

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

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

TABLE OF CONTENTS

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2
1.	Definitions.....	7
2.	Term of Contract – Right to Use of Water	13
3.	Water to be Made Available and Delivered to the Contractor.....	15
4.	Time for Delivery of Water	19
5.	Point of Diversion and Responsibility for Distribution of Water	20
6.	Measurement of Water Within the Contractor’s Service Area.....	24
7.	Rates, Method of Payment for Water and Accelerated Repayment of Facilities .	26
8.	Repayment of Project Works	34
9.	Sales, Transfers, or Exchanges of Water	35
10.	Project Use Power.....	37
11.	Application of Payments and Adjustments.....	39
12.	Temporary Reductions – Return Flows	40
13.	Constraints on the Availability of Water	41
14.	Rules, Regulations, and Determinations	42
15.	Protection of Water and Air Quality	42
16.	Water Acquired by the Contractor Other Than From the United States.....	43
17.	Opinions and Determinations	45
18.	Coordination and Cooperation.....	46
19.	Charges for Delinquent Payments	48
20.	Equal Employment Opportunity	48
21.	General Obligation – Benefits Conditioned Upon Payment.....	50

Table of Contents – continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
22.	Compliance with Civil Rights Laws and Regulations	50
23.	Contractor to Pay Certain Miscellaneous Costs.....	51
24.	Water Conservation	51
25.	Existing or Acquired Water or Water Rights.....	53
26.	Clean Air and Water	54
27.	Operation and Maintenance of Transferred Works	55
28.	Transfer of Title of Project Works.....	58
29.	Performance of Project Works with Contributed Funds.....	58
30.	Examination, Inspection, and Audit of Project Works, Records, and Reports for Determining Adequacy of Operation and Maintenance	59
31.	Contingent on Appropriation or Allotment of Funds	60
32.	Books, Records, and Reports	61
33.	Assignment Limited – Successors and Assigns Obligated.....	61
34.	Severability	62
35.	Resolution of Disputes.....	62
36.	Officials Not to Benefit.....	63
37.	Changes in Contractor’s Organization and/or Service Area.....	63
38.	Federal Laws	64
39.	Emergency Reserve Fund	64
40.	Administration of Federal Project Lands	65
41.	Contamination or Pollution of Federal Property.....	66
42.	Pest Management	67
43.	Notices	68
44.	Medium for Transmitting Payment.....	68
45.	Contract Drafting Considerations	69
46.	Confirmation of Contract.....	69
	Signature Page	69
	Exhibit A – Map of Contractor’s Service Area	
	Exhibit B – Rates and Charges	
	Exhibit C – Repayment Obligation	

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

CONTRACT BETWEEN THE UNITED STATES
AND
CONTRA COSTA 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 CONTRA COSTA 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:

15 EXPLANATORY RECITALS

16 [1st] WHEREAS, the United States has constructed and is operating the
17 California Central Valley Project (Project), for diversion, storage, carriage, distribution, and
18 beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and
19 wildlife mitigation, protection and restoration, generation and distribution of electric energy,
20 salinity control, navigation, and other beneficial uses, of waters of the Sacramento River,
21 the American River, the Trinity River, and the San Joaquin River and their tributaries;
22 and

23 [2nd] WHEREAS, the United States constructed the Contra Costa Canal and
24 related facilities, which will be used in part for the furnishing of water to the Contractor
25 pursuant to the terms of this Contract; and

26 [3rd] WHEREAS, the Contractor has constructed the Los Vaqueros Project, that
27 is intended to exclusively serve the Contractor to assist in attaining its goals of providing high
28 quality water to the Contractor's customers, while also providing reliability to the Contractor's
29 existing contract water supply during emergencies, droughts or other water shortages; and

30 [4th] WHEREAS, it is necessary for the Contractor and the United States to
31 agree on how the Los Vaqueros Project will be utilized in conjunction with Project Water and
32 Project facilities; and

33 [5th] WHEREAS, the rights to Project Water were acquired by the United
34 States pursuant to California law for operation of the Project; and

35 [6th] WHEREAS, the Contractor and the United States entered into Contract
36 No. I75r-3401, on September 18, 1951, which established terms for the delivery to the

37 Contractor of Project Water and for construction and repayment of certain facilities. This
38 contract was amended on November 9, 1970, April 26, 1973, May 26, 1994, and February 7,
39 2000.

40 [7th] WHEREAS, the United States and the Contractor executed Memorandum
41 of Agreement No. 14-06-200-6072A dated June 28, 1972, and subsequent Amendment 1 dated
42 May 15, 1995, that requires the Contractor to operate and maintain the Contra Costa Canal
43 System and Contra Loma Dam and Reservoir; and

44 [8th] WHEREAS, the United States and the Contractor have, pursuant to
45 Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently
46 entered into a binding agreement, identified as Binding Agreement No. I75r-3401-BA, and
47 Supplemental Agreement No. I75r-3401-SA, which sets out the terms pursuant to which the
48 Contractor agreed to renew the Existing Contract before its expiration date after completion of a
49 programmatic environmental impact statement (PEIS) and other appropriate environmental
50 documentation and negotiation of a renewal contract, and which also sets out the consequences
51 of a subsequent decision not to renew; and

52 [9th] WHEREAS, the United States and the Contractor entered into a long-term
53 contract identified as Contract No. I75r-3401A -LTR1, hereinafter referred to as the Existing
54 Contract, which provided for the continued water service to the Contractor following expiration
55 of Contract No. I75r-3401, and which was in effect the date the WIIN Act was enacted; and

56 [10th] WHEREAS, on December 16, 2016, the 114th Congress of the United
57 States of America enacted the WIIN Act; and

58 [11th] WHEREAS, Section 4011(a)(1) provides that “upon request of the
59 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
60 date of enactment of this subtitle and between the United States and a water users’ association
61 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
62 mutually agreeable terms and conditions.”; and

63 [12th] WHEREAS, Section 4011(a)(1) further provides that “the manner of
64 conversion under this paragraph shall be as follows: (A) Water service contracts that were
65 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under
66 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.
67 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9
68 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be
69 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

70 [13th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered
71 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,
72 repayment, exchange and transfer contractual rights between the water users’ association
73 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the
74 water users’ association [Contractor] and their landowners as provided under State law.”; and

75 [14th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that
76 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water
77 service or repayment contractor to receive water; or (4) except as expressly provided in this
78 section, any obligations under the Federal Reclamation law, including the continuation of

79 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and
80 repayment contractors making prepayments pursuant to this section.”; and

81 [15th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
82 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water
83 service contracts into repayment contracts, amend existing repayment contracts, and allow
84 contractors to prepay their construction cost obligations pursuant to applicable Federal
85 Reclamation law; and

86 [16th] WHEREAS, the United States has determined that the Contractor
87 has fulfilled all of its obligations under the Existing Contract; and

88 [17th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
89 Contracting Officer that the Contractor has utilized the Project Water supplies available
90 to it for reasonable and beneficial use and/or has demonstrated future demand for water
91 use such that the Contractor has the capability and expects to utilize fully for reasonable
92 and beneficial use the quantity of Project Water to be made available to it pursuant to
93 this Contract; and

94 [18th] WHEREAS, water obtained from the Project has been relied upon by
95 urban areas within California for more than 50 years, and is considered by the Contractor
96 as an essential portion of its water supply; and

97 [19th] WHEREAS, the economies of regions within the Project, including the
98 Contractor’s, depend upon the continued availability of water, including water service
99 from the Project; and

100 [20th] WHEREAS, in the CALFED Programmatic Record of Decision, dated
101 August 28, 2000, the United States and the State of California adopted a general target of
102 continuously improving Delta water quality for all uses. The CALFED Agencies' target for
103 providing safe, reliable, and affordable drinking water in a cost-effective way, is to achieve
104 either: (a) average concentrations at Clifton Forebay and other southern and central Delta
105 drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an
106 equivalent level of public health protection using a cost-effective combination of alternative
107 source waters, source control and treatment technologies; and

108 [21st] WHEREAS, the Secretary intends through coordination, cooperation, and
109 partnerships to pursue measures to improve water supply, water quality, and reliability of the
110 Project for all Project purposes; and

111 [22nd] WHEREAS, the mutual goals of the United States and the Contractor
112 include: to provide for reliable Project Water supplies; to control costs of those supplies;
113 to achieve repayment of the Project as required by law; to guard reasonably against Project
114 Water shortages; to achieve a reasonable balance among competing demands for use of
115 Project Water; and to comply with all applicable environmental statutes, all consistent with
116 the legal obligations of the United States relative to the Project; and

117 [23rd] WHEREAS, the parties intend by this Contract to maintain a cooperative
118 relationship in order to achieve their mutual goals; and

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

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

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

126 DEFINITIONS

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

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

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

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

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

142 (e) “Contra Costa Canal System” shall mean the Contra Costa Canal,
143 including the intake channel from Rock Slough, Clayton, and Ygnacio Relift Canals and
144 pumping plants, the Martinez Reservoir and Pumping Plants 1, 2, 3, and 4, and such other
145 facilities as may be authorized by Congress from time to time for rehabilitation or replacement
146 thereof;

147 (f) “Contra Loma Dam and Reservoir” shall mean the dam, pumping plant,
148 and reservoir constructed as an addition to the Contra Costa Canal System;

149 (g) “Contracting Officer” shall mean the Secretary of the Interior's duly
150 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
151 or regulation;

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

154 (i) “Contractor's Service Area” shall mean the area to which the Contractor is
155 permitted to provide Project Water under this Contract as described in Exhibit “A”
156 attached hereto, which may be modified from time to time in accordance with Article 36
157 of this Contract without amendment of this Contract;

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

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

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

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

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

185 (o) “Lateral Distribution System” shall mean the water conveyance system
186 constructed by the United States which consists of pipelines extending to Contractor's water
187 users from the Contra Costa Canal at milepost 5.3, 6.2, 7.1, 7.3, 9.1, 14.0, 25.6, 36.6, and Y-
188 2-6;

189 (p) “Los Vaqueros” shall mean the Los Vaqueros Project consisting of a
190 storage reservoir and associated facilities constructed by the Contractor on property which
191 is owned by the Contractor, and in which the United States has no legal interest, to store and
192 convey Los Vaqueros Water Rights Water and Project Water as well as additional water that
193 may be acquired by the Contractor;

194 (q) “Los Vaqueros Water Rights Water” shall mean that water
195 appropriated pursuant to State Water Rights Application 20245 (Permit 20749), which is in
196 addition to Project Water;

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

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

203 (t) “New Facilities” shall mean the Short Cut Pipeline located between
204 Contra Costa Canal at milepost 25.70 and at milepost 47.77 and the Pump Units in Pumping
205 Plant 1, 2, 3, and 4 of the Contra Costa Canal System;

206 (1) “Pump Units” shall mean the pump, motor, motor controls,
207 wiring, structural supports and discharge control apparatus for pumping 100 cubic feet per
208 second (“cfs”) of water; and

209 (2) “Short Cut Pipeline” shall mean the Contra Costa Canal intake,
210 pipeline, pipeline appurtenances, Martinez Reservoir inlet;

211 (u) “Operation and Maintenance” or “O&M” shall mean normal and
212 reasonable care, control, operation, repair, replacement (other than capital replacement),
213 and maintenance of Project facilities;

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

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

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

223 (y) “Project Works” shall mean all those facilities defined in subsections
224 (e), (f), (o), and (t) of this Article;

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

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

231 (bb) “Repayment Obligation” for Water Delivered as Irrigation Water shall
232 mean the Existing Capital Obligation discounted by ½ of the Treasury rate, which shall be the
233 amount due and payable to the United States, pursuant to section 4011(a)(2)(A) of the WIIN Act;
234 and for Water Delivered as M&I Water shall mean the amount due and payable to the United
235 States, pursuant to section 4011(a)(3)(A) of the WIIN Act;

236 (cc) “Secretary” shall mean the Secretary of the Interior, a duly appointed
237 successor, or an authorized representative acting pursuant to any authority of the
238 Secretary and through any agency of the Department of the Interior;

239 (dd) “Substantial Change” shall mean a modification in, or addition to, a project
240 facility which involves changes in the original design intent, function, and/or operational
241 parameters of the facility, or changes in project benefits, including non-routine maintenance
242 activities that involve construction or reconstruction of a portion of the facility. These
243 modifications may be capitalized or non-capitalized. A substantial change is not a characterization
244 of the proposed action in terms of being a major or minor action as defined in the National
245 Environmental Policy Act.

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

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

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

259 (ii) “Year” shall mean the period from and including March 1 of each
260 Calendar Year through the last day of February of the following Calendar Year.

261 TERM OF CONTRACT – RIGHT TO USE OF WATER

262 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the
263 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges
264 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.
265 1195) as applicable, and applicable law;

266 (1) *Provided, That* the Contracting Officer shall not seek to terminate
267 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,
268 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice
269 to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay,

270 or to diligently commence and maintain full curative payments satisfactory to the Contracting
271 Officer within the sixty (60) calendar days' notice period;

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

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

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

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

291 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

292 3. (a) During each Year, consistent with all applicable State water rights
293 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 12 and
294 13 of this Contract, the Contracting Officer shall make available for delivery to the
295 Contractor 195,000 acre-feet of Project Water for M&I purposes. Water Delivered to the
296 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant
297 to the provisions of Articles 4 and 7 of this Contract.

298 (b) Because the capacity of the Project to deliver Project Water has been
299 constrained in recent years and may be constrained in the future due to many factors
300 including hydrologic conditions and implementation of Federal and State laws, the
301 likelihood of the Contractor actually receiving the amount of Project Water set out in
302 subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's
303 modeling referenced in the programmatic environmental impact statement prepared
304 pursuant to Section 3404(c) of the CVPIA projected that the Contract Total set forth in
305 this Contract will not be available to the Contractor in many years. During the most recent five
306 years prior to execution of the Existing Contract, the Recent Historic Average Water Made
307 Available to the Contractor was 152,100 acre-feet. Nothing in this subdivision (b) of this Article
308 shall affect the rights and obligations of the parties under any provision of this Contract.

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

311 (d) The Contractor shall make reasonable and beneficial use of all Project
312 Water furnished pursuant to subdivision (f) this Article. Groundwater recharge programs

313 (direct, indirect, or in lieu), groundwater banking programs, surface water storage
314 programs, and other similar programs utilizing Project Water or other water furnished
315 pursuant to this Contract conducted within the Contractor's Service Area which are
316 consistent with applicable State law and result in use consistent with Federal
317 Reclamation law will be allowed; *Provided, That* any direct recharge program(s) is (are)
318 described in the Contractor's water conservation plan submitted pursuant to Article 24 of
319 this Contract; *Provided, further, That* such water conservation plan demonstrates
320 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term
321 average, the quantity of Delivered Water is demonstrated to be reasonable for such uses
322 and in compliance with Federal Reclamation law. Groundwater recharge programs,
323 groundwater banking programs, surface water storage programs, and other similar
324 programs utilizing Project Water or other water furnished pursuant to this Contract
325 conducted outside the Contractor's Service Area may be permitted upon written
326 approval of the Contracting Officer, which approval will be based upon environmental
327 documentation, Project Water rights, and Project operational concerns. The Contracting
328 Officer will address such concerns in regulations, policies, or guidelines.

329 (e) The Contractor shall comply with requirements applicable to the
330 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
331 of any water service contract between the Contracting Officer and the Contractor in effect
332 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
333 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
334 implement. The Existing Contract, which evidences in excess of 50 years of diversions for

335 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
336 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
337 required biological assessment(s) prepared pursuant to the ESA, and any other needed
338 environmental review. Nothing herein shall be construed to prevent the Contractor from
339 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
340 biological opinion or other environmental documentation referred to in this Article.

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

355 (g) The Contractor may request permission to reschedule for use during
356 the subsequent Year some or all of the Water Made Available to the Contractor during

357 the current Year, referred to as “rescheduled water.” The Contractor may request
358 permission to use during the current Year a quantity of Project Water which may be
359 made available by the United States to the Contractor during the subsequent Year referred
360 to as “preuse.” The Contracting Officer's written approval may permit such uses in
361 accordance with applicable statutes, regulations, guidelines, and policies.

362 (h) The Contractor’s right pursuant to Federal Reclamation law and
363 applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to
364 this Contract shall not be disturbed, and this Contract shall continue so long as the
365 Contractor pays applicable Rates and Charges under this Contract consistent with Section
366 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable
367 law. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose
368 shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

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

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

379 such proceedings the Contracting Officer shall recognize the Contractor has a legal right
380 under the terms of this Contract to use Project Water.

381 TIME FOR DELIVERY OF WATER

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

393 (b) On or before each March 1 and at such other times as necessary, the
394 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the
395 Contracting Officer, showing the monthly quantities of Project Water to be delivered by
396 the United States to the Contractor pursuant to this Contract for the Year commencing
397 on such March 1. The Contracting Officer shall use all reasonable means to deliver
398 Project Water according to the approved schedule for the Year commencing on such
399 March 1.

400 (c) The Contractor shall not schedule Project Water in excess of the
401 quantity of Project Water the Contractor intends to put to reasonable and beneficial use
402 within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article
403 9 of this Contract during any Year.

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

410 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

411 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
412 Contract shall be delivered to the Contractor at Rock Slough at the intake of Pumping Plant
413 1 of the Contra Costa Canal System or in the Sacramento-San Joaquin Delta at the intake
414 and any additional point or points of delivery either on Project facilities or another location
415 or locations mutually agreed to in writing by the Contracting Officer and the Contractor.
416 Such deliveries at the Sacramento-San Joaquin Delta may be made at the intake to the Tracy
417 Pumping Plant of the Project at Old River, the intake of the State Water Project to Clifton
418 Court at Old River and/or the intake to Los Vaqueros at Old River. Los Vaqueros Water
419 Rights Water shall be delivered and/or diverted in the Sacramento-San Joaquin Delta. Said
420 point(s) of delivery and/or diversion of Project Water and Los Vaqueros Water Rights
421 Water shall be subject to change by written agreements of the parties hereto: *Provided,*

422 *That* such change(s) is/are consistent with the applicable state water right permit(s) or
423 license(s) as they may be amended or modified. The United States shall not be obligated to
424 construct additional facilities for the delivery and/or diversion of water under this Contract.

425 (b) Omitted.

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

428 (d) All Water Delivered to the Contractor pursuant to this Contract shall
429 be measured and recorded with equipment furnished, installed, operated, and maintained by
430 the Contracting Officer, or the Contractor at the point or points of delivery established
431 pursuant to subdivision (a) of this Article. Upon the request of either party to this
432 Contract, the Contracting Officer or the Contractor shall investigate the accuracy of such
433 measurements and shall take any necessary steps to adjust any errors appearing therein.
434 For any period of time when accurate measurements have not been made, the Contracting
435 Officer shall consult with the Contractor prior to making a final determination of the
436 quantity delivered for that period of time.

437 (e) The Contracting Officer shall not be responsible for the control,
438 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor
439 pursuant to this Contract beyond the delivery points specified in subdivision (a) of this
440 Article. The Contractor shall indemnify the United States, its officers, employees, agents,
441 and assigns on account of damage or claim of damage of any nature whatsoever for which
442 there is legal responsibility, including property damage, personal injury, or death arising out
443 of or connected with the control, carriage, handling, use, disposal, or distribution of such

444 Water Delivered beyond such delivery points, except for any damage or claim arising out
445 of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents,
446 or assigns, with the intent of creating the situation resulting in any damage or claim; (ii)
447 willful misconduct of the Contracting Officer or any of its officers, employees, agents, or
448 assigns; (iii) negligence of the Contracting Officer or any of its officers, employees, agents,
449 or assigns; or (iv) damage or claims resulting from a malfunction of facilities owned and/or
450 operated by the United States; *Provided, That* the Contractor is not the entity that owned or
451 operated the malfunctioning facility(ies) from which the damage claim arose.

452 (f) Water diverted by the Contractor pursuant to this Contract shall be
453 measured and recorded by the Contractor for each of the points set forth below through
454 measuring and recording devices, acceptable to the Contracting Officer: *Provided, That* the
455 parties thereto, may agree in writing that such points and/or method of water measurement
456 may be changed or added to. Except for Rock Slough at the intake of Pumping Plant 1, the
457 Contractor shall O&M each of the measuring and recording devices at no cost to the United
458 States. The Contractor shall install all measuring and recording devices:

- 459 (1) At the intake to Pumping Plant 1 of the Contra Costa Canal
460 System;
- 461 (2) At the Los Vaqueros intake in Old River;
- 462 (3) At the intake to the Los Vaqueros storage reservoir; and
- 463 (4) At the point at which the Los Vaqueros Water Rights Water and
464 Project Water diverted from other than Rock Slough are introduced into the Contra Costa
465 Canal System from Los Vaqueros;

466 (g) The Contractor shall measure or compute and record daily, or at such
467 other intervals as may be agreed upon in writing by the parties, and provide to the
468 Contracting Officer on or before the 20th day of each month following the month in which
469 the measurement or computation was made the rates and quantities associated with the
470 following:

- 471 (1) Diversion of Project Water at Rock Slough;
- 472 (2) Diversion of Project Water from Old River for direct use;
- 473 (3) Diversion of Los Vaqueros Water Rights Water to storage in
474 Los Vaqueros storage reservoir;
- 475 (4) Diversion of Project Water to storage in Los Vaqueros storage
476 reservoir;
- 477 (5) Diversion to storage in Contra Loma Dam and Reservoir;
- 478 (6) Withdrawal of Project Water from Los Vaqueros storage
479 reservoir;
- 480 (7) Withdrawal of Los Vaqueros Water Rights Water from Los
481 Vaqueros storage reservoir;
- 482 (8) Withdrawal of water from Contra Loma Dam and Reservoir for
483 delivery to the East Bay Regional Park District pursuant to Contract No. 4-06-200-6023A,
484 dated September 18, 1972, as amended on November 29, 1977;
- 485 (9) Withdrawal of water from Contra Loma Dam and Reservoir for
486 purposes other than that specified in subdivision (g)(8) above; and
- 487 (10) Total M&I water distributed.

488 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

489 6. (a) The Contractor has established a measuring program satisfactory to
490 the Contracting Officer. The Contractor shall ensure that all surface water delivered for
491 M&I purposes within the Contractor's Service Area is measured at each M&I service
492 connection. The water measuring devices or water measuring methods of comparable
493 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be
494 responsible for installing, operating, maintaining, and repairing all such measuring devices
495 and implementing all such water measuring methods at no cost to the United States. The
496 Contractor shall use the information obtained from such water measuring devices or
497 water measuring methods to ensure its proper management of the water; to bill water users for
498 water delivered by the Contractor; and, if applicable, to record water delivered for M&I
499 purposes by customer class as defined in the Contractor's water conservation plan
500 provided for in Article 24 of this Contract. Nothing herein contained, however, shall
501 preclude the Contractor from establishing and collecting any charges, assessments, or
502 other revenues authorized by California law. The Contractor shall include a summary of
503 all its annual surface water deliveries in the annual report described in subdivision (c) of
504 Article 24 of this Contract.

505 (b) To the extent the information has not otherwise been provided, upon
506 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
507 report describing the measurement devices or water measuring methods being used or to
508 be used to implement subdivision (a) of this Article and identifying the M&I service
509 connections or alternative measurement programs approved by the Contracting Officer,

510 at which such measurement devices or water measuring methods are being used, and, if
511 applicable, identifying the locations at which such devices and/or methods are not yet
512 being used including a time schedule for implementation at such locations. The
513 Contracting Officer shall advise the Contractor in writing within 60 days as to the
514 adequacy and necessary modifications, if any, of the measuring devices or water
515 measuring methods identified in the Contractor's report and if the Contracting Officer
516 does not respond in such time, they shall be deemed adequate. If the Contracting
517 Officer notifies the Contractor that the measuring devices or methods are inadequate, the
518 parties shall within 60 days following the Contracting Officer's response, negotiate in good
519 faith the earliest practicable date by which the Contractor shall modify said measuring
520 devices and/or measuring methods as required by the Contracting Officer to ensure
521 compliance with subdivision (a) of this Article.

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

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

528 (e) Omitted.

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

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

546 (1) The Contractor shall pay the United States as provided for in this
547 Article of this Contract for all Delivered Water and Los Vaqueros Water Rights Water at
548 applicable Rates, Charges, and Tiered Pricing Component in accordance with policies for
549 M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable
550 costs included in the Operation and Maintenance component of the Rate and amounts established

551 to recover deficits and other charges, if any, including construction costs as identified in the
552 following subdivisions.

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

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

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

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

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

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

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

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

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

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

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

616 (d) At the time the Contractor submits the initial schedule for the delivery of

617 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
618 Contractor shall make an advance payment to the United States equal to the total amount
619 payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the
620 Project Water scheduled to be delivered pursuant to this Contract during the first two
621 calendar months of the Year. Before the end of the first month and before the end of
622 each calendar month thereafter, the Contractor shall make an advance payment to the
623 United States, at the Rate(s) set under subdivision (a) of this Article, for the Water
624 Scheduled to be delivered pursuant to this Contract during the second month
625 immediately following. Adjustments between advance payments for Water Scheduled
626 and payments at Rates due for Water Delivered shall be made before the end of the
627 following month; *Provided, That* any revised schedule submitted by the Contractor
628 pursuant to Article 4 of this Contract which increases the amount of Water Delivered
629 pursuant to this Contract during any month shall be accompanied with appropriate
630 advance payment, at the Rates then in effect, to assure that Project Water is not
631 delivered to the Contractor in advance of such payment. In any month in which the
632 quantity of Water Delivered to the Contractor pursuant to this Contract equals the
633 quantity of Water Scheduled and paid for by the Contractor, no additional Project Water
634 shall be delivered to the Contractor unless and until an advance payment at the Rates
635 then in effect for such additional Project Water is made. Final adjustment between the
636 advance payments for the Water Scheduled and payments for the quantities of Water
637 Delivered during each Year pursuant to this Contract shall be made as soon as
638 practicable but no later than April 30th of the following Year, or 60 days after the

639 delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract
640 if such water is not delivered by the last day of February.

641 (e) The Contractor shall also make a payment in addition to the Rate(s) in
642 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the
643 appropriate Tiered Pricing Component then in effect, before the end of the month following the
644 month of delivery. The payments shall be consistent with the quantities of Irrigation Water and
645 M&I Water Delivered as shown in the water delivery report for the subject month prepared by
646 the Contractor. The water delivery report shall be deemed a bill for the payment of Charges and
647 applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or
648 underpayment of Charges shall be made through the adjustment of payments due to the United
649 States for Charges for the next month. Any amount to be paid for past due payment of Charges
650 and the Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

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

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

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

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

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

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

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

683 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
684 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
685 Contract Total, shall equal one-half of the difference between the Rate established under
686 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing
687 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
688 shall equal the difference between (i) the Rate established under subdivision (a) of this Article
689 and (ii) the M&I Full Cost Water Rate.

690 (2) Omitted.

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

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

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

705 to discuss the nature, need, and impact of the proposed change.

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

711 (n) Omitted.

712 (o) Omitted.

713 REPAYMENT OF PROJECT WORKS

714 8. (a) Contra Costa Canal System. The remaining capitalized cost of the Contra
715 Costa Canal System on December 31, 2004, was \$839,101. The Contractor shall fully repay
716 \$914,032.56, including interest at 2.5 percent per annum, by making six annual payments of
717 \$152,338.76, beginning January 1, 2005, and ending January 1, 2010. The Contractor fully
718 repaid these capitalized costs as of January 1, 2010.

719 (b) New Facilities. The remaining capitalized cost of the New Facilities on
720 December 31, 2004, was \$1,446,457.07. The Contractor shall fully repay \$1,620,281.05, plus
721 interest at 3.342 percent per annum, by making six annual payments of \$270,046.84 beginning
722 January 1, 2005, and ending January 1, 2010. The Contractor fully repaid these capitalized costs
723 as of January 1, 2010.

724 (c) Contra Loma Dam and Reservoir. The remaining capitalized costs of the
725 Contra Loma Dam and Reservoir on December 31, 2004, was \$1,689,039.16. The Contractor
726 shall fully repay \$1,879,257.85, including interest at 3.137 percent per annum, by making six

727 annual payments of \$313,209.63 beginning January 1, 2005, and ending January 1, 2010. The
728 Contractor fully repaid these capitalized costs as of January 1, 2010.

729 (d) The Contractor may, instead of making the payments provided for in
730 subdivisions (a), (b), and (c) above, at any time, make full payment of the sum then due and
731 owing on any or all of the facilities described in those subdivisions: *Provided, That* the
732 Contractor agrees that such accelerated repayment shall not exempt the Contractor from
733 compliance with the otherwise applicable ownership and full cost pricing provisions of Federal
734 Reclamation laws. If payment is made at any time in the year other than that specified in
735 subdivisions (a), (b), and (c) of this Article, the remaining payment balance as of such date will
736 be determined by the Contracting Officer and provided to the Contractor. Upon full repayment,
737 the Contractor shall have no further repayment obligations associated with the capitalized costs
738 specified in subdivisions (a), (b), and (c) of this Article.

739 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

749 include, as appropriate, an analysis of groundwater impacts and economic and social
750 effects, including environmental justice, of the proposed water transfers on both the
751 transferor and transferee.

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

767 (c) For a water transfer to qualify under subdivision (b) of this Article, such
768 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
769 years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater
770 activities, surface water storage, or fish and wildlife resources; not lead to land

771 conversion; and be delivered to established cropland, wildlife refuges, groundwater basins, or
772 M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing
773 buyer; (iv) convey water through existing facilities with no new construction or
774 modifications to facilities and be between existing Project Contractors and/or the Contractor
775 and the United States, Department of the Interior; and (v) comply with all applicable
776 Federal, State, and local or tribal laws and requirements imposed for protection of the
777 environment and Indian Trust Assets, as defined under Federal law.

778 PROJECT USE POWER

779 10. (a) During each Year, the United States shall furnish to the Contractor the
780 quantity of Project use power, not to exceed 164.8 kWh of energy for each acre-foot of Project
781 Water or Los Vaqueros Water Rights Water, required to operate facilities needed to pump
782 through the Contra Costa Canal System and Contra Loma Dam and Reservoir the full quantity of
783 Project Water scheduled and the Los Vaqueros Water Rights Water forecasted for delivery and
784 diversion to and by the Contractor for use within the Contractor's Service Area during that Year.
785 Such quantity of Project use power may be utilized at one or more of the following locations:
786 the Contra Costa Canal System; the intake of Los Vaqueros in Old River; Contra Loma Dam and
787 Reservoir; and such other points of diversion set forth in Article 5(a) as may be mutually agreed
788 upon. Project use power can only be used to convey Project Water or Los Vaqueros Water
789 Rights Water and shall be available to pump no more than 195,000 acre-feet annually.

790 (b) The United States may, at any time, request in writing that the
791 Contractor take delivery of some or all of the Project Water Made Available to the
792 Contractor pursuant to this Contract at the point of diversion for Los Vaqueros Water Rights

793 Water in lieu of taking delivery of such water at the intake of Pumping Plant 1 of the Contra
794 Costa Canal System at Rock Slough. If the Contractor agrees in writing to such a request,
795 the United States shall furnish to the Contractor during the term of the agreement, the
796 quantity of Project use power required to pump said Project Water and Los Vaqueros Water
797 Rights Water from the point of diversion for Los Vaqueros Water Rights Water to the Los
798 Vaqueros transfer reservoir, not to exceed 350 kWh of energy per acre-foot; *Provided, That*
799 such a written agreement by the parties for the delivery to and diversion at the point of
800 diversion for Los Vaqueros Water Rights Water of the full supply of Project Water Made
801 Available under this Contract during the term of such agreement shall not be implemented
802 absent modification acceptable to the Contracting Officer of applicable Sacramento-San
803 Joaquin Delta water quality standards during the entire term of such agreement.

804 (c) If the Contracting Officer and the Contractor are required under any
805 biological opinion issued by an agency of the United States to take delivery of some or all of the
806 Project Water Made Available to the Contractor pursuant to this Contract at the point of
807 diversion for Los Vaqueros Water Rights Water in lieu of taking delivery of such water at the
808 intake to Pumping Plant 1 of the Contra Costa Canal System at Rock Slough, the United States
809 shall furnish to the Contractor the quantity of Project use power required to pump said Project
810 water from the point of diversion for Los Vaqueros Water Rights Water to the Los Vaqueros
811 transfer reservoir, not to exceed 350 kWh of energy per acre-foot; *Provided, That* the quantity of
812 Project use power furnished pursuant to this subdivision shall not exceed the quantity of Project
813 use power needed to convey the quantity of Project Water diverted at the point of diversion of
814 Los Vaqueros Water Rights Water for immediate delivery through the Contra Costa Canal; and

815 *Provided further, That* the Contractor shall notify the Contracting Officer by March 1 of each
816 calendar year, in accordance with the written schedules submitted pursuant to Article 4(b), of the
817 projected quantity of Project Water which will be pumped with Project use power described in
818 this subdivision.

819 (d) The Contractor shall pay the United States for the quantity of Project use
820 power as set forth in subdivision (a), (b), and (c) above as a component of the water Rates
821 described in Article 7(a) of this Contract.

822 (e) The Contracting Officer may adjust the quantity of Project use power
823 required to pump each acre-foot of Project Water or Los Vaqueros Water Rights Water if the
824 Contracting Officer determines based on substantial evidence that the actual energy required for
825 such pumping is different from the quantity set forth in this Article. Such determinations and
826 adjustments by the Contracting Officer shall not require further amendment to this Contract.

827 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

837 within 30 days of the Contracting Officer obtaining direction as to how to credit or
838 refund such overpayment in response to the notice to the Contractor that it has finalized the
839 accounts for the Year in which the overpayment was made.

840 (b) All advances for miscellaneous costs incurred for work requested by the
841 Contractor pursuant to Article 23 of this Contract shall be adjusted to reflect the actual
842 costs when the work has been completed. If the advances exceed the actual costs incurred, the
843 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
844 advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this
845 Contract.

846 TEMPORARY REDUCTIONS – RETURN FLOWS

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

852 (b) The Contracting Officer may temporarily discontinue or reduce the
853 quantity of Water Delivered to the Contractor as herein provided for the purposes of
854 investigation, inspection, maintenance, repair, or replacement of any of the Project
855 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but
856 so far as feasible the Contracting Officer will give the Contractor due notice in advance
857 of such temporary discontinuance or reduction, except in case of emergency, in which case
858 no notice need be given; *Provided, That* the United States shall use its best efforts to avoid

859 any discontinuance or reduction in such service. Upon resumption of service after such
860 discontinuance or reduction, and if requested by the Contractor, the United States will, if
861 possible, deliver the quantity of Project Water which would have been delivered
862 hereunder in the absence of such discontinuance or reduction.

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

869 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

884 (d) By entering into this Contract, the Contractor does not waive any legal
885 rights or remedies it may have to file or participate in any administrative or judicial

886 proceeding contesting: (i) the sufficiency of the manner in which any Project M&I Water
887 Shortage Policy adopted after the Effective Date was promulgated; (ii) the substance of such
888 a policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the
889 Contracting Officer does not waive any legal defenses or remedies that it may have to
890 assert in such a proceeding.

891 RULES, REGULATIONS, AND DETERMINATIONS

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

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

901 PROTECTION OF WATER AND AIR QUALITY

902 15. (a) The Contractor, without expense to the United States, will care for,
903 operate and maintain transferred works in a manner that preserves the quality of the water at the
904 highest feasible level as determined by the Contracting Officer.

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

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

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

919 (e) Omitted

920 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED
921 STATES

922 16. (a) Omitted.

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

929 (1) The Contractor may introduce non-Project water into Project
930 facilities, other than Project Works, subject to payment to the United States of an
931 appropriate rate as determined by the applicable Project ratesetting policy, the
932 Reclamation Reform Act of 1982, and the Project use power policy, if such Project use
933 power policy is applicable, each as amended, modified, or superseded from time to time.
934 In Addition, if electrical power is required to pump non-Project water through the
935 facilities, the Contractor shall be responsible for obtaining necessary power and
936 paying the necessary charges therefore.

937 (2) Delivery of such non-Project water in and through Project
938 facilities, other than Project Works, shall only be allowed to the extent such deliveries do
939 not: (i) interfere with other Project purposes as determined by the Contracting Officer;

940 (ii) reduce the quantity or quality of water available to other Project Contractors; (iii)
941 interfere with the delivery of contractual water entitlements to any other Project
942 Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

943 (c) The Contractor may use Project Works to convey non-Project water,
944 subject to each of the following conditions:

945 (1) Such conveyance shall not interfere with deliveries of water
946 hereunder;

947 (2) Non-Project water for irrigation shall utilize in accordance with the
948 applicable acreage limitation provisions of the Federal reclamation laws;

949 (3) Project use power shall not be used to pump or convey non-Project
950 water except as provided for in Article 9.1(a);

951 (4) The United States shall not incur any liability or unreimbursed cost
952 or expense thereby;

953 (5) The quantities of non-Project water introduced into and conveyed
954 through the Project Works shall be measured or otherwise determined by the Contractor in a
955 manner consistent with Article 6 of this contract, acceptable to the Contracting Officer and at no
956 cost to the United States;

957 (6) The amount the Contractor is to pay to the United States for
958 conveying non-Project water through Project Works shall be determined annually by the United
959 States in accordance with the applicable provisions of Federal law, including but not limited to
960 the Warren Act of February 21, 1911 (36 Stat. 935), as amended and supplemented, associated
961 regulations, and the then-current applicable federal ratesetting policies.

962 (d) The United States shall not be responsible for control, care, or distribution
963 of the non-Project water before it is introduced into or after it is delivered from the Project
964 facilities. The Contractor hereby releases and agrees to defend and indemnify the United States
965 and their respective officers, agents, and employees, from any claim for damage to persons or
966 property, direct or indirect, resulting from the Contractor's or its officers', employees', agents', or
967 assigns', act(s) of (i) extracting or diverting non-Project water from any source, or (ii) diverting
968 such non-Project water into Project facilities.

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

972 (f) After Project purposes are met, as determined by the Contracting Officer
973 the United States and the Contractor shall share priority to utilize the remaining capacity of the
974 facilities declared to be available by the Contracting Officer for storage, conveyance, and
975 transportation of non-Project water prior to any such remaining capacity being made available to
976 non-Project contractors.

977 OPINIONS AND DETERMINATIONS

978 17. (a) Where the terms of this Contract provide for actions to be based upon
979 the opinion or determination of either party to this Contract, said terms shall not be
980 construed as permitting such action to be predicated upon arbitrary, capricious, or
981 unreasonable opinions or determinations. Both parties, notwithstanding any other
982 provisions of this Contract, expressly reserve the right to seek relief from and appropriate
983 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination.

984 Each opinion or determination by either party shall be provided in a timely manner.
985 Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the
986 standard of judicial review applicable under Federal law to any opinion or determination
987 implementing a specific provision of Federal law embodied in statute or regulation.

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

993 COORDINATION AND COOPERATION

994 18. (a) In order to further their mutual goals and objectives, the Contracting
995 Officer and the Contractor shall communicate, coordinate, and cooperate with each other,
996 and with other affected Project Contractors, in order to improve the O&M of the
997 Project. The communication, coordination, and cooperation regarding O&M shall
998 include, but not be limited to, any action which will or may materially affect the quantity
999 or quality of Project Water supply, the allocation of Project Water supply, and Project
1000 financial matters including, but not limited to, budget issues. The communication,
1001 coordination, and cooperation provided for hereunder shall extend to all provisions of
1002 this Contract. Each party shall retain exclusive decision making authority for all actions,
1003 opinions, and determinations to be made by the respective party.

1004 (b) Within 120 days following the Effective Date, the Contractor, other
1005 affected Project Contractors, and the Contracting Officer shall arrange to meet with

1006 interested Project Contractors to develop a mutually agreeable, written Project-wide
1007 process, which may be amended as necessary separate and apart from this Contract. The
1008 goal of this process shall be to provide, to the extent practicable, the means of mutual
1009 communication and interaction regarding significant decisions concerning Project O&M
1010 on a real-time basis.

1011 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
1012 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out
1013 this intent:

1014 (1) The Contracting Officer will, at the request of the Contractor,
1015 assist in the development of integrated resource management plans for the Contractor.

1016 Further, the Contracting Officer will, as appropriate, seek authorizations for implementation
1017 of partnerships to improve water supply, water quality, and reliability.

1018 (2) The Secretary will, as appropriate, pursue program and project
1019 implementation and authorization in coordination with Project Contractors to improve the
1020 water supply, water quality, and reliability of the Project for all Project purposes.

1021 (3) The Secretary will coordinate with Project Contractors and the
1022 State of California to seek improved water resource management.

1023 (4) The Secretary will coordinate actions of agencies within the
1024 Department of the Interior that may impact the availability of water for Project purposes.

1025 (5) The Contracting Officer shall periodically, but not less than
1026 annually, hold division-level meetings to discuss Project operations, division-level water
1027 management activities, and other issues as appropriate.

1028 (d) Without limiting the contractual obligations of the Contracting Officer
1029 under the other Articles of this Contract, nothing in this Article shall be construed to limit
1030 or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate
1031 with the Contractor or other interested stakeholders or to make decisions in a timely fashion
1032 as needed to protect health, safety, or the physical integrity of structures or facilities.

1033 CHARGES FOR DELINQUENT PAYMENTS

1034 19. (a) The Contractor shall be subject to interest, administrative, and penalty
1035 charges on delinquent payments. If a payment is not received by the due date, the
1036 Contractor shall pay an interest charge on the delinquent payment for each day the payment
1037 is delinquent beyond the due date. If a payment becomes 60 days delinquent, the
1038 Contractor shall pay, in addition to the interest charge, an administrative charge to
1039 cover additional costs of billing and processing the delinquent payment. If a payment is
1040 delinquent 90 days or more, the Contractor shall pay, in addition to the interest and
1041 administrative charges, a penalty charge for each day the payment is delinquent beyond the
1042 due date, based on the remaining balance of the payment due at the rate of 6 percent per
1043 year. The Contractor shall also pay any fees incurred for debt collection services associated
1044 with a delinquent payment.

1045 (b) The interest rate charged shall be the greater of either the rate prescribed
1046 quarterly in the Federal Register by the Department of the Treasury for application to
1047 overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged
1048 will be determined as of the due date and remain fixed for the duration of the delinquent
1049 period.

1050 (c) When a partial payment on a delinquent account is received, the amount
1051 received shall be applied first to the penalty charges, second to the administrative charges,
1052 third to the accrued interest, and finally to the overdue payment.

1053 EQUAL EMPLOYMENT OPPORTUNITY

1054 20. During the performance of this Contract, the Contractor agrees as follows:

1055 (a) The Contractor will not discriminate against any employee or applicant
1056 for employment because of race, color, religion, sex, sexual orientation, gender identity, or
1057 national origin. The Contractor will take affirmative action to ensure that applicants are
1058 employed, and that employees are treated during employment, without regard to their race,
1059 color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall
1060 include, but not be limited to, the following: employment, upgrading, demotion, or

1061 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
1062 forms of compensation; and selection for training, including apprenticeship. The Contractor
1063 agrees to post in conspicuous places, available to employees and applicants for employment,
1064 notices to be provided by the Contracting Officer setting forth the provisions of this
1065 nondiscrimination clause.

1066 (b) The Contractor will, in all solicitations or advertisements for employees
1067 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1068 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1069 gender identity, or national origin.

1070 (c) The Contractor will not discharge or in any other manner discriminate
1071 against any employee or applicant for employment because such employee or applicant has
1072 inquired about, discussed, or disclosed the compensation of the employee or applicant or
1073 another employee or applicant. This provision shall not apply to instances in which an
1074 employee who has access to the compensation information of other employees or applicants as
1075 part of such employee's essential job functions discloses the compensation of such other
1076 employees or applicants to individuals who do not otherwise have access to such information,
1077 unless such disclosure is in response to a formal complaint or charge, in furtherance of an
1078 investigation, proceeding, hearing, or action, including an investigation conducted by the
1079 employer, or is consistent with the Contractor's legal duty to furnish information.

1080 (d) The Contractor will send to each labor union or representative of
1081 workers with which it has a collective bargaining agreement or other contract or understanding,
1082 a notice, to be provided by the Contracting Officer, advising the labor union or workers'
1083 representative of the Contractor's commitments under section 202 of Executive Order No.
1084 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places
1085 available to employees and applicants for employment.

1086 (e) The Contractor will comply with all provisions of Executive Order No.
1087 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
1088 of Labor.

1089 (f) The Contractor will furnish all information and reports required by
1090 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of
1091 the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and
1092 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation
1093 to ascertain compliance with such rules, regulations, and orders.

1094 (g) In the event of the Contractor's noncompliance with the
1095 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this
1096 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may
1097 be declared ineligible for further Government contracts in accordance with procedures
1098 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may

1099 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,
1100 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by
1101 law.

1102 (h) The Contractor will include the provisions of paragraphs (a) through (g)
1103 in every subcontract or purchase order unless exempted by the rules, regulations, or orders
1104 of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of Sept.
1105 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
1106 Contractor will take such action with respect to any subcontract or purchase order as may be
1107 directed by the Secretary of Labor as a means of enforcing such provisions, including
1108 sanctions for noncompliance: *Provided, however, That* in the event the Contractor
1109 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a
1110 result of such direction, the Contractor may request the United States to enter into such
1111 litigation to protect the interests of the United States.

1112 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1113 21. (a) The obligation of the Contractor to pay the United States as provided in
1114 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1115 obligation may be distributed among the Contractor's water users and notwithstanding the default
1116 of individual water users in their obligation to the Contractor.

1117 (b) The payment of charges becoming due pursuant to this Contract is a
1118 condition precedent to receiving benefits under this Contract. The United States shall not make
1119 water available to the Contractor through Project facilities during any period in which the
1120 Contractor is in arrears in the advance payment of water rates due the United States. The
1121 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1122 parties that are in arrears in the advance payment of water rates as levied or established by the
1123 Contractor.

1124 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1125 obligation to require advance payment for water rates which it levies.

1126 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1127 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1128 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1129 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1130 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
1131 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1132 applicable implementing regulations and any guidelines imposed by the U.S.
1133 Department of the Interior and/or Bureau of Reclamation.

1134 (b) These statutes prohibit any person in the United States from being
1135 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1136 discrimination under any program or activity receiving financial assistance from the Bureau
1137 of Reclamation on the grounds of race, color, national origin, disability, or age. By
1138 executing this Contract, the Contractor agrees to immediately take any measures necessary
1139 to implement this obligation, including permitting officials of the United States to inspect
1140 premises, programs, and documents.

1141 (c) The Contractor makes this Contract in consideration of and for the
1142 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1143 Federal financial assistance extended after the date hereof to the Contractor by the Bureau
1144 of Reclamation, including installment payments after such date on account of
1145 arrangements for Federal financial assistance which were approved before such date.
1146 The Contractor recognizes and agrees that such Federal assistance will be extended in
1147 reliance on the representations and agreements made in this Article and that the United
1148 States reserves the right to seek judicial enforcement thereof.

1149 (d) Complaints of discrimination against the Contractor shall be investigated
1150 by the Contracting Officer's Office of Civil Rights.

1151 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1152 23. In addition to all other payments to be made by the Contractor pursuant to this
1153 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill
1154 and detailed statement submitted by the Contracting Officer to the Contractor for such
1155 specific items of direct cost incurred by the United States for work requested by the
1156 Contractor associated with this Contract plus indirect costs in accordance with applicable
1157 Bureau of Reclamation policies and procedures. All such amounts referred to in this
1158 Article shall not exceed the amount agreed to in writing in advance by the Contractor.
1159 This Article shall not apply to costs for routine contract administration.

1160 WATER CONSERVATION

1161 24. (a) Prior to the delivery of water provided from or conveyed through
1162 Federally constructed or Federally financed facilities pursuant to this Contract, the
1163 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the

1164 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1165 Regulations).

1166 Additionally, an effective water conservation and efficiency program shall be based on the
1167 Contractor's water conservation plan that has been determined by the Contracting Officer to
1168 meet the conservation and efficiency criteria for evaluating water conservation plans
1169 established under Federal law. The water conservation and efficiency program shall
1170 contain definite water conservation objectives, appropriate economically feasible water
1171 conservation measures, and time schedules for meeting those objectives. Continued
1172 Project Water delivery pursuant to this Contract shall be contingent upon the
1173 Contractor's continued implementation of such water conservation program. In the
1174 event the Contractor's water conservation plan or any revised water conservation plan
1175 completed pursuant to subdivision (d) of this Article 24 have not yet been determined by
1176 the Contracting Officer to meet such criteria, due to circumstances which the
1177 Contracting Officer determines are beyond the control of the Contractor, water deliveries
1178 shall be made under this Contract so long as the Contractor diligently works with the
1179 Contracting Officer to obtain such determination at the earliest practicable date, and
1180 thereafter the Contractor immediately begins implementing its water conservation and
1181 efficiency program in accordance with the time schedules therein.

1182 (b) Should the amount of M&I Water delivered pursuant to subdivision
1183 (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year,
1184 the Contractor shall implement the Best Management Practices identified by the time
1185 frames issued by the Mid-Pacific Region's then-existing conservation and efficiency

1186 criteria for such M&I Water unless any such practice is determined by the Contracting
1187 Officer to be inappropriate for the Contractor.

1188 (c) The Contractor shall submit to the Contracting Officer a report on the
1189 status of its implementation of the water conservation plan on the reporting dates specified in the
1190 then-existing conservation and efficiency criteria established under Federal law.

1191 (d) At five (5)-year intervals, the Contractor shall revise its water
1192 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1193 water conservation plans established under Federal law and submit such revised water
1194 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1195 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1196 existing conservation and efficiency criteria for evaluating water conservation plans established
1197 under Federal law.

1198 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1199 shall be described in the Contractor's water conservation plan.

1200 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1201 25. Except as specifically provided in Article 16 of this Contract, the provisions
1202 of this Contract shall not be applicable to or affect non-Project water or water rights now owned
1203 or hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1204 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1205 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1206 any water user within the Contractor's Service Area acquires or has available under any other
1207 contract pursuant to Federal Reclamation law.

1208

CLEAN AIR AND WATER

1209 26. (a) The Contractor agrees as follows:

1210 (1) To comply with all the requirements of section 114 of the Clean Air
1211 Act, as amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. § 1318),
1212 relating to inspection, monitoring, entry, reports, and information, as well as other requirements
1213 specified in those sections, and all applicable regulations and guidelines issued thereunder.

1214 (2) That no portion of the work required by this contract will be
1215 performed in a facility listed on the Environmental Protection Agency List of Violating Facilities
1216 on the date when this contract was executed unless and until the Environmental Protection Agency
1217 eliminates the name of such facility or facilities from such listing.

1218 (3) To use its best efforts to comply with clean air standards and clean
1219 water standards at the facility where the contract work is being performed.

1220 (4) To insert the substance of the provisions of this article into any
1221 nonexempt subcontract, including this subparagraph (a)(4).

1222 (b) The following definitions apply for purposes of this article:

1223 (1) The term “Clean Air Act” means the Act enacted by Pub. L. 88-206
1224 of Dec. 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

1225 (2) The term “Clean Water Act” means the Act enacted by Pub. L. 92-
1226 500 of Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

1227 (3) The term “clean air standards” refers to all enforceable rules,
1228 regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other
1229 requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean
1230 Air Act or Executive Order 11738, an applicable implementation plan as described in section 110
1231 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or plan under
1232 subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or (d)), or an

1233 approved implementation procedure under subsection 112(d) of the Clean Air Act (42 U.S.C. §
1234 7412(d)).

1235 (4) The term “clean water standards” refers to all enforceable
1236 limitations, controls, conditions, prohibitions, standards, and other requirements which are
1237 promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by
1238 the Environmental Protection Agency or by a state under an approved program, as authorized by
1239 section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure
1240 compliance with pretreatment regulations as required by section 307 of the Clean Water Act
1241 (33 U.S.C. § 1317).

1242 (5) The term “comply” refers to compliance with clean air or water
1243 standards. It also refers to compliance with a schedule or plan ordered or approved by a court of
1244 competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control
1245 agency in accordance with the requirements of the Clean Air Act or Clean Water Act and
1246 regulations issued pursuant thereto.

1247 (6) The term “facility” means any building, plant, installation,
1248 structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or
1249 supervised by a contractor or subcontractor to be utilized in the performance of a contract or
1250 subcontract. Where a location or site of operations contains or includes more than one building,
1251 plant, installation, or structure, the entire location or site shall be deemed to be a facility except
1252 where the Director, Office of Federal Activities, Environmental Protection Agency, determines
1253 that independent facilities are collocated in one geographical area.

1254 OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

1255 27. (a) Upon substantial completion of the Project works, or as otherwise
1256 determined by the Contracting Officer, and following written notification, the care, operation,
1257 and maintenance of any or all of those Project works may be transferred to the Contractor. Title
1258 to the transferred works will remain in the name of the United States, unless otherwise provided
1259 by the Congress of the United States.

1260 (b) The Contractor, without expense to the United States, will care for,
1261 operate, and maintain the transferred works in full compliance with the terms of this Contract
1262 and in such a manner that the transferred works remain in good and efficient condition.

1263 (1) The provisions of this Article shall be implemented by the
1264 Memorandum of Agreement relating to Details of Transfer Operations and Maintenance of

1265 Contra Costa Canal System, dated June 28, 1972, and Amendment 1, dated May 15, 1995, and
1266 may be amended from time to time.

1267 (c) Necessary repairs of the transferred works shall be made promptly by the
1268 Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and
1269 maintenance of the transferred works threatening or causing interruption of water service, the
1270 Contracting Officer may issue to the Contractor a special written notice of those necessary
1271 repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1)
1272 make the necessary repairs; or 2) submit a plan for accomplishing the repairs acceptable to the
1273 Contracting Officer that contains a timeframe for completing the necessary repairs. In the case
1274 of an emergency the written notice of necessary repairs will include a timeframe for completion
1275 of the repairs. If the Contractor fails to either: 1) make the necessary repairs within the identified
1276 timeframe; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting
1277 Officer within 60 days of receipt of the notice and accomplish the repairs within the timeframe
1278 identified therein, the Contracting Officer may cause the repairs to be made, and the cost of those
1279 repairs shall be paid by the Contractor as directed by the Contracting Officer.

1280 (1) If at any time, in the opinion of the Contracting Officer one or
1281 more of the Project Works shall from any cause be in a condition unfit for service, the
1282 Contracting Officer may order that the water be shut off from that Project Works until, in the
1283 Contracting Officer's opinion, said Project Works are put in proper condition for service.

1284 (d) The Contractor shall not make any Substantial Changes in the transferred
1285 works without first obtaining written consent of the Contracting Officer. The Contractor will
1286 take all reasonable measures to prevent any unauthorized encroachment on project land and
1287 rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its
1288 existence.

1289 (e) The Contractor agrees to indemnify the United States for, and hold the
1290 United States and all of its representatives harmless from, all damages resulting from suits,
1291 actions, or claims of any character, except for intentional torts committed by employees of the
1292 United States, brought on account of any injury to any person or property arising out of any act,
1293 omission, neglect, or misconduct in the manner or method of performing any construction, care,
1294 operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or
1295 the United States on transferred works required under this Contract, regardless of who performs
1296 those duties.

1297 (f) The Contractor will cooperate with the Contracting Officer in
1298 implementing an effective dam safety program. The United States agrees to provide the
1299 Contractor and the appropriate agency of the State or States in which the Project facilities are

1300 located with design data, designs, and an operating plan for the dam(s) and related facilities
1301 consistent with the current memorandum of understanding between the United States and the
1302 State of California relating to the coordination of planning, design, construction, operation, and
1303 maintenance processes for dams and related facilities.

1304 (g) In the event the Contractor is found to be operating the transferred works
1305 or any part thereof in violation of this Contract or the Contractor is found to be failing any
1306 financial commitments or other commitments to the United States under the terms and conditions
1307 of this Contract, then upon the election of the Contracting Officer, the United States may take
1308 over from the Contractor the care, operation, and maintenance of the transferred works by giving
1309 written notice to the Contractor of such election and the effective date thereof. Thereafter,
1310 during the period of operation by the United States, upon notification by the Contracting Officer
1311 the Contractor will pay to the United States, annually in advance, the cost of Operation and
1312 Maintenance of the works as determined by the Contracting Officer. Following written
1313 notification from the Contracting Officer the care, operation, and maintenance of the works may
1314 be transferred back to the Contractor.

1315 (h) In addition to all other payments to be made by the Contractor under this
1316 Contract, the Contractor will reimburse to the United States, following the receipt of a statement
1317 from the Contracting Officer, all miscellaneous costs incurred by the United States for any work
1318 involved in the administration and supervision of this Contract.

1319 (1) The Contractor at its own expense shall repair any damage to the
1320 Project Works resulting from negligence of its officers, employee, or agents.

1321 (i) Nothing in this article will be deemed to waive the sovereign immunity of
1322 the United States.

1323 (j) The Contractor shall have the right to abandon one or more of the Project
1324 Works with the prior written approval of the Contracting Officer: *Provided, That* abandonment
1325 of one or more of the Project Works shall not relieve the Contractor of its obligation to repay the
1326 capital cost plus interest as appropriate of such Project Works less any disposal or salvage value
1327 which may be realized.

1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349

TRANSFER OF TITLE OF PROJECT WORKS

28. (a) Upon repayment of all outstanding capitalized costs of one or more of the Project Works, and upon appropriate authorization of Congress, all rights, title, and interests in and to the relevant Project Work(s) shall be transferred to the Contractor.

(b) If and when the Contractor fully repays the United States the costs of one or more of the Project Works and the ownership of such Project Works is transferred to the Contractor pursuant to an Act of Congress, the provisions of Articles 26, 29, 38, 39, 40, and 41 and subdivision (c) of Article 16 of this Contract shall no longer apply to such Project Works.

PERFORMANCE OF PROJECT WORKS WITH CONTRIBUTED FUNDS

29. (a) Pursuant to the Act of March 4, 1921 (41 Stat. 1367, 1404), the Contracting Officer may accept funds contributed by the Contractor to finance any authorized construction work on the Project facilities not otherwise provided for by this Contract for which funds may not be available. Pursuant to the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C. § 397a), the Contracting Officer may also accept funds contributed by the Contractor to finance any authorized O&M work on the Project facilities not otherwise provided for by this Contract for which funds may not be available. When the undertaking of such work is approved, funds therefore shall be advanced by the Contractor as may be directed by the Contracting Officers and there shall be submitted to the Contracting Officer a certified copy of the resolution of the Board of Directors of the Contractor describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work on Project facilities financed in whole or in part with funds contributed by the Contractor under subdivision (a) of this Article, the Contractor

1350 shall be furnished with a statement of the final cost thereof. Any unexpended balance of funds
1351 shall be refunded to the Contractor or applied as otherwise directed by the Contractor. The
1352 amount by which the cost of such work exceeds the amount of funds advanced by the Contractor
1353 therefore shall be paid by the Contractor to the United States as the Contracting Officer may
1354 direct.

1355 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND
1356 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

1357 30. (a) The Contracting Officer may, from time to time, examine the following:
1358 the Contractor's books, records, and reports; the project works being operated by the Contractor;
1359 the adequacy of the Operation and Maintenance program[s]; the reserve fund; and the water
1360 conservation program including the water conservation fund, if applicable. Notwithstanding title
1361 ownership, where the United States retains a financial, physical, or liability interest in facilities
1362 either constructed by the United States or with funds provided by the United States, the
1363 Contracting Officer may examine any or all of the project works providing such interest to the
1364 United States.

1365 (b) The Contracting Officer may, or the Contractor may ask the Contracting
1366 Officer to, conduct special inspections of any project works being operated by the Contractor and
1367 special audits of the Contractor's books and records to ascertain the extent of any Operation and
1368 Maintenance deficiencies to determine the remedial measures required for their correction and to
1369 assist the Contractor in solving specific problems. Except in an emergency, any special
1370 inspection or audit shall be made only after written notice thereof has been delivered to the
1371 Contractor by the Contracting Officer.

1372 (c) The Contractor shall provide access to the project works, operate any
1373 mechanical or electrical equipment, and be available to assist in the examination, inspection, or
1374 audit.

1375 (d) The Contracting Officer shall prepare reports based on the examinations,
1376 inspections, or audits and furnish copies of such reports and any recommendations to the
1377 Contractor.

1378 (e) The costs incurred by the United States in conducting Operation and
1379 Maintenance examinations, inspections, and audits and preparing associated reports and
1380 recommendations related to high- and significant-hazard dams and associated facilities shall be
1381 nonreimbursable. Associated facilities include carriage, distribution, and drainage systems;
1382 pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and
1383 storage dams (low-hazard); Type 2 bridges which are Bureau of Reclamation-owned bridges not

1384 located on a public road; regulating reservoirs (low-hazard); fish passage and protective
1385 facilities, including hatcheries; river channelization features; rural/municipal water systems;
1386 desalting and other water treatment plants; maintenance buildings and service yards; facilities
1387 constructed under Federal loan programs (until paid out); and recreation facilities (reserved
1388 works only); and any other facilities as determined by the Contracting Officer.

1389 (e) (1) The Contractor shall reimburse the actual cost incurred by the
1390 United States in making O&M examinations, inspections, and audits, and preparing
1391 associated reports and recommendations.

1392 (f) Expenses incurred by the Contractor, as applicable, in participating in the
1393 Operation and Maintenance site examination will be borne by the Contractor.

1394 (g) Requests by the Contractor for consultations, design services, or
1395 modification reviews, and the completion of any Operation and Maintenance activities identified
1396 in the formal recommendations resulting from the examination (unless otherwise noted) are to be
1397 funded as project Operation and Maintenance and are reimbursable by the Contractor to the
1398 extent of current project Operation and Maintenance allocations.

1399 (h) Site visit special inspections that are beyond the regularly scheduled
1400 Operation and Maintenance examinations conducted to evaluate particular concerns or problems
1401 and provide assistance relative to any corrective action (either as a follow up to an Operation and
1402 Maintenance examination or when requested by the Contractor) shall be nonreimbursable.

1403 (i) The Contracting Officer may provide the State(s) an opportunity to
1404 observe and participate in, at its (their) own expense, the examinations and inspections. The
1405 State(s) may be provided copies of reports and any recommendations relating to such
1406 examinations and inspections.

1407 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1408 31. The expenditure or advance of any money or the performance of any obligation of
1409 the United States under this Contract shall be contingent upon appropriation or allotment
1410 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor
1411 from any obligations under this Contract. No liability shall accrue to the United States in case
1412 funds are not appropriated or allotted.

1413

BOOKS, RECORDS, AND REPORTS

1414 32. (a) The Contractor shall establish and maintain accounts and other books and
1415 records pertaining to administration of the terms and conditions of this Contract, including
1416 the Contractor's financial transactions; water supply data; project operations, maintenance, and
1417 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1418 census), land-ownership, land-leasing, and water-use data; and other matters that the
1419 Contracting Officer may require. Reports shall be furnished to the Contracting Officer
1420 in such form and on such date or dates as the Contracting Officer may require. Subject to
1421 applicable Federal laws and regulations, each party to this Contract shall have the right during
1422 office hours to examine and make copies of the other party's books and records relating to
1423 matters covered by this Contract.

1424 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1425 books, records, or other information shall be requested from the Contractor by the
1426 Contracting Officer unless such books, records, or information are reasonably related to the
1427 administration or performance of this Contract. Any such request shall allow the Contractor a
1428 reasonable period of time within which to provide the requested books, records, or
1429 information.

1430 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1431 33. (a) The provisions of this Contract shall apply to and bind the successors and
1432 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1433 therein by either party shall be valid until approved in writing by the other party.

1434 (b) The assignment of any right or interest in this Contract by either party
1435 shall not interfere with the rights or obligations of the other party to this Contract absent the
1436 written concurrence of said other party.

1437 (c) The Contracting Officer shall not unreasonably condition or withhold
1438 approval of any proposed assignment.

1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460

SEVERABILITY

34. 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

35. 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

1461 provide to the other party 30 days' written notice of the intent to take such action;
1462 Provided, That such notice shall not be required where a delay in commencing an action
1463 would prejudice the interests of the party that intends to file suit. During the 30-day
1464 notice period, the Contractor and the Contracting Officer shall meet and confer in an
1465 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended
1466 to waive or abridge any right or remedy that the Contractor or the United States may have.

1467 OFFICIALS NOT TO BENEFIT

1468 36. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1469 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1470 same manner as other water users or landowners.

1471 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1472 37. (a) While this Contract is in effect, no change may be made in the
1473 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1474 changes which may affect the respective rights, obligations, privileges, and duties of either the
1475 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1476 consolidation, or merger, except upon the Contracting Officer's written consent.

1477 (b) Within 30 days of receipt of a request for such a change, the Contracting
1478 Officer will notify the Contractor of any additional information required by the Contracting
1479 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1480 schedule for timely completion of the process. Such process will analyze whether the proposed
1481 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1482 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1483 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1484 have an impact on any Project Water rights applications, permits, or licenses. In addition,
1485 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will

1486 be responsible for all costs incurred by the Contracting Officer in this process, and such
1487 costs will be paid in accordance with Article 23 of this Contract.

1488 FEDERAL LAWS

1489 38. By entering into this Contract, the Contractor does not waive its rights to contest
1490 the validity or application in connection with the performance of the terms and
1491 conditions of this Contract of any Federal law or regulation; *Provided, That* the
1492 Contractor agrees to comply with the terms and conditions of this Contract unless and
1493 until relief from application of such Federal law or regulation to the implementing
1494 provision of the Contract is granted by a court of competent jurisdiction.

1495 EMERGENCY RESERVE FUND

1496 39. (a) Commencing on **MM/DD/YR**, the Contractor shall accumulate and
1497 maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other
1498 funds are available for use as an emergency reserve fund. The Contractor shall establish and
1499 maintain that emergency reserve fund to meet costs incurred during periods of special stress
1500 caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or
1501 causing interruption of water service.

1502 (b) The Contractor shall accumulate the reserve fund with annual deposits or
1503 investments of not less than \$250,000 to a Federally insured, interest- or dividend-bearing
1504 account or in securities guaranteed by the Federal Government: *Provided, That* money in the
1505 reserve fund, including accrued interest, shall be available within a reasonable time to meet
1506 expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and
1507 the accumulation of interest to the reserve fund shall continue until the basic amount of
1508 \$1,000,000 is accumulated. Following an emergency expenditure from the fund, the annual
1509 deposits shall continue from the year following the emergency expenditure until the previous
1510 balance is restored. After the initial amount is accumulated or after the previous balance is

1511 restored, the annual deposits may be discontinued, and the interest earnings shall continue to
1512 accumulate and be retained as part of the reserve fund.

1513 (1) The Contracting Officer acknowledges that the Contractor has
1514 accumulated and maintained the required reserve fund of \$1,000,000 under the Existing
1515 Contract.

1516 (c) Upon mutual written agreement between the Contractor and the
1517 Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to
1518 account for risk and uncertainty stemming from the size and complexity of the project; the size
1519 of the annual Operation and Maintenance budget; additions to, deletions from, or changes in
1520 project works; and Operation and Maintenance costs not contemplated when this Contract was
1521 executed.

1522 (d) The Contractor may make expenditures from the reserve fund only for
1523 meeting routine or recurring Operation and Maintenance costs incurred during periods of special
1524 stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary Operation
1525 and Maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or
1526 for meeting betterment costs (in situations where recurrence of severe problems can be
1527 eliminated) during periods of special stress. Proposed expenditures from the fund shall be
1528 submitted to the Contracting Officer in writing for review and written approval prior to
1529 disbursement. Whenever the reserve fund is reduced below the current balance by expenditures
1530 therefrom, the Contractor shall restore that balance by the accumulation of annual deposits as
1531 specified in paragraph (b) herein.

1532 (e) During any period in which any of the project works are operated and
1533 maintained by the United States, the Contractor agrees the reserve fund shall be available for like
1534 use by the United States.

1535 (f) On or before August 1 of each year, the Contractor shall provide a current
1536 statement of the principal and accumulated interest of the reserve fund account to the Contracting
1537 Officer.

1538 ADMINISTRATION OF FEDERAL PROJECT LANDS

1539 40. (a) The lands and interests in lands acquired, withdrawn, or reserved and
1540 needed by the United States for the purposes of care, operation, and maintenance of Project
1541 Works may be used by the Contractor for such purposes. The Contractor shall ensure that no
1542 unauthorized encroachment occurs on Federal project lands and rights-of-way. The Contractor
1543 does not have the authority to issue any land-use agreement or grant that conveys an interest in
1544 Federal real property, nor to lease or dispose of any interest of the United States.

1545 (1) No substantial installation of Contractor facilities on the lands and
1546 rights of way of Project Works shall be made by the Contractor without first obtaining the
1547 written consent of the contracting Officer.

1548 (2) The provisions of this Article shall not affect the authority to grant
1549 limited licenses conveyed to the Contractor by the Contracting Officer in the Memorandum of
1550 Agreement relating to Details of Transfer Operations and Maintenance of Contra Costa Canal
1551 System, dated June 28, 1972, and Amendment 1, dated May 15, 1995, and as may be amended
1552 from time to time.

1553 (b) The United States retains responsibility for compliance with the National
1554 Historic Preservation Act of 1966 (NHPA), and the Native American Graves Protection and
1555 Repatriation Act of 1990 (NAGPRA). The Contractor will notify the Contracting Officer and,
1556 only when on tribal land, also notify the appropriate tribal official, immediately upon the
1557 discovery of any potential historic properties or Native American human remains, funerary
1558 objects, sacred objects, or objects of cultural patrimony.

1559 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

1560 41. (a) The Contractor shall not allow contamination or pollution of Federal
1561 project lands, project waters, or project works of the United States or administered by the United
1562 States and for which the Contractor has the responsibility for care, operation, and maintenance
1563 by its employees or agents. The Contractor shall also take reasonable precautions to prevent
1564 such contamination or pollution by third parties.

1565 (b) The Contractor shall comply with all applicable Federal, State, and local
1566 laws and regulations and Bureau of Reclamation policies and instructions existing, or hereafter
1567 enacted or promulgated, concerning any hazardous material that will be used, produced,
1568 transported, stored, released, or disposed of on or in Federal project lands, project waters, or
1569 project works.

1570 (c) "Hazardous material" means (1) any substance falling within the
1571 definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the
1572 Comprehensive Environmental Response, Compensation and Liability Act
1573 (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act
1574 (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution,
1575 refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides,

1576 and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal,
1577 State, local or Tribal law.

1578 (d) Upon discovery of any event which may or does result in contamination or
1579 pollution of Federal project lands, project water, or project works, the Contractor shall
1580 immediately undertake all measures necessary to protect public health and the environment,
1581 including measures necessary to contain or abate any such contamination or pollution, and shall
1582 report such discovery with full details of the actions taken to the Contracting Officer. Reporting
1583 shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery
1584 if it is an emergency and the first working day following discovery in the event of a non-
1585 emergency.

1586 (e) If violation of the provisions of this Article occurs and the Contractor does
1587 not take immediate corrective action, as determined by the Contracting Officer, the Contractor
1588 may be subject to remedies imposed by the Contracting Officer, which may include termination
1589 of this Contract.

1590 (f) The Contractor shall be liable for any response action or corrective
1591 measure necessary to protect public health and the environment or to restore Federal project
1592 lands, project waters, or project works that are adversely affected as a result of such violation,
1593 and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State,
1594 local, or Tribal laws and regulations concerning hazardous material. At the discretion of the
1595 Contracting Officer, the United States may also terminate this Contract, as a result of such
1596 violation.

1597 (g) The Contractor shall defend, indemnify, protect and save the United States
1598 harmless from and against any costs, expenses, claims, damages, demands, or other liability
1599 arising from or relating to Contractor's violation of this Article.

1600 (h) The Bureau of Reclamation agrees to provide information necessary for
1601 the Contractor, using reasonable diligence, to comply with the provisions of this Article.

1602 PEST MANAGEMENT

1603 42. (a) The Contractor is responsible for complying with applicable Federal,
1604 State, and local laws, rules, and regulations related to pest management in performing its
1605 responsibilities under this contract.

1606 (b) The Contractor is responsible for effectively avoiding the introduction and
1607 spread of, and for otherwise controlling, undesirable plants and animals, as defined by the
1608 Contracting Officer, on or in Federal project lands, Federal project waters, and Federal project
1609 works for which and to the extent that the Contractor has Operation and Maintenance
1610 responsibility. The Contractor is responsible for exercising the level of precaution necessary in
1611 meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for

1612 reproductive and vegetative parts, foreign soil, mud, or other debris that may cause the spread of
1613 weeds, invasive species and other pests, and removing such materials before moving its vehicles,
1614 watercraft, and equipment onto any Federal land, into any Federal project facility waters, or out
1615 of any area on Federal project land where work is performed.

1616 (c) Where decontamination of the Contractor's vehicles, watercraft, or
1617 equipment is required prior to entering Federal project land or waters, the decontamination shall
1618 be performed by the Contractor at the point of prior use, or at an approved offsite facility able to
1619 process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the
1620 completion of work, the Contractor will perform any required decontamination within the work
1621 area before moving the vehicles, watercraft, and equipment from Federal project lands and
1622 waters.

1623 (d) Programs for the control of undesirable plants and animals on Federal
1624 project lands, and in Federal project waters and Federal project works for which the Contractor
1625 has Operation and Maintenance responsibility will incorporate Integrated Pest Management
1626 (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible
1627 program to maintain pest populations within economically and environmentally tolerable levels.
1628 In implementing an IPM program, the Contractor will adhere to applicable Federal and State
1629 laws and regulations and Department of the Interior and Bureau of Reclamation policies,
1630 directives, guidelines, and manuals, including but not limited to, the Department of the Interior
1631 Manual, Part 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the
1632 Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February
1633 3, 1999.

1634 NOTICES

1635 43. Any notice, demand, or request authorized or required by this Contract shall be
1636 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1637 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1638 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1639 postage prepaid, or delivered to the Board of Directors of the Contra Costa Water District, P.O.
1640 Box H20, Concord, California, 94504. The designation of the addressee or the address may be
1641 changed by notice given in the same manner as provided in this Article for other notices.

1642 MEDIUM FOR TRANSMITTING PAYMENT

1643 44. (a) All payments from the Contractor to the United States under this Contract
1644 shall be by the medium requested by the United States on or before the date payment is due. The
1645 required method of payment may include checks, wire transfers, or other types of payment
1646 specified by the United States.

1647 (b) Upon execution of this Contract, the Contractor shall furnish the
1648 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose

1649 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1650 out of the Contractor's relationship with the United States.

1651 CONTRACT DRAFTING CONSIDERATIONS

1652 45. This amended Contract has been negotiated and reviewed by the parties hereto,
1653 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1654 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1655 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1656 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1657 CONFIRMATION OF CONTRACT

1658 46. Promptly after the execution of this Contract, the Contractor will provide
1659 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1660 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the
1661 Contractor. This Contract will not be binding on the United States until the Contractor
1662 provides evidence to the Contracting Officer's satisfaction. In addition to other forms of
1663 evidence to meet the requirements of this Article, the Contractor may provide or the
1664 Contracting Officer may require a certified copy of a final decree of a court of competent
1665 jurisdiction in the State of California, confirming the proceedings on the part of the
1666 Contractor for the authorization of the execution of this Contract.

1667

1668 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1669 day and year first above written.

1670 UNITED STATES OF AMERICA

1671 By: _____
1672 Regional Director
1673 Interior Region 10: California-Great Basin
1674 Bureau of Reclamation

1675 CONTRA COSTA WATER DISTRICT
1676 (SEAL)

1677 By: _____
1678 President of the Board of Directors

1679 Attest:

1680 By: _____
1681 Secretary of the Board of Directors