

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

CONTRACT BETWEEN THE UNITED STATES
AND
PANOCHÉ WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT

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

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EXPLANATORY RECITALS

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

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

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

[4th] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-7864A, as amended, which provided the Contractor, Project Water from the Project facilities from August 30, 1974 to December 31, 2008; and

[5th] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into binding agreements identified as Binding Agreement No. 14-06-200-495A-BA, and Binding Agreement No. CV 79-106-EDP-BA, which sets out the

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

42 [6th] WHEREAS, the United States and the Contractor entered into Delta
43 Division and San Luis Unit Contract Number 14-06-200-7864A-IR1 and subsequent Interim
44 Renewal Contracts 14-06-200-7864A-IR2 through 14-06-200-7864A-IR6, the last of which is
45 hereinafter referred to as the “Existing Contract”, which established terms for the delivery of
46 Project Water to the Contractor from the Delta Division and San Luis Unit, and which was in
47 effect the date the WIIN Act was enacted; and

48 [7th] WHEREAS, on December 16, 2016, the 114th Congress of the United
49 States of America enacted the WIIN Act; and

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

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

59 1195”); and “(B) Water service contracts that were entered under subsection (c)(2) of section 9
60 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be
61 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

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

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

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

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

80 [14th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
81 Contracting Officer that the Contractor has utilized the Project Water supplies available
82 to it for reasonable and beneficial use and expects to utilize fully for reasonable and
83 beneficial use the quantity of Project Water to be made available to it pursuant to this
84 Contract; and

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

88 [16th] WHEREAS, the economies of regions within the Project, including the
89 Contractor's, depend upon the continued availability of water, including water service
90 from the Project; and

91 [17th] WHEREAS, the United States Court of Appeals for the Ninth Circuit has
92 held that Section 1(a) of the San Luis Act, Pub. L. 86-488 (74 Stat. 156) imposes on the
93 Secretary of the Interior a duty to provide drainage service to the San Luis Unit; and

94 [18th] WHEREAS, the Contractor and the Contracting Officer recognize that
95 adequate drainage service is required to maintain agricultural production within certain
96 areas served with Project Water made available under this Contract; and

97 [19th] WHEREAS, the Contracting Officer intends, to the extent appropriated
98 funds are available, to develop and implement effective solutions to drainage problems in
99 the San Luis Unit; and

100 [20th] WHEREAS, the Contracting Officer and the Contractor
101 acknowledge that such drainage solutions may involve actions not originally

102 contemplated and/or the construction or use of facilities, other than the San Luis Drain;
103 that the Contractor is investing in drainage solutions for lands within its boundaries that
104 should be considered by the Contracting Officer in determining drainage solutions; and that the
105 existing ratesetting policy as it relates to the allocation and collection of drainage costs may
106 require amendment to recognize those investments by the Contractor and other relevant
107 circumstances; and

108 [21st] WHEREAS, the Department of the Interior, Bureau of Reclamation
109 published in June 2006 the San Luis Drainage Feature Re-evaluation Final
110 Environmental Impact Statement, which considers alternatives to provide agricultural
111 drainage service to the San Luis Unit; and

112 [22nd] WHEREAS, the Secretary intends through coordination, cooperation, and
113 partnerships to pursue measures to improve water supply, water quality, and reliability of the
114 Project for all Project purposes; and

115 [23rd] WHEREAS, the mutual goals of the United States and the Contractor
116 include: to provide for reliable Project Water supplies; to control costs of those supplies;
117 to achieve repayment of the Project as required by law; to guard reasonably against Project
118 Water shortages; to achieve a reasonable balance among competing demands for use of
119 Project Water; and to comply with all applicable environmental statutes, all consistent with
120 the legal obligations of the United States relative to the Project; and

121 [24th] WHEREAS, the parties intend by this Contract to maintain a cooperative
122 relationship in order to achieve their mutual goals; and

123 [25th] WHEREAS, the Contractor has utilized or may utilize transfers, contract
124 assignments, rescheduling, and conveyance of Project Water and non-Project water under this
125 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the
126 beneficial use of water; and

127 [26th] WHEREAS, the parties desire and intend that this Contract not provide a
128 disincentive to the Contractor in continuing to carry out the beneficial activities set out in
129 the Explanatory Recital immediately above; and

130 [27th] WHEREAS, the Contracting Officer and the Contractor agree that this
131 Contract complies with Section 4011 of the WIIN Act; and

132 [28th] WHEREAS, the Contracting Officer and the Contractor agree to amend
133 and convert the Existing Contract pursuant to section 4011 of the WIIN Act and other Federal
134 Reclamation law on the terms and conditions set forth below.

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

137 DEFINITIONS

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

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

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

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

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

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

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

158 (g) "Contractor's Service Area" shall mean the area to which the Contractor is
159 permitted to provide Project Water under this Contract as described in Exhibit "A"
160 attached hereto, which may be modified from time to time in accordance with Article 36
161 of this Contract without amendment of this Contract;

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

164 (i) "Delta Division Facilities" shall mean those existing and future Project
165 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not
166 limited to, the C.W. "Bill" Jones Pumping Plant, the O'Neill Forebay, the O'Neill

167 Pumping/Generating Plant, and the San Luis Reservoir, used to divert, store, and convey
168 water to those Project Contractors entitled to receive water conveyed through the Delta-
169 Mendota Canal;

170 (j) “Eligible Lands” shall mean all lands to which Irrigation Water may be
171 delivered in accordance with Section 204 of the Reclamation Reform Act of 1982 (96 Stat.
172 1263), as amended;

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

176 (l) “Existing Capital Obligation” shall mean the remaining amount of
177 construction costs or other capitalized costs allocable to the Contractor as described in section
178 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
179 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,
180 dated **Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to**
181 **address the intertie]**, as adjusted to reflect payments not reflected in such schedule. The
182 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in
183 Exhibit “C”, which is incorporated herein by reference;

184 (m) “Full Cost Rate”, pursuant to CVPIA section 3405(d) shall mean an
185 annual rate, as determined by the Contracting Officer that shall amortize the
186 expenditures for construction properly allocable to the Project irrigation or M&I
187 functions, as appropriate, of facilities in service including all O&M deficits funded, less
188 payments, over such periods as may be required under Federal Reclamation law, or

189 applicable contract provisions. Interest will accrue on both the construction
190 expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at
191 that date, or from the date incurred in the case of costs arising subsequent to October 12
192 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the
193 Reclamation Reform Act of 1982. The Full Cost Rate includes actual operation,
194 maintenance, and replacement costs consistent with Section 426.2 of the Rules and
195 Regulations for the Reclamation Reform Act of 1982;

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

198 (o) “Irrigation Full Cost Water Rate”, pursuant to CVPIA section
199 3405(d), shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

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

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

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

209 (s) “M&I Full Cost Water Rate”, pursuant to CVPIA section 3405(d),
210 shall mean the Full Cost Rate applicable to the delivery of M&I Water;

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

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

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

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

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

232 (z) Omitted

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

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

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

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

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

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

253 and

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

256 TERM OF CONTRACT – RIGHT TO USE OF WATER

257 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the
258 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges
259 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.
260 1195) as applicable, and applicable law;

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

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

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

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

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

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

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

290 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

291 3. (a) During each Year, consistent with all applicable State water rights
292 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and
293 12 of this Contract, the Contracting Officer shall make available for delivery to the
294 Contractor 94,000 acre-feet of Project Water for irrigation and M&I purposes. Water
295 Delivered to the Contractor in accordance with this subdivision shall be scheduled and
296 paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

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

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

307 (1) In the event any Project Contractor (other than a Cross Valley
308 Contractor) that receives Project Water through the Delta Division Facilities obtains a
309 contractual agreement that the Contracting Officer shall make Project Water available at
310 a point or points of delivery in or north of the Delta, at the request of the Contractor and
311 upon completion of any required environmental documentation, this Contract shall be
312 amended to provide for deliveries in or north of the Delta on mutually agreeable terms.
313 Such amendments to this Contract shall be limited solely to those changes made necessary by
314 the addition of such alternate points of delivery in or north of the Delta; *Provided, That*
315 the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project
316 Water does not trigger this right of amendment.

317 (d) The Contractor shall make reasonable and beneficial use of all water
318 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or

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

335 (e) The Contractor shall comply with requirements applicable to the
336 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
337 of any water service contract between the Contracting Officer and the Contractor in effect
338 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
339 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
340 implement. The Existing Contract, which evidences in excess of 34 years of diversions for

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

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

362 have a first right to acquire such water, including Project Water made available pursuant
363 to Section 215 of the Reclamation Reform Act of 1982.

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

371 (h) The Contractor’s right pursuant to Federal Reclamation law and
372 applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to
373 this Contract shall not be disturbed, and this Contract shall continue so long as the
374 Contractor pays applicable Rates and Charges under this Contract consistent with Section
375 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable
376 law. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose
377 shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

382 (j) The Contracting Officer shall make reasonable efforts to protect the
383 water rights necessary for the Project and to provide the water available under this Contract.

384 The Contracting Officer shall not object to participation by the Contractor, in the capacity
385 and to the extent permitted by law, in administrative proceedings related to the Project
386 Water rights; *Provided, That* the Contracting Officer retains the right to object to the
387 substance of the Contractor's position in such a proceeding; *Provided, further, That* in
388 such proceedings the Contracting Officer shall recognize the Contractor has a legal right
389 under the terms of this Contract to use Project Water.

390 TIME FOR DELIVERY OF WATER

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

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

406 (c) The Contractor shall not schedule Project Water in excess of the
407 quantity of Project Water the Contractor intends to put to reasonable and beneficial use
408 within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article
409 9 of this Contract during any Year.

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

416 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

426 (c) The Contractor shall deliver Irrigation Water in accordance with any
427 applicable land classification provisions of Federal Reclamation law and the associated

428 regulations. The Contractor shall not deliver Project Water to land outside the
429 Contractor's Service Area unless approved in advance by the Contracting Officer.

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

442 (e) Absent a separate contrary written agreement with the Contractor,
443 neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be
444 responsible for the control, carriage, handling, use, disposal, or distribution of Water
445 Delivered to the Contractor pursuant to this Contract beyond the point or points of
446 delivery established pursuant to subdivision (a) of this Article. The Contractor shall
447 indemnify the United States, its officers, employees, agents, and assigns on account of
448 damage or claim of damage of any nature whatsoever for which there is legal
449 responsibility, including property damage, personal injury, or death arising out of or

450 connected with the control, carriage, handling, use, disposal, or distribution of such Water
451 Delivered beyond such point or points of delivery except for any damage or claim arising
452 out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees,
453 agents, and assigns, including the Operating Non-Federal Entity(ies) with the intent of
454 creating the situation resulting in any damage or claim; (ii) willful misconduct of the
455 Contracting Officer or any of its officers, employees, agents, and assigns, including the
456 Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its
457 officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies);
458 (iv) a malfunction of facilities owned and/or operated by the United States or the Operating
459 Non-Federal Entity(ies); or (v) failure of the United States, its officers, employees, agents,
460 and assigns, including the Operating Non-Federal Entity(ies), to provide drainage service.

461 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

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

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

494 modify said measuring devices and/or measuring methods as required by the Contracting
495 Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

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

507 7. (a) Notwithstanding the Contractor's full prepayment of the
508 Repayment Obligation pursuant to section 4011, subsection (a)(2)(A) and subsection
509 (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required
510 pursuant to section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for
511 the final cost allocation as described in this Article, subsection (b), the Contractor's
512 Project construction and other obligations shall be determined in accordance with: (i)
513 the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
514 then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such
515 ratesetting policies shall be amended, modified, or superseded only through a public

516 notice and comment procedure; (ii) applicable Federal Reclamation law and associated
517 rules and regulations, or policies, and (iii) other applicable provisions of this Contract.
518 Payments shall be made by cash transaction, electronic funds transfers, or any other
519 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
520 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
521 execution of this Contract are set forth in Exhibit “B”, as may be revised annually.

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

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

530 (A) The amount due and payable to the United States, pursuant
531 to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been
532 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth
533 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual
534 installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date of
535 this Contract as set forth in Exhibit “C”. The Repayment Obligation is due in lump sum by
536 **[Month, Day, Year]** as provided by the WIIN Act. The Contractor must provide appropriate
537 notice to the Contracting Officer in writing no later than thirty (30) days prior to **[Month, Day,**

538 **Year] [Division Level: consider the effective date of the contract being converted]** if
539 electing to repay the amount due using the lump sum alternative. If such notice is not provided
540 by such date, the Contractor shall be deemed to have elected the installment payment alternative,
541 in which case, the first such payment shall be made no later than **[Month, Day, Year] [Division**
542 **Level: consider the effective date of the contract being converted].** The second payment
543 shall be made no later than the first anniversary of the first payment date. The third payment
544 shall be made no later than the second anniversary of the first payment date. The final payment
545 shall be made no later than **[Month, Day, Year] [no later than the third anniversary of the**
546 **effective date of the contract].** If the installment payment option is elected by the Contractor,
547 the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the
548 Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall
549 re-compute the remaining amount due to reflect the pre-payment using the same methodology as
550 was used to compute the initial annual installment payment amount, which is illustrated in
551 Exhibit “C”. Notwithstanding any Additional Capital Obligation that may later be established,
552 receipt of the Contractor’s payment of the Repayment Obligation to the United States shall fully
553 and permanently satisfy the Existing Capital Obligation.

554 (B) Additional Capital Obligations that are not reflected in, the
555 schedules referenced in Exhibit “C” and properly assignable to the Contractor, shall be repaid as
556 prescribed by the WIIN Act without interest except as required by law. Consistent with Federal
557 Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital
558 Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the
559 Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of

560 the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not
561 be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B),
562 however, will be considered under subdivision (b) of this Article. A separate agreement shall be
563 established by the Contractor and the Contracting Officer to accomplish repayment of the
564 Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the
565 WIIN Act, subject to the following:

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

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

578 (b) In the event that the final cost allocation referenced in Section 4011(b) of
579 the WIIN Act determines that the costs properly assignable to the Contractor are greater than
580 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining
581 allocated costs. The term of such additional repayment contract shall be not less than one (1)

582 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate
583 of repayment of such amount may be developed by the Contractor and Contracting Officer. In
584 the event that the final cost allocation indicates that the costs properly assignable to the
585 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such
586 overpayment as an offset against any outstanding or future obligations of the Contractor, with the
587 exception of Restoration Fund charges pursuant to section 3407(d) of Pub. L. 102-575.

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

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

599 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
600 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component
601 for Project Water for the following Year and the computations and cost allocations upon which
602 those Rates are based. The Contractor shall be allowed not less than two months to review and
603 comment on such computations and cost allocations. By December 31 of each Calendar Year,

604 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
605 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit
606 “B”.

607 (d) At the time the Contractor submits the initial schedule for the delivery of
608 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
609 Contractor shall make an advance payment to the United States equal to the total amount
610 payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the
611 Project Water scheduled to be delivered pursuant to this Contract during the first two
612 calendar months of the Year. Before the end of the first month and before the end of
613 each calendar month thereafter, the Contractor shall make an advance payment to the
614 United States, at the Rate(s) set under subdivision (a) of this Article, for the Water
615 Scheduled to be delivered pursuant to this Contract during the second month
616 immediately following. Adjustments between advance payments for Water Scheduled
617 and payments at Rates due for Water Delivered shall be made before the end of the
618 following month; *Provided, That* any revised schedule submitted by the Contractor
619 pursuant to Article 4 of this Contract which increases the amount of Water Delivered
620 pursuant to this Contract during any month shall be accompanied with appropriate
621 advance payment, at the Rates then in effect, to assure that Project Water is not
622 delivered to the Contractor in advance of such payment. In any month in which the
623 quantity of Water Delivered to the Contractor pursuant to this Contract equals the
624 quantity of Water Scheduled and paid for by the Contractor, no additional Project Water
625 shall be delivered to the Contractor unless and until an advance payment at the Rates

626 then in effect for such additional Project Water is made. Final adjustment between the
627 advance payments for the Water Scheduled and payments for the quantities of Water
628 Delivered during each Year pursuant to this Contract shall be made as soon as
629 practicable but no later than April 30th of the following Year, or 60 days after the
630 delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract
631 if such water is not delivered by the last day of February.

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

645 (f) The Contractor shall pay for any Water Delivered under subdivision
646 (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer
647 pursuant to applicable statutes, associated regulations, any applicable provisions of

648 guidelines or ratesetting policies; *Provided, That* the Rate for Water Delivered under
649 subdivision (f) of Article 3 of this Contract shall be no more than the otherwise
650 applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

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

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

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

667 (j) The parties acknowledge and agree that the efficient administration of this
668 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
669 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,

670 and/or for making and allocating payments, other than those set forth in this Article may be in
671 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
672 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
673 this Contract is in effect without amending this Contract.

674 (k) (1) Beginning at such time as deliveries of Project Water in a Year
675 exceed 80 percent of the Contract Total, then before the end of the month following the month of
676 delivery the Contractor shall make an additional payment to the United States equal to the
677 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
678 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
679 Contract Total, shall equal one-half of the difference between the Rate established under
680 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
681 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
682 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
683 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water
684 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
685 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract
686 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in
687 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

688 (2) Subject to the Contracting Officer's written approval, the
689 Contractor may request and receive an exemption from such Tiered Pricing Component for
690 Project Water delivered to produce a crop which the Contracting Officer determines will provide
691 significant and quantifiable habitat values for waterfowl in fields where the water is used and the

692 crops are produced; *Provided, That* the exemption from the Tiered Pricing Component for
693 Irrigation Water shall apply only if such habitat values can be assured consistent with the
694 purposes of the CVPIA through binding agreements executed with or approved by the
695 Contracting Officer prior to use of such water.

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

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

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

714 Contractor is receiving lower Rates and Charges because of inability to pay and is
715 transferring Project Water to another entity whose Rates and Charges are not adjusted
716 due to inability to pay, the Rates and Charges for transferred Project Water shall not be
717 adjusted to reflect the Contractor's inability to pay.

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

720 NON-INTEREST BEARING O&M DEFICITS

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

724 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

736 transferor and transferee.

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

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

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

763 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

782 TEMPORARY REDUCTIONS – RETURN FLOWS

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

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

800 (c) The United States reserves the right to all seepage and return flow
801 water derived from Water Delivered to the Contractor hereunder which escapes or is

802 discharged beyond the Contractor's Service Area; *Provided, That* this shall not be construed
803 as claiming for the United States any right to seepage or return flow being put to
804 reasonable and beneficial use pursuant to this Contract within the Contractor's Service
805 Area by the Contractor or those claiming by, through, or under the Contractor.

806 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

818 (c) In any Year in which there may occur a Condition of Shortage for any of
819 the reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this
820 Article, the Contracting Officer will first allocate the available Project Water consistent
821 with the Project M&I Water Shortage Policy in its form applicable under this Article 12(c) of
822 water service contracts in effect on the date of this Contract which provide water service
823 from Delta Division Facilities for determining the amount of Project Water Available
824 for delivery to the Project Contractors. Subject to the foregoing allocation, in any year
825 in which there may occur a Condition of Shortage, the Contracting Officer shall then
826 apportion Project Water among the Contractor and others entitled to Project Water from
827 Delta Division Facilities under long-term water service or repayment contracts (or

828 renewals thereof or binding commitments therefore) in force on February 28, 2005, as
829 follows:

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

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

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

844 (4) The available supply shall be multiplied by the Contractor's
845 proportionate share and the result shall be the quantity of Project Water made available
846 by the United States to the Contractor for the relevant Year in accordance with the
847 schedule developed by the Contracting Officer under subdivision (c)(1) of this Article 12,
848 but in no event shall such amount exceed the Contract Total. In the event the
849 Contracting Officer subsequently determines that the Contracting Officer can increase or

850 needs to decrease the available supply for delivery from Delta Division Facilities to
851 interim renewal, long-term water service, and repayment contractors during the relevant
852 Year, such additions or reductions to the available supply shall be apportioned consistent
853 with subparagraphs (1) through (4), inclusive.

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

865 (e) Omitted

866 UNAVOIDABLE GROUNDWATER PERCOLATION

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

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

874 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

880 PROTECTION OF WATER AND AIR QUALITY

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

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

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

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

898 (e) The Contracting Officer shall notify the Contractor in writing when
899 drainage service becomes available. Thereafter, the Contracting Officer shall provide
900 drainage service to the Contractor at rates established pursuant to the then-existing
901 ratesetting policy for Irrigation Water; Provided, That such ratesetting policy shall be
902 amended, modified, or superseded only through the process described in subdivision (a)

903 of Article 7 of this Contract.

904 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED
905 STATES

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

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

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

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

947 power policy, if such Project use power policy is applicable, each as amended, modified, or
948 superseded from time to time.

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

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

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

967 (5) After Project purposes are met, as determined by the
968 Contracting Officer, the United States and Project Contractors entitled to Project Water

969 from Delta Division Facilities shall share priority to utilize the remaining capacity of the
970 facilities declared to be available by the Contracting Officer for conveyance and
971 transportation of non-Project water prior to any such remaining capacity being made
972 available to non-Project contractors. Other Project Contractors shall have a second priority
973 to any remaining capacity of facilities declared to be available by the Contracting Officer
974 for conveyance and transportation of non-Project water prior to any such remaining
975 capacity being made available to non-Project contractors.

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

978 OPINIONS AND DETERMINATIONS

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

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

989 (b) The Contracting Officer shall have the right to make determinations
990 necessary to administer this Contract that are consistent with the provisions of this

991 Contract, the laws of the United States and of the State of California, and the rules and
992 regulations promulgated by the Secretary. Such determinations shall be made in
993 consultation with the Contractor to the extent reasonably practicable.

994 COORDINATION AND COOPERATION

995 18. (a) In order to further their mutual goals and objectives, the Contracting
996 Officer and the Contractor shall communicate, coordinate, and cooperate with each other,
997 and with other affected Project Contractors, in order to improve the O&M of the
998 Project. The communication, coordination, and cooperation regarding O&M shall
999 include, but not be limited to, any action which will or may materially affect the quantity
1000 or quality of Project Water supply, the allocation of Project Water supply, and Project
1001 financial matters including, but not limited to, budget issues. The communication,
1002 coordination, and cooperation provided for hereunder shall extend to all provisions of
1003 this Contract. Each party shall retain exclusive decision making authority for all actions,
1004 opinions, and determinations to be made by the respective party.

1005 (b) Within 120 days following the Effective Date of this Contract, the
1006 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to
1007 meet with interested Project Contractors to develop a mutually agreeable, written Project-
1008 wide process, which may be amended as necessary separate and apart from this Contract.
1009 The goal of this process shall be to provide, to the extent practicable, the means of
1010 mutual communication and interaction regarding significant decisions concerning
1011 Project O&M on a real-time basis.

1012 (c) In light of the factors referred to in subdivision (b) of Article 3 of this

1013 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out
1014 this intent:

1015 (1) The Contracting Officer will, at the request of the Contractor,
1016 assist in the development of integrated resource management plans for the Contractor.

1017 Further, the Contracting Officer will, as appropriate, seek authorizations for implementation
1018 of partnerships to improve water supply, water quality, and reliability.

1019 (2) The Secretary will, as appropriate, pursue program and project
1020 implementation and authorization in coordination with Project Contractors to improve the
1021 water supply, water quality, and reliability of the Project for all Project purposes.

1022 (3) The Secretary will coordinate with Project Contractors and the
1023 State of California to seek improved water resource management.

1024 (4) The Secretary will coordinate actions of agencies within the
1025 Department of the Interior that may impact the availability of water for Project purposes.

1026 (5) The Contracting Officer shall periodically, but not less than
1027 annually, hold division-level meetings to discuss Project operations, division-level water
1028 management activities, and other issues as appropriate.

1029 (d) Without limiting the contractual obligations of the Contracting Officer
1030 under the other Articles of this Contract, nothing in this Article shall be construed to limit
1031 or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate
1032 with the Contractor or other interested stakeholders or to make decisions in a timely fashion
1033 as needed to protect health, safety, or the physical integrity of structures or facilities.

1034

CHARGES FOR DELINQUENT PAYMENTS

1035 19. (a) The Contractor shall be subject to interest, administrative, and penalty
1036 charges on delinquent payments. If a payment is not received by the due date, the
1037 Contractor shall pay an interest charge on the delinquent payment for each day the payment
1038 is delinquent beyond the due date. If a payment becomes 60 days delinquent, the
1039 Contractor shall pay, in addition to the interest charge, an administrative charge to
1040 cover additional costs of billing and processing the delinquent payment. If a payment is
1041 delinquent 90 days or more, the Contractor shall pay, in addition to the interest and
1042 administrative charges, a penalty charge for each day the payment is delinquent beyond the
1043 due date, based on the remaining balance of the payment due at the rate of 6 percent per
1044 year. The Contractor shall also pay any fees incurred for debt collection services associated
1045 with a delinquent payment.

1046 (b) The interest rate charged shall be the greater of either the rate prescribed
1047 quarterly in the Federal Register by the Department of the Treasury for application to
1048 overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged
1049 will be determined as of the due date and remain fixed for the duration of the delinquent
1050 period.

1051 (c) When a partial payment on a delinquent account is received, the amount
1052 received shall be applied first to the penalty charges, second to the administrative charges,
1053 third to the accrued interest, and finally to the overdue payment.

1054

EQUAL EMPLOYMENT OPPORTUNITY

1055 20. During the performance of this Contract, the Contractor agrees as follows:

1056 (a) The Contractor will not discriminate against any employee or applicant
1057 for employment because of race, color, religion, sex, sexual orientation, gender identity, or
1058 national origin. The Contractor will take affirmative action to ensure that applicants are
1059 employed, and that employees are treated during employment, without regard to their race,
1060 color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall
1061 include, but not be limited to, the following: employment, upgrading, demotion, or
1062 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
1063 forms of compensation; and selection for training, including apprenticeship. The Contractor
1064 agrees to post in conspicuous places, available to employees and applicants for employment,
1065 notices to be provided by the Contracting Officer setting forth the provisions of this
1066 nondiscrimination clause.

1067 (b) The Contractor will, in all solicitations or advertisements for employees
1068 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1069 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1070 gender identity, or national origin.

1071 (c) The Contractor will not discharge or in any other manner discriminate
1072 against any employee or applicant for employment because such employee or applicant has
1073 inquired about, discussed, or disclosed the compensation of the employee or applicant or
1074 another employee or applicant. This provision shall not apply to instances in which an
1075 employee who has access to the compensation information of other employees or applicants as
1076 part of such employee's essential job functions discloses the compensation of such other
1077 employees or applicants to individuals who do not otherwise have access to such information,
1078 unless such disclosure is in response to a formal complaint or charge, in furtherance of an
1079 investigation, proceeding, hearing, or action, including an investigation conducted by the
1080 employer, or is consistent with the Contractor's legal duty to furnish information.

1081 (d) The Contractor will send to each labor union or representative of
1082 workers with which it has a collective bargaining agreement or other contract or understanding,
1083 a notice, to be provided by the Contracting Officer, advising the labor union or workers'
1084 representative of the Contractor's commitments under section 202 of Executive Order No.
1085 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places
1086 available to employees and applicants for employment.

1087 (e) The Contractor will comply with all provisions of Executive Order No.
1088 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
1089 of Labor.

1090 (f) The Contractor will furnish all information and reports required by
1091 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of
1092 the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and
1093 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation
1094 to ascertain compliance with such rules, regulations, and orders.

1095 (g) In the event of the Contractor's noncompliance with the
1096 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this
1097 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may
1098 be declared ineligible for further Government contracts in accordance with procedures
1099 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may
1100 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,
1101 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by
1102 law.

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

1110 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a
1111 result of such direction, the Contractor may request the United States to enter into such
1112 litigation to protect the interests of the United States.

1113 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1114 21. (a) The obligation of the Contractor to pay the United States as provided in
1115 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1116 obligation may be distributed among the Contractor's water users and notwithstanding the default
1117 of individual water users in their obligation to the Contractor.

1118 (b) The payment of charges becoming due pursuant to this Contract is a
1119 condition precedent to receiving benefits under this Contract. The United States shall not make
1120 water available to the Contractor through Project facilities during any period in which the
1121 Contractor is in arrears in the advance payment of water rates due the United States. The
1122 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1123 parties that are in arrears in the advance payment of water rates as levied or established by the
1124 Contractor.

1125 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1126 obligation to require advance payment for water rates which it levies.

1127 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1128 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1129 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1130 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1131 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
1132 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1133 applicable implementing regulations and any guidelines imposed by the U.S.
1134 Department of the Interior and/or Bureau of Reclamation.

1135 (b) These statutes prohibit any person in the United States from being
1136 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1137 discrimination under any program or activity receiving financial assistance from the Bureau
1138 of Reclamation on the grounds of race, color, national origin, disability, or age. By
1139 executing this Contract, the Contractor agrees to immediately take any measures necessary
1140 to implement this obligation, including permitting officials of the United States to inspect
1141 premises, programs, and documents.

1142 (c) The Contractor makes this Contract in consideration of and for the
1143 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1144 Federal financial assistance extended after the date hereof to the Contractor by the Bureau

1145 of Reclamation, including installment payments after such date on account of
1146 arrangements for Federal financial assistance which were approved before such date.
1147 The Contractor recognizes and agrees that such Federal assistance will be extended in
1148 reliance on the representations and agreements made in this Article and that the United
1149 States reserves the right to seek judicial enforcement thereof.

1150 (d) Complaints of discrimination against the Contractor shall be investigated
1151 by the Contracting Officer's Office of Civil Rights.

1152 PRIVACY ACT COMPLIANCE

1153 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1154 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy
1155 Act (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting
1156 records required to be submitted to the Contractor for compliance with Sections 206,
1157 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and
1158 390zz), and pursuant to 43 C.F.R. § 426.18.

1159 (b) With respect to the application and administration of the criminal penalty
1160 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1161 employees who are responsible for maintaining the certification and reporting records
1162 referenced in paragraph (a) above are considered to be employees of the Department of the
1163 Interior. See 5 U.S.C. § 552a(m).

1164 (c) The Contracting Officer or a designated representative shall provide the
1165 Contractor with current copies of the Department of the Interior Privacy Act regulations
1166 and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice
1167 (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding,
1168 and disclosure of information contained in the Landholders' certification and reporting
1169 records.

1170 (d) The Contracting Officer shall designate a full-time employee of the
1171 Bureau of Reclamation to be the System Manager responsible for making decisions on
1172 denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43
1173 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to
1174 their own records.

1175 (e) The Contractor shall forward promptly to the System Manager each
1176 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of
1177 records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral;
1178 and provide the System Manager with information and records necessary to prepare an
1179 appropriate response to the requester. These requirements do not apply to individuals
1180 seeking access to their own certification and reporting forms filed with the Contractor

1181 pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as an
1182 authority for the request.

1183 (f) Upon complete payment of the Repayment Obligation by the
1184 Contractor, this Article 23 will no longer be applicable.

1185 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1186 24. In addition to all other payments to be made by the Contractor pursuant to this
1187 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill
1188 and detailed statement submitted by the Contracting Officer to the Contractor for such
1189 specific items of direct cost incurred by the United States for work requested by the
1190 Contractor associated with this Contract plus indirect costs in accordance with applicable
1191 Bureau of Reclamation policies and procedures. All such amounts referred to in this
1192 Article shall not exceed the amount agreed to in writing in advance by the Contractor.
1193 This Article shall not apply to costs for routine contract administration.

1194 WATER CONSERVATION

1195 25. (a) Prior to the delivery of water provided from or conveyed through
1196 Federally constructed or Federally financed facilities pursuant to this Contract, the
1197 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the
1198 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1199 Regulations).

1200 Additionally, an effective water conservation and efficiency program shall be based on the
1201 Contractor's water conservation plan that has been determined by the Contracting Officer to
1202 meet the conservation and efficiency criteria for evaluating water conservation plans
1203 established under Federal law. The water conservation and efficiency program shall
1204 contain definite water conservation objectives, appropriate economically feasible water
1205 conservation measures, and time schedules for meeting those objectives. Continued

1206 Project Water delivery pursuant to this Contract shall be contingent upon the
1207 Contractor's continued implementation of such water conservation program. In the
1208 event the Contractor's water conservation plan or any revised water conservation plan
1209 completed pursuant to subdivision (d) of this Article 25 have not yet been determined by
1210 the Contracting Officer to meet such criteria, due to circumstances which the
1211 Contracting Officer determines are beyond the control of the Contractor, water deliveries
1212 shall be made under this Contract so long as the Contractor diligently works with the
1213 Contracting Officer to obtain such determination at the earliest practicable date, and
1214 thereafter the Contractor immediately begins implementing its water conservation and
1215 efficiency program in accordance with the time schedules therein.

1216 (b) Should the amount of M&I Water delivered pursuant to subdivision
1217 (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year,
1218 the Contractor shall implement the Best Management Practices identified by the time
1219 frames issued by the Mid-Pacific Region's then-existing conservation and efficiency
1220 criteria for such M&I Water unless any such practice is determined by the Contracting
1221 Officer to be inappropriate for the Contractor.

1222 (c) The Contractor shall submit to the Contracting Officer a report on the
1223 status of its implementation of the water conservation plan on the reporting dates specified in the
1224 then-existing conservation and efficiency criteria established under Federal law.

1225 (d) At five (5)-year intervals, the Contractor shall revise its water
1226 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1227 water conservation plans established under Federal law and submit such revised water

1228 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1229 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1230 existing conservation and efficiency criteria for evaluating water conservation plans established
1231 under Federal law.

1232 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1233 shall be described in the Contractor's water conservation plan.

1234 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1235 26. Except as specifically provided in Article 16 of this Contract, the provisions
1236 of this Contract shall not be applicable to or affect non-Project water or water rights now owned
1237 or hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1238 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1239 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1240 any water user within the Contractor's Service Area acquires or has available under any other
1241 contract pursuant to Federal Reclamation law.

1242 OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

1243 27. (a) Upon substantial completion of the Project works, or as otherwise
1244 determined by the Contracting Officer, and following written notification, the care, operation,
1245 and maintenance of any or all of those Project works may be transferred to the Contractor. Title
1246 to the transferred works will remain in the name of the United States, unless otherwise provided
1247 by the Congress of the United States.

1248 (b) The Contractor, without expense to the United States, will care for,
1249 operate, and maintain the transferred works in full compliance with the terms of this Contract
1250 and in such a manner that the transferred works remain in good and efficient condition.

1251 (c) Necessary repairs of the transferred works shall be made promptly by the
1252 Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and
1253 maintenance of the transferred works threatening or causing interruption of water service, the
1254 Contracting Officer may issue to the Contractor a special written notice of those necessary

1255 repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1)
1256 make the necessary repairs; or 2) submit a plan for accomplishing the repairs acceptable to the
1257 Contracting Officer that contains a timeframe for completing the necessary repairs. In the case
1258 of an emergency the written notice of necessary repairs will include a timeframe for completion
1259 of the repairs. If the Contractor fails to either: 1) make the necessary repairs within the identified
1260 timeframe; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting
1261 Officer within 60 days of receipt of the notice and accomplish the repairs within the timeframe
1262 identified therein, the Contracting Officer may cause the repairs to be made, and the cost of those
1263 repairs shall be paid by the Contractor as directed by the Contracting Officer.

1264 (d) The Contractor shall not make any substantial changes in the transferred
1265 works without first obtaining written consent of the Contracting Officer. The Contractor will
1266 take all reasonable measures to prevent any unauthorized encroachment on project land and
1267 rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its
1268 existence.

1269 (e) The Contractor agrees to indemnify the United States for, and hold the
1270 United States and all of its representatives harmless from, all damages resulting from suits,
1271 actions, or claims of any character, except for intentional torts committed by employees of the
1272 United States, brought on account of any injury to any person or property arising out of any act,
1273 omission, neglect, or misconduct in the manner or method of performing any construction, care,
1274 operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or
1275 the United States on transferred works required under this Contract, regardless of who performs
1276 those duties.

1277 (f) The Contractor will cooperate with the Contracting Officer in
1278 implementing an effective dam safety program. The United States agrees to provide the
1279 Contractor and the appropriate agency of the State or States in which the Project facilities are
1280 located with design data, designs, and an operating plan for the dam(s) and related facilities
1281 consistent with the current memorandum of understanding between the United States and the
1282 State of California relating to the coordination of planning, design, construction, operation, and
1283 maintenance processes for dams and related facilities.

1284 (g) In the event the Contractor is found to be operating the transferred works
1285 or any part thereof in violation of this Contract or the Contractor is found to be failing any
1286 financial commitments or other commitments to the United States under the terms and conditions
1287 of this Contract, then upon the election of the Contracting Officer, the United States may take
1288 over from the Contractor the care, operation, and maintenance of the transferred works by giving
1289 written notice to the Contractor of such election and the effective date thereof. Thereafter,
1290 during the period of operation by the United States, upon notification by the Contracting Officer
1291 the Contractor will pay to the United States, annually in advance, the cost of operation and
1292 maintenance of the works as determined by the Contracting Officer. Following written
1293 notification from the Contracting Officer the care, operation, and maintenance of the works may
1294 be transferred back to the Contractor.

1295 (h) In addition to all other payments to be made by the Contractor under this
1296 Contract, the Contractor will reimburse to the United States, following the receipt of a statement
1297 from the Contracting Officer, all miscellaneous costs incurred by the United States for any work
1298 involved in the administration and supervision of this Contract.

1299 (i) Nothing in this article will be deemed to waive the sovereign immunity of
1300 the United States.

1301 O&M BY THE SAN LUIS & DELTA – MENDOTA WATER AUTHORITY

1302 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1303 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1304 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1305 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1306 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1307 affect the rights or obligations of the Contractor or the United States hereunder.

1308 (b) The Contracting Officer has previously notified the Contractor in
1309 writing that the Operation and Maintenance of a portion of the Project facilities which
1310 serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis &
1311 Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the
1312 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1313 successor approved by the Contracting Officer under the terms and conditions of the
1314 separate agreement between the United States and the Operating Non-Federal Entity San
1315 Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates,
1316 charges, or assessments of any kind, including any assessment for reserve funds, which the
1317 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor
1318 determines, sets, or establishes for the Operation and Maintenance of the portion of the Project

1319 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-
1320 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal
1321 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the
1322 Contractor of its obligation to pay directly to the United States the Contractor's share of
1323 the Project Rates, Charges, and Tiered Pricing Component except to the extent the
1324 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments
1325 on behalf of the United States in accordance with the separate agreement identified in
1326 subdivision (a) of this Article.

1327 (c) For so long as the O&M of any portion of the Project facilities
1328 serving the Contractor is performed by Operating Non-Federal Entity San Luis &
1329 Delta-Mendota Water Authority, or any successor thereto, the Contracting Officer
1330 shall adjust those components of the Rates for Water Delivered under this Contract
1331 representing the cost associated with the activity being performed by Operating Non-
1332 Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

1333 (d) In the event the Operation and Maintenance of the Project facilities
1334 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota
1335 Water Authority is re-assumed by the United States during the term of this Contract, the
1336 Contracting Officer shall so notify the Contractor, in writing, and present to the
1337 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid
1338 by the Contractor for Project Water under this Contract representing the Operation and
1339 Maintenance costs of the portion of such Project facilities which have been re-assumed. The
1340 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to

1341 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised
1342 Exhibit “B” directly to the United States in compliance with Article 7 of this Contract.

1343 O&M BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

1344 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor,
1345 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1346 California Department of Water Resources, an Operating Non-Federal Entity by a separate
1347 agreement (14-06-200-9755) between the United States and Operating Non-Federal
1348 Entity California Department of Water Resources. This separate agreement shall not
1349 interfere with or affect the rights or obligations of the Contractor or the United States
1350 hereunder.

1351 (b) The Contracting Officer has previously notified the Contractor in writing
1352 that the O&M of a portion of the Project facilities which serve the Contractor has been
1353 transferred to the Operating Non-Federal Entity California Department of Water
1354 Resources, and the Contractor shall pay directly to Operating Non-Federal Entity San
1355 Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting
1356 Officer under the terms and conditions of the separate agreement between the United
1357 States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1358 described in subdivision (a) of Article 28 of this Contract, all rates, charges, or assessments of
1359 any kind, including any assessment for reserve funds, which Operating Non-Federal Entity
1360 California Department of Water Resources, or such successor determines, sets, or establishes for
1361 the O&M of the conveyance and conveyance pumping portion of the Project facilities
1362 operated and maintained by Operating Non-Federal Entity California Department of

1363 Water Resources, or such successor. Such direct payments to Operating Non-Federal
1364 Entity San Luis & Delta-Mendota Water Authority, or such successor, shall not relieve
1365 the Contractor of its obligation to pay directly to the United States the Contractor's
1366 share of the Project Rates, Charges, and Tiered Pricing Component except to the extent
1367 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1368 payments on behalf of the United States in accordance with the separate agreement
1369 identified in subdivision (a) of Article 28 of this Contract.

1370 (c) For so long as the O&M of any portion of the Project facilities serving
1371 the Contractor is performed by Operating Non-Federal Entity California Department of
1372 Water Resources, or any successor thereto, the Contracting Officer shall adjust those
1373 components of the Rates for Water Delivered under this Contract representing the cost associated
1374 with the activity being performed by Operating Non-Federal Entity California Department of
1375 Water Resources, or its successor.

1376 (d) In the event the O&M of the Project facilities operated and maintained by
1377 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1378 United States during the term of this Contract, the Contracting Officer shall so notify the
1379 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall
1380 include the portion of the Rates and Charges, to be paid by the Contractor for Project
1381 Water under this Contract representing the O&M costs of the portion of such Project
1382 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of
1383 written notification from the Contracting Officer to the contrary, pay the Rates, Charges,

1384 and Tiered Pricing Component specified in the revised Exhibit “B” directly to the United
1385 States in compliance with Article 7 of this Contract.

1386 PUMPING PLANTS, POWER FOR PUMPING PLANTS

1387 28.2. (a) The United States shall furnish and install pumping plants and furnish
1388 the amount of Project power the Contracting Officer determines is necessary to deliver Project
1389 Water to the Contractor from the Delta-Mendota and San Luis Canals, at the point(s) of
1390 delivery identified pursuