXCHANGES OF WATER

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

environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

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

#### APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply

discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such discontinuance or reduction, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

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

#### CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

(c) In any Year in which there may occur a Condition of Shortage for any of the reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the Contracting Officer will first allocate the available Project Water consistent



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

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

UNAVOIDABLE GROUNDWATER PERCOLATION

13. (a) To the extent applicable, the Contractor shall not be deemed to have

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

16. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are (were) constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the

972 superseded from time to time.

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

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

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

991                               (5)     After Project purposes are met, as determined by the  
992 Contracting Officer, the United States and Project Contractors entitled to Project Water  
993 from Delta Division Facilities shall share priority to utilize the remaining capacity of the

regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

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

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

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

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

(c) The Contractor makes this Contract in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau

pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as an authority for the request.

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

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

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

Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued

management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets the Bureau of Reclamation's then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

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



shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

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

#### CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

#### BOOKS, RECORDS, AND REPORTS

29. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's financial transactions; water supply data; project operations, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during

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

#### RESOLUTION OF DISPUTES

32. 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

FEDERAL LAWS

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

RECLAMATION REFORM ACT OF 1982

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

(b) The obligation of a Contractor to pay the Additional Capital Obligation shall not affect the Contractor's status as having repaid all of the construction costs assignable to the Contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

CERTIFICATION OF NONSEGREGATED FACILITIES

37. The Contractor hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact

1456 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1457 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1458 CONFIRMATION OF CONTRACT

1459 41. Promptly after the execution of this amended Contract, the Contractor will  
1460 provide to the Contracting Officer a certified copy of a final decree of a court of competent  
1461 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor  
1462 for the authorization of the execution of this amended Contract. This amended Contract shall not  
1463 be binding on the United States until the Contractor secures a final decree.

1464

Irrigation and M&I  
Contract No. 14-06-200-922-LTR1-P

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

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

Exhibits

Exhibit A – Map of Contractor’s Service Area

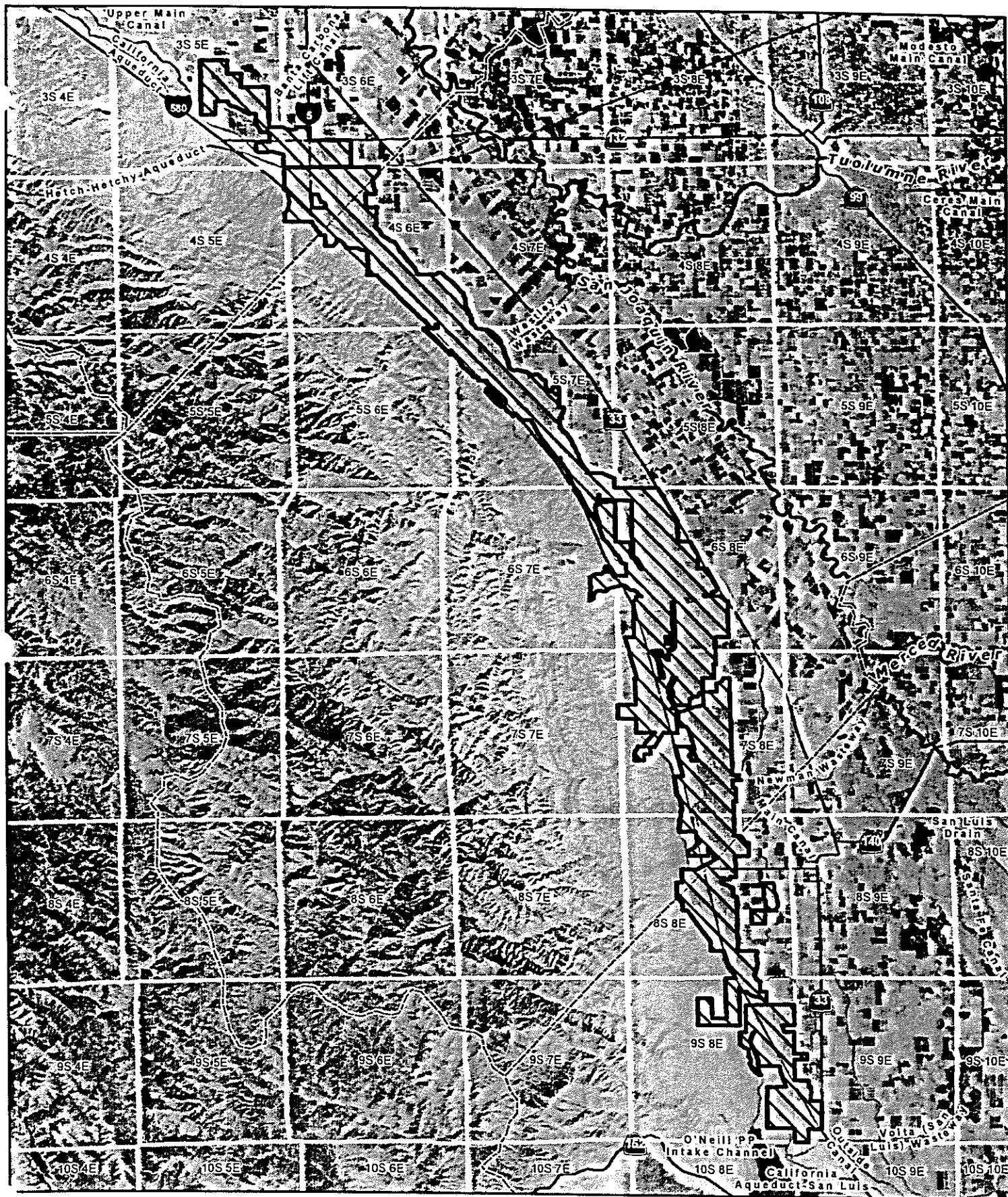
*This Exhibit is unchanged from current Contract..*



Exhibit B – Rates and Charges

*This Exhibit template is unchanged from current Contract and is updated annually. Rate Schedules may be found at: <https://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>*

Exhibit C – Repayment Obligation

*This Exhibit template was developed during the WIIN Act Negotiations. Relevant data will be incorporated upon contract execution.*



-  District Boundary
-  Contractor's Service Area

## Del Puerto Water District

Contract No. 14-06-200-922-LTR1-P  
EXHIBIT A



BUREAU OF  
RECLAMATION



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

	Irrigation Water	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>		
Construction Costs	\$43.99	
DMC Aqueduct Intertie	\$1.06	
O&M Components		
Water Marketing	\$8.97	\$6.12
Storage	\$18.01	\$14.99
Deficit Cost	\$0.00	\$0.00
<b>TOTAL COS RATE (Tier 1 Rate)</b>	<b>\$72.03</b>	<b>\$21.11</b>
<b>IRRIGATION FULL-COST RATE</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$106.72	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$131.82	
<b>M&amp;I FULL COST RATE</b>		
		\$21.11
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>		
<b>IRRIGATION</b>		
Tier 2 Rate: >80% <=90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate]/2 (Amount to be added to Tier 1 Rate)	\$17.35	
Tier 3 Rate: >90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate] (Amount to be added to Tier 1 Rate)	\$34.69	
<b>M&amp;I</b>		
Tier 2 Rate: >80% <=90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)		\$0.00
Tier 3 Rate: >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to Be Added to Tier 1 Rate)		\$0.00
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>		
P.L. 102-575 Surcharge (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$10.91	\$21.82
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12	\$0.12

**EXPLANATORY NOTES**

The CVP M&I Water Shortage Policy per EIS, EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre feet (AF) are revised as follows: 2006 = 32 AF; 2011 = 21 AF; 2017 = 8 AF; which equals a M&I Historic use average quantity of 20 AF.

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

JL 3/20/20

# Exhibit C<sup>a</sup>

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

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

Contractor: Del Puerto WD  
Facility: Delta Mendota Canal  
Contract: 14-06-200-922-LTR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost	Discount	
Construction Cost	\$ 16,546,588		
2019 Repayment (Estimate) **	\$ 3,305,770		
Adjusted Construction Cost	\$ 13,240,818	\$ 12,851,579	
Intertie Construction Cost (N/A):	\$ 1,588,962	\$ 1,423,126	
Total	\$ 14,829,780	\$ 14,274,705	
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1	9/1/2020	\$ 3,613,396	
Payment 2	9/1/2021	\$ 3,613,396	
Payment 3	9/1/2022	\$ 3,613,396	
Payment 4 ~	9/1/2023	\$ 3,613,396	
Total Installment Payments		\$ 14,453,584	
20 yr CMT Rates - 04/28/2020 (to be adjusted to effective date of contract)®			
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))			
1.000%			
0.500%			

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

Calculation Support: Irrigation Lump Sum or First Payment\*\*\*\* 9/1/2020  
Days Until the End of the Fiscal Year 29

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
2020	\$ 13,240,818	\$ 1,203,711	\$ 1,197,249	\$ 1,588,962	\$ 36,113	\$ 35,919	\$ 1,233,168
2021	\$ 12,037,107	\$ 1,203,711	\$ 1,191,763	\$ 1,552,849	\$ 36,113	\$ 35,754	\$ 1,227,518
2022	\$ 10,833,397	\$ 1,203,711	\$ 1,185,834	\$ 1,516,736	\$ 36,113	\$ 35,576	\$ 1,221,411
2023	\$ 9,629,686	\$ 1,203,711	\$ 1,179,934	\$ 1,480,624	\$ 36,113	\$ 35,399	\$ 1,215,334
2024	\$ 8,425,975	\$ 1,203,711	\$ 1,174,064	\$ 1,444,511	\$ 36,113	\$ 35,223	\$ 1,209,287
2025	\$ 7,222,264	\$ 1,203,711	\$ 1,168,223	\$ 1,408,398	\$ 36,113	\$ 35,048	\$ 1,203,271
2026	\$ 6,018,554	\$ 1,203,711	\$ 1,162,411	\$ 1,372,285	\$ 36,113	\$ 34,874	\$ 1,197,285
2027	\$ 4,814,843	\$ 1,203,711	\$ 1,156,628	\$ 1,336,173	\$ 36,113	\$ 34,700	\$ 1,191,328
2028	\$ 3,611,132	\$ 1,203,711	\$ 1,150,873	\$ 1,300,060	\$ 36,113	\$ 34,528	\$ 1,185,401
2029	\$ 2,407,421	\$ 1,203,711	\$ 1,145,148	\$ 1,263,947	\$ 36,113	\$ 34,356	\$ 1,179,504
2030	\$ 1,203,711	\$ 1,203,711	\$ 1,139,450	\$ 1,227,834	\$ 36,113	\$ 34,185	\$ 1,173,635
2031-63				\$ 1,191,722	\$ 1,191,722	\$ 1,037,563	\$ 1,037,563
Total, Lump Sum Payment			\$ 12,851,579			\$ 1,423,126	\$ 14,274,705

Amount of Reduction, Lump Sum \$ 389,240 \$ 165,836 \$ 555,075

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

\*\* 2019 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

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

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

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

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

~~ Final Payment made in installments must be repaid by this date.



EXHIBIT "B"  
NOTICE OF EXEMPTION

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

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

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

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

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 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
6        October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992  
7        (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act  
8        (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all  
9        collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES  
10       OF AMERICA, hereinafter referred to as the United States, represented by the officer executing  
11       this Contract, hereinafter referred to as the Contracting Officer, and DEL PUERTO WATER  
12       DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
13       duly organized, existing, and acting pursuant to the laws thereof;

14       WITNESSETH, That:

EXPLANATORY RECITALS

[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-Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[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. 14-06-200-922, as amended, which established terms for the delivery to the Contractor of Project Water from the Delta Division facilities from June 10, 1953, though February 28, 1994; and

[5<sup>th</sup>] WHEREAS, the United States and the following water districts entered into long-term water service contracts, which provided those districts Project Water from the Delta Division through the date of contract expiration listed below:

<u>District</u>	<u>Contract No.</u>	<u>Execution Date</u>	<u>Expiration Date</u>
Davis Water District	14-06-200-1458	10/03/53	02/28/94

37	Hospital Water District	14-06-200-923	06/10/53	02/28/94
38	Kern Canon Water District	14-06-200-924	06/10/53	02/28/94
39	Salada Water District	14-06-200-925	06/10/53	02/28/94
40	Sunflower Water District	14-06-200-1804	11/12/53	02/28/94
41	Mustang Water District	14-06-200-8103	12/07/59	02/28/95
42	Orestimba Water District	14-06-200-8091	11/27/59	02/28/95
43	Quinto Water District	14-06-200-8899	01/24/61	02/28/95
44	Romero Water District	14-06-200-7758	05/11/59	02/28/95
45	Foothill Water District	14-06-200-4323	05/31/55	02/29/96
46	; and			

47                   [6<sup>th</sup>]   WHEREAS, the long-term water service contracts between the United  
48 States and Davis, Del Puerto, Hospital, Kern Canon, Salada, and Sunflower Water Districts  
49 provided for water service through February 28, 1994, and for which one-year interim renewal  
50 contracts were entered into providing for continued water service through February 28, 1995;  
51 and

52                   [7<sup>th</sup>]   WHEREAS, all ten water districts including Davis, Foothill, Hospital,  
53 Kern Canon, Mustang, Orestimba, Quinto, Romero, Salada, and Sunflower Water Districts were  
54 assigned to the Contractor by separate "Assignments of Water Service Contract", dated February  
55 13, 1995; and

56                   [8<sup>th</sup>]   WHEREAS, the Contractor and the United States entered into the interim  
57 renewal contract identified as Contract No. 14-06-200-922-IR2, which consolidated all of the  
58 Water Districts that were assigned to the Contractor, except Foothill Water District, and provided  
59 for the continued water service from March 1, 1995, through February 28, 1997; and

60                   [9<sup>th</sup>]   WHEREAS, the long-term water service contract between Foothill Water  
61 District (Foothill) and the United States identified as Contract No. 14-06-200-4323, that was  
62 assigned to the Contractor, provided for water service through February 28, 1996, and for which

a one-year interim renewal contract identified as Contract No. 14-06-200-4323-IR1, provided water service from March 1, 1996, through February 28, 1997; and

[10<sup>th</sup>] WHEREAS, the Contractor requested subsequent renewal and consolidation of Contract No(s). 14-06-200-922-IR2 and 14-06-200-4323-IR1 pursuant to, Federal Reclamation law, and the laws of the State of California, for water service from the Central Valley Project; and

[11<sup>th</sup>] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-200-922-IR3 and subsequent Interim Renewal Contracts 14-06-200-922-IR4 through 14-06-200-922-IR10, which provided for water service to the Contractor from March 1, 1997 through February 28, 2006; and

[12<sup>th</sup>] WHEREAS, the United States and the Contractor entered into a long-term contract identified as Contract No. 14-06-200-922-LTR1, hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor following expiration of Contract No. 14-06-200-922-IR10, and which was in effect the date the WIIN Act was enacted; and

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

[14<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users’ association

85 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under  
86 mutually agreeable terms and conditions.”; and

87 [15<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of  
88 conversion under this paragraph shall be as follows: (A) Water service contracts that were  
89 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under  
90 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.  
91 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9  
92 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be  
93 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

94 [16<sup>th</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered  
95 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,  
96 repayment, exchange and transfer contractual rights between the water users’ association  
97 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the  
98 water users’ association [Contractor] and their landowners as provided under State law.”; and

99 [17<sup>th</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that  
100 “implementation of the provisions of this subtitle shall not alter... (3) the priority of a water  
101 service or repayment contractor to receive water; or (4) except as expressly provided in this  
102 section, any obligations under the Federal Reclamation law, including the continuation of  
103 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and  
104 repayment contractors making prepayments pursuant to this section.”; and

105 [18<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the  
106 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water



service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

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

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

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

[22<sup>nd</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's, depend upon the continued availability of water, including water service from the Project; and

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

[24<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies;

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

133 [25<sup>th</sup>] WHEREAS, the parties intend by this Contract to maintain a cooperative  
134 relationship in order to achieve their mutual goals; and

135 [26<sup>th</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
136 assignments, rescheduling, and conveyance of Project Water and non-Project water under this  
137 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the  
138 beneficial use of water; and

139 [27<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
140 disincentive to the Contractor in continuing to carry out the beneficial activities set out in  
141 the Explanatory Recital immediately above; and

142 [28<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this  
143 Contract complies with Section 4011 of the WIIN Act; and

144 [29<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend  
145 and convert the Existing Contract pursuant to section 4011 of the WIIN Act and other Federal  
146 Reclamation law on the terms and conditions set forth below;

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

DEFINITIONS

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

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

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

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

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

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

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

(g) "Contractor's Service Area" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto, which may be modified from time to time in accordance with Article 34 of this Contract without amendment of this Contract;

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

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

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

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

(l) "Existing Capital Obligation" shall mean the remaining amount of construction costs or other capitalized costs allocable to the Contractor as described in section 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,

dated Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to address the intertie], as adjusted to reflect payments not reflected in such schedule. The Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit "C", which is incorporated herein by reference;

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

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

(o) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

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

214 (q) "Landholder" shall mean a party that directly or indirectly owns or  
215 leases nonexempt land, as provided in 43 CFR 426.2;

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

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

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

225 (u) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)  
226 successors or assigns, which has (have) the obligation to operate and maintain all or a  
227 portion of the Delta Division Facilities pursuant to written agreement(s) with the United  
228 States. When this Contract was entered into, the Operating Non-Federal Entity was the  
229 San Luis & Delta-Mendota Water Authority;

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

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

235 (x) "Project Water" shall mean all water that is developed, diverted,  
236 stored, or delivered by the Secretary in accordance with the statutes authorizing the

Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

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

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

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

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

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

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

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

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

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

TERM OF CONTRACT – RIGHT TO USE OF WATER

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

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

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



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

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

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage limitations, reporting, and full cost pricing provisions of the Reclamation Reform Act of 1982, and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands, of Article 1 of this Contract shall no longer be applicable.

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

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

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 140,210 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement prepared pursuant to Section 3404(c) of the CVPIA projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years prior to execution of the Existing Contract, the Recent Historic Average Water Made Available to the Contractor was 92,258 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

(1) In the event any Project Contractor (other than a Cross Valley Contractor) that receives Project Water through the Delta Division Facilities obtains a

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

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 25 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the

Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of any water service contract between the Contracting Officer and the Contractor in effect immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of 51 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for any required biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

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

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

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

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section

9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

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

#### TIME FOR DELIVERY OF WATER

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

412 Contracting Officer shall provide forecasts of Project operations and the basis of the  
413 estimate, with relevant supporting information, upon the written request of the  
414 Contractor. Concurrently with the declaration of the Water Made Available, the  
415 Contracting Officer shall provide the Contractor with the updated Recent Historic  
416 Average.

417 (b) On or before each March 1 and at such other times as necessary, the  
418 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the  
419 Contracting Officer, showing the monthly quantities of Project Water to be delivered by  
420 the United States to the Contractor pursuant to this Contract for the Year commencing  
421 on such March 1. The Contracting Officer shall use all reasonable means to deliver  
422 Project Water according to the approved schedule for the Year commencing on such  
423 March 1.

424 (c) The Contractor shall not schedule Project Water in excess of the  
425 quantity of Project Water the Contractor intends to put to reasonable and beneficial use  
426 within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article  
427 9 of this Contract during any Year.

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

434 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

435           5.       (a)     Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
436 Contract shall be delivered to the Contractor at a point or points on the Delta-Mendota  
437 Canal and any additional point or points of delivery either on Project facilities or another  
438 location or locations mutually agreed to in writing by the Contracting Officer and the  
439 Contractor.

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

445                       (c)     The Contractor shall deliver Irrigation Water in accordance with any  
446 applicable land classification provisions of Federal Reclamation law and the associated  
447 regulations. The Contractor shall not deliver Project Water to land outside the  
448 Contractor's Service Area unless approved in advance by the Contracting Officer.

449                       (d)     All Water Delivered to the Contractor pursuant to this Contract shall  
450 be measured and recorded with equipment furnished, installed, operated, and maintained  
451 by the Contracting Officer either directly or indirectly through its written agreements(s)  
452 with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with  
453 the consent of the Contracting Officer at the point or points of delivery established  
454 pursuant to subdivision (a) of this Article. Upon the request of either party to this  
455 Contract, the Contracting Officer shall investigate, or cause to be investigated by the



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

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); or

(iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity(ies).

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water; to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 25 of this Contract.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written

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

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

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

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

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

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required pursuant to section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other obligations shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing

Component in accordance with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable costs included in the operation and maintenance component of the Rate and amounts established to recover deficits and other charges, if any, including construction costs as identified in the following subdivisions.

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

(A) The amount due and payable to the United States, pursuant to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as set forth in Exhibit "C". **There could be one or two exhibits in most cases due to more than one service area [For Irrigation contractors and M&I contractors]** The Repayment Obligation is due in lump sum by **[Month Day, Year]** as provided by the WIIN Act. The Contractor must provide appropriate notice to the Contracting Officer in writing no later than thirty (30) days prior to **[Month Day, Year]** **[Division Level: consider the effective date of the contract being converted]** if electing to repay the amount due using the lump sum alternative. If such notice is not provided by such date, the Contractor shall be deemed to have elected the installment payment alternative, in which case, the first such payment shall be made no later than **[Month Day, Year]** **[Division Level: consider the effective date of the contract being converted]**. The second payment shall be made no later than the first anniversary of the first payment date. The third payment shall be made no later than the second anniversary of the

first payment date. The final payment shall be made no later than **[Month Day, Year] [no later than the third anniversary of the effective date of the contract]**. If the installment payment option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using the same methodology as was used to compute the initial annual installment payment amount, which is illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

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

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

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

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

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

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

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

(d) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the



Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or 60 days after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(e) The Contractor shall also make a payment in addition to the Rate(s) in

subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

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

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

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

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

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

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

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

696 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
697 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
698 Contract Total, shall equal one-half of the difference between the Rate established under  
699 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water  
700 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water  
701 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)  
702 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water  
703 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to  
704 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract  
705 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in  
706 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

707                   (2) Subject to the Contracting Officer's written approval, the  
708 Contractor may request and receive an exemption from such Tiered Pricing Component for  
709 Project Water delivered to produce a crop which the Contracting Officer determines will provide  
710 significant and quantifiable habitat values for waterfowl in fields where the water is used and the  
711 crops are produced; *Provided, That* the exemption from the Tiered Pricing Component for  
712 Irrigation Water shall apply only if such habitat values can be assured consistent with the  
713 purposes of the CVPIA through binding agreements executed with or approved by the  
714 Contracting Officer prior to use of such water.

715                   (3) For purposes of determining the applicability of the Tiered Pricing  
716 Component pursuant to this Article, Water Delivered shall include Project Water that the  
717 Contractor transfers to others but shall not include Project Water transferred to the Contractor,

nor shall it include the additional water provided to the Contractor under the provisions of subdivision (f) of Article 3 of this Contract.

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

(m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

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

(o) With respect to the Rates for M&I Water, the Contractor asserts that it is

not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence, computation, or imposition of any deficit charges accruing during the term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, provided that the basis for such ruling is applicable to the Contractor.

NON-INTEREST BEARING O&M DEFICITS

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

SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

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

#### APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply



provided for by this Contract. All credits and refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

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

(b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due notice in advance of such temporary

discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such discontinuance or reduction, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

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

#### CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

(c) In any Year in which there may occur a Condition of Shortage for any of the reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the Contracting Officer will first allocate the available Project Water consistent

with the Project M&I Water Shortage Policy as finally adopted after environmental review for determining the amount of Project Water Available for delivery to the Project Contractors. Subject to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting Officer shall then apportion Project Water among the Contractor and others entitled to Project Water from Delta Division Facilities under long-term water service or repayment contracts (or renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

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

(2) A determination shall be made of the total quantity of Project Water that is available for meeting the scheduled total, the quantity so determined being hereinafter referred to as the available supply;

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

(4) The available supply shall be multiplied by the Contractor's

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

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

#### UNAVOIDABLE GROUNDWATER PERCOLATION

13. (a) To the extent applicable, the Contractor shall not be deemed to have

delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

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

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

PROTECTION OF WATER AND AIR QUALITY

15. (a) Omitted

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

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

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

(e) Omitted

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

16. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are (were) constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the

Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full-cost land within the Contractor's Service Area that receives non-Project water through Federally financed or constructed facilities. The incremental fee calculation methodology will continue during the term of this Contract absent the promulgation of a contrary Bureau of Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted, it shall supersede this provision.

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

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the Reclamation Reform Act of 1982, and the Project use power policy, if such Project use power policy is applicable, each as amended, modified, or

972 superseded from time to time.

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

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

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

991                               (5)     After Project purposes are met, as determined by the  
992 Contracting Officer, the United States and Project Contractors entitled to Project Water  
993 from Delta Division Facilities shall share priority to utilize the remaining capacity of the



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

1000 (c) Upon complete payment of the Repayment Obligation by the Contractor,  
1001 subdivision (a) of this Article 16 shall no longer be applicable.

1002 OPINIONS AND DETERMINATIONS

1003 17. (a) Where the terms of this Contract provide for actions to be based upon  
1004 the opinion or determination of either party to this Contract, said terms shall not be  
1005 construed as permitting such action to be predicated upon arbitrary, capricious, or  
1006 unreasonable opinions or determinations. Both parties, notwithstanding any other  
1007 provisions of this Contract, expressly reserve the right to seek relief from and appropriate  
1008 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination.  
1009 Each opinion or determination by either party shall be provided in a timely manner.  
1010 Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the  
1011 standard of judicial review applicable under Federal law to any opinion or determination  
1012 implementing a specific provision of Federal law embodied in statute or regulation.

1013 (b) The Contracting Officer shall have the right to make determinations  
1014 necessary to administer this Contract that are consistent with the provisions of this  
1015 Contract, the laws of the United States and of the State of California, and the rules and

regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

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

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

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

1038 this intent:

1039 (1) The Contracting Officer will, at the request of the Contractor,  
1040 assist in the development of integrated resource management plans for the Contractor.

1041 Further, the Contracting Officer will, as appropriate, seek authorizations for implementation  
1042 of partnerships to improve water supply, water quality, and reliability.

1043 (2) The Secretary will, as appropriate, pursue program and project  
1044 implementation and authorization in coordination with Project Contractors to improve the  
1045 water supply, water quality, and reliability of the Project for all Project purposes.

1046 (3) The Secretary will coordinate with Project Contractors and the  
1047 State of California to seek improved water resource management.

1048 (4) The Secretary will coordinate actions of agencies within the  
1049 Department of the Interior that may impact the availability of water for Project purposes.

1050 (5) The Contracting Officer shall periodically, but not less than  
1051 annually, hold division-level meetings to discuss Project operations, division-level water  
1052 management activities, and other issues as appropriate.

1053 (d) Without limiting the contractual obligations of the Contracting Officer  
1054 under the other Articles of this Contract, nothing in this Article shall be construed to limit  
1055 or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate  
1056 with the Contractor or other interested stakeholders or to make decisions in a timely fashion  
1057 as needed to protect health, safety, or the physical integrity of structures or facilities.

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

1095 (c) The Contractor will not discharge or in any other manner discriminate  
1096 against any employee or applicant for employment because such employee or applicant has  
1097 inquired about, discussed, or disclosed the compensation of the employee or applicant or  
1098 another employee or applicant. This provision shall not apply to instances in which an  
1099 employee who has access to the compensation information of other employees or applicants as  
1100 part of such employee's essential job functions discloses the compensation of such other  
1101 employees or applicants to individuals who do not otherwise have access to such information,  
1102 unless such disclosure is in response to a formal complaint or charge, in furtherance of an  
1103 investigation, proceeding, hearing, or action, including an investigation conducted by the  
1104 employer, or is consistent with the Contractor's legal duty to furnish information.

1105 (d) The Contractor will send to each labor union or representative of  
1106 workers with which it has a collective bargaining agreement or other contract or understanding,  
1107 a notice, to be provided by the Contracting Officer, advising the labor union or workers'  
1108 representative of the Contractor's commitments under section 202 of Executive Order No.  
1109 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places  
1110 available to employees and applicants for employment.

1111 (e) The Contractor will comply with all provisions of Executive Order No.  
1112 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1113 of Labor.

1114 (f) The Contractor will furnish all information and reports required by  
1115 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of  
1116 the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and  
1117 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation  
1118 to ascertain compliance with such rules, regulations, and orders.

1119 (g) In the event of the Contractor's noncompliance with the  
1120 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this  
1121 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may  
1122 be declared ineligible for further Government contracts in accordance with procedures  
1123 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may  
1124 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,  
1125 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by  
1126 law.

1127 (h) The Contractor will include the provisions of paragraphs (a) through (g)  
1128 in every subcontract or purchase order unless exempted by the rules, regulations, or orders  
1129 of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of Sept.  
1130 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The  
1131 Contractor will take such action with respect to any subcontract or purchase order as may be  
1132 directed by the Secretary of Labor as a means of enforcing such provisions, including  
1133 sanctions for noncompliance: *Provided, however, That* in the event the Contractor

becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

(c) The Contractor makes this Contract in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau

of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article and that the United States reserves the right to seek judicial enforcement thereof.

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

#### PRIVACY ACT COMPLIANCE

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

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

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Department of the Interior Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholders' certification and reporting records.

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

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

1205 pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as an  
1206 authority for the request.

1207 (f) Upon complete payment of the Repayment Obligation by the  
1208 Contractor, this Article 23 will no longer be applicable.

1209 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1210 24. In addition to all other payments to be made by the Contractor pursuant to this  
1211 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill  
1212 and detailed statement submitted by the Contracting Officer to the Contractor for such  
1213 specific items of direct cost incurred by the United States for work requested by the  
1214 Contractor associated with this Contract plus indirect costs in accordance with applicable  
1215 Bureau of Reclamation policies and procedures. All such amounts referred to in this  
1216 Article shall not exceed the amount agreed to in writing in advance by the Contractor.  
1217 This Article shall not apply to costs for routine contract administration.

1218 WATER CONSERVATION

1219 25. (a) Prior to the delivery of water provided from or conveyed through  
1220 Federally constructed or Federally financed facilities pursuant to this Contract, the  
1221 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the  
1222 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and  
1223 Regulations).

1224 Additionally, an effective water conservation and efficiency program shall be based on the  
1225 Contractor's water conservation plan that has been determined by the Contracting Officer to  
1226 meet the conservation and efficiency criteria for evaluating water conservation plans  
1227 established under Federal law. The water conservation and efficiency program shall  
1228 contain definite water conservation objectives, appropriate economically feasible water  
1229 conservation measures, and time schedules for meeting those objectives. Continued



Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of this Article 25 have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

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

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

(d) At five (5)-year intervals, the Contractor shall revise its water conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water

management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets the Bureau of Reclamation's then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

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

1273                   (b)     The Contracting Officer has previously notified the Contractor in  
1274     writing that the Operation and Maintenance of a portion of the Project facilities which  
1275     serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis &  
1276     Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the  
1277     Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any  
1278     successor approved by the Contracting Officer under the terms and conditions of the  
1279     separate agreement between the United States and the Operating Non-Federal Entity San  
1280     Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates,  
1281     charges, or assessments of any kind, including any assessment for reserve funds, which the  
1282     Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor  
1283     determines, sets, or establishes for the Operation and Maintenance of the portion of the Project  
1284     facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-  
1285     Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal  
1286     Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the  
1287     Contractor of its obligation to pay directly to the United States the Contractor's share of  
1288     the Project Rates, Charges, and Tiered Pricing Component except to the extent the  
1289     Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments  
1290     on behalf of the United States in accordance with the separate agreement identified in  
1291     subdivision (a) of this Article.

1292                   (c)     For so long as the O&M of any portion of the Project facilities  
1293     serving the Contractor is performed by Operating Non-Federal Entity San Luis &  
1294     Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer

shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

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

#### CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

#### BOOKS, RECORDS, AND REPORTS

29. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's financial transactions; water supply data; project operations, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during

office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

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

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

SEVERABILITY

31. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to

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

#### RESOLUTION OF DISPUTES

32. 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.

OFFICIALS NOT TO BENEFIT

33. 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.

CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

34. (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.

(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 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 24 of this Contract.

FEDERAL LAWS

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

RECLAMATION REFORM ACT OF 1982

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

(b) The obligation of a Contractor to pay the Additional Capital Obligation shall not affect the Contractor's status as having repaid all of the construction costs assignable to the Contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

CERTIFICATION OF NONSEGREGATED FACILITIES

37. The Contractor hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact



segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The Contractor further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

NOTICES

38. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Del Puerto Water District, P. O. Box 1596, Patterson, California 95363-1596. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

MEDIUM FOR TRANSMITTING PAYMENT

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

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

CONTRACT DRAFTING CONSIDERATIONS

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

1456 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1457 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1458 CONFIRMATION OF CONTRACT

1459 41. Promptly after the execution of this amended Contract, the Contractor will  
1460 provide to the Contracting Officer a certified copy of a final decree of a court of competent  
1461 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor  
1462 for the authorization of the execution of this amended Contract. This amended Contract shall not  
1463 be binding on the United States until the Contractor secures a final decree.

1464

1465 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1466 day and year first above written.

1467 UNITED STATES OF AMERICA

1468 By: \_\_\_\_\_  
1469 Regional Director  
1470 Interior Region 10: California-Great Basin  
1471 Bureau of Reclamation

1472 DEL PUERTO WATER DISTRICT  
1473 (SEAL)

1474 By: \_\_\_\_\_  
1475 President of the Board of Directors

1476 Attest:

1477 By: \_\_\_\_\_  
1478 Secretary of the Board of Directors

Irrigation and M&I  
Contract No. 14-06-200-922-LTR1-P

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

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

Exhibits

Exhibit A – Map of Contractor’s Service Area

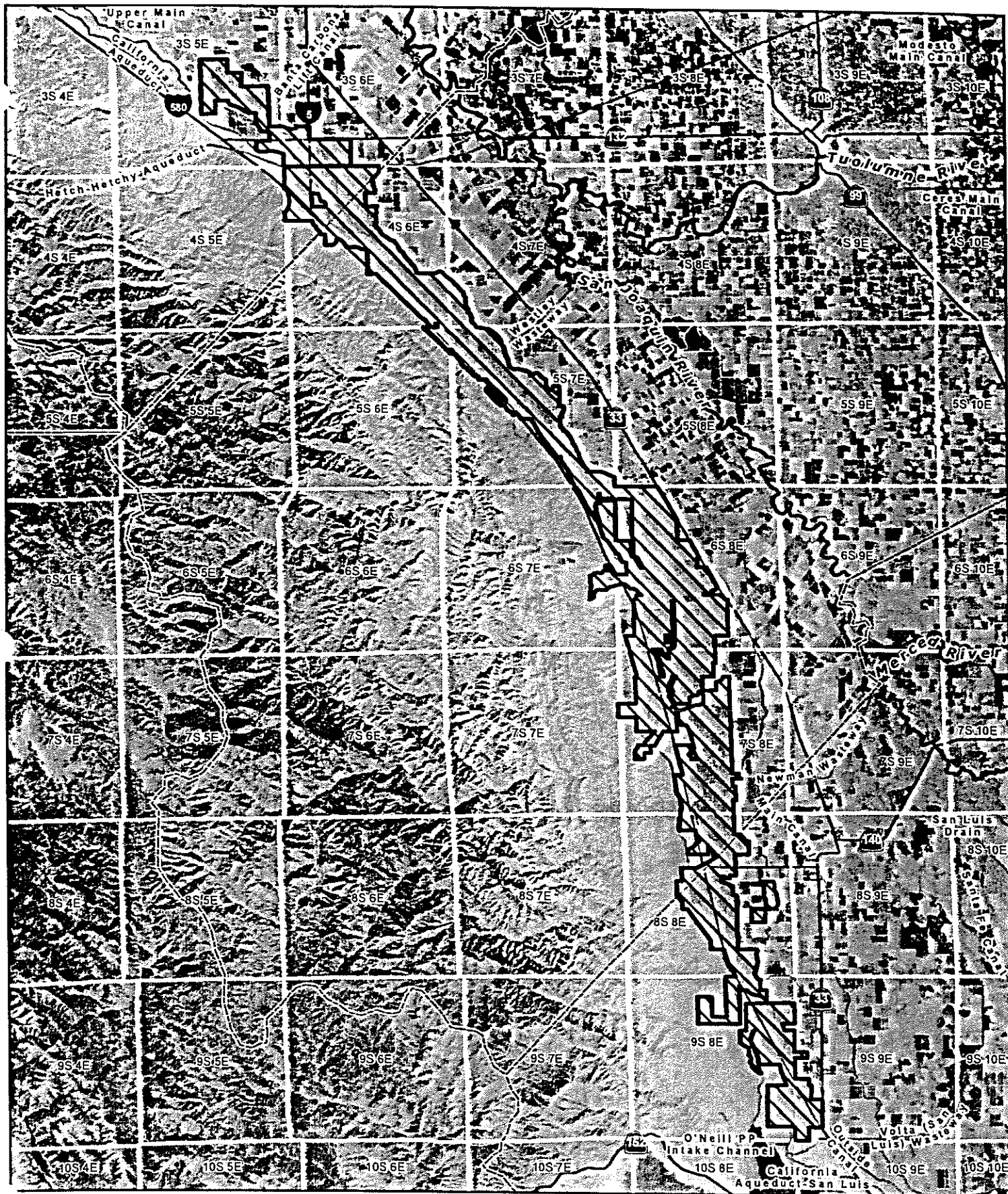
*This Exhibit is unchanged from current Contract..*



Exhibit B – Rates and Charges

*This Exhibit template is unchanged from current Contract and is updated annually. Rate Schedules may be found at: <https://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>*

Exhibit C – Repayment Obligation

*This Exhibit template was developed during the WIIN Act Negotiations. Relevant data will be incorporated upon contract execution.*



-  District Boundary
-  Contractor's Service Area

## Del Puerto Water District

Contract No. 14-06-200-922-LTR1-P  
EXHIBIT A



BUREAU OF  
RECLAMATION



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

	Irrigation Water	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>		
Construction Costs	\$43.99	
DMC Aqueduct Intertie	\$1.06	
O&M Components		
Water Marketing	\$8.97	\$6.12
Storage	\$18.01	\$14.99
Deficit Cost	\$0.00	\$0.00
<b>TOTAL COS RATE (Tier 1 Rate)</b>	<b>\$72.03</b>	<b>\$21.11</b>
<b>IRRIGATION FULL-COST RATE</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$106.72	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$131.82	
<b>M&amp;I FULL COST RATE</b>		
		\$21.11
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>		
<b>IRRIGATION</b>		
Tier 2 Rate: >80% <=90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate]/2 (Amount to be added to Tier 1 Rate)	\$17.35	
Tier 3 Rate: >90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate] (Amount to be added to Tier 1 Rate)	\$34.69	
<b>M&amp;I</b>		
Tier 2 Rate: >80% <=90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)		\$0.00
Tier 3 Rate: >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to Be Added to Tier 1 Rate)		\$0.00
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>		
P.L. 102-575 Surcharge (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$10.91	\$21.82
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12	\$0.12

**EXPLANATORY NOTES**

The CVP M&I Water Shortage Policy per EIS/EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre feet (AF) are revised as follows: 2006 = 32 AF; 2011 = 21 AF; 2017 = 8 AF; which equals a M&I Historic use average quantity of 20 AF.

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

JL 3/20/20

# Exhibit C<sup>a</sup>

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

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

Contractor: Del Puerto WD  
Facility: Delta Mendota Canal  
Contract: 14-06-200-922-LTR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost	Discount	
Construction Cost	\$ 16,546,588		
2019 Repayment (Estimate) **	\$ 3,305,770		
Adjusted Construction Cost	\$ 13,240,818	\$ 12,851,579	
Intertie Construction Cost (N/A):	\$ 1,588,962	\$ 1,423,126	
Total	\$ 14,829,780	\$ 14,274,705	
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1	9/1/2020	\$ 3,613,396	
Payment 2	9/1/2021	\$ 3,613,396	
Payment 3	9/1/2022	\$ 3,613,396	
Payment 4 ~	9/1/2023	\$ 3,613,396	
Total Installment Payments		\$ 14,453,584	
20 yr CMT Rates - 04/28/2020 (to be adjusted to effective date of contract) *			
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))			
1.000%			
0.500%			

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

Calculation Support: Irrigation Lump Sum or First Payment\*\*\*\* 9/1/2020  
Days Until the End of the Fiscal Year 29

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
2020	\$ 13,240,818	\$ 1,203,711	\$ 1,191,249	\$ 1,588,962	\$ 36,113	\$ 35,919	\$ 1,233,168
2021	\$ 12,037,107	\$ 1,203,711	\$ 1,191,763	\$ 1,552,849	\$ 36,113	\$ 35,754	\$ 1,227,518
2022	\$ 10,833,397	\$ 1,203,711	\$ 1,185,834	\$ 1,516,736	\$ 36,113	\$ 35,576	\$ 1,221,411
2023	\$ 9,629,686	\$ 1,203,711	\$ 1,179,934	\$ 1,480,624	\$ 36,113	\$ 35,399	\$ 1,215,334
2024	\$ 8,425,975	\$ 1,203,711	\$ 1,174,064	\$ 1,444,511	\$ 36,113	\$ 35,223	\$ 1,209,287
2025	\$ 7,222,264	\$ 1,203,711	\$ 1,168,223	\$ 1,408,398	\$ 36,113	\$ 35,048	\$ 1,203,271
2026	\$ 6,018,554	\$ 1,203,711	\$ 1,162,411	\$ 1,372,285	\$ 36,113	\$ 34,874	\$ 1,197,285
2027	\$ 4,814,843	\$ 1,203,711	\$ 1,156,628	\$ 1,336,173	\$ 36,113	\$ 34,700	\$ 1,191,328
2028	\$ 3,611,132	\$ 1,203,711	\$ 1,150,873	\$ 1,300,060	\$ 36,113	\$ 34,528	\$ 1,185,401
2029	\$ 2,407,421	\$ 1,203,711	\$ 1,145,148	\$ 1,263,947	\$ 36,113	\$ 34,356	\$ 1,179,504
2030	\$ 1,203,711	\$ 1,203,711	\$ 1,139,450	\$ 1,227,834	\$ 36,113	\$ 34,185	\$ 1,173,635
2031-63				\$ 1,191,722	\$ 1,191,722	\$ 1,037,563	\$ 1,037,563
Total, Lump Sum Payment			\$ 12,851,579			\$ 1,423,126	\$ 14,274,705

Amount of Reduction, Lump Sum \$ 389,240 \$ 165,836 \$ 555,075

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

\*\* 2019 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

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

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

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

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

~Final Payment made in installments must be repaid by this date.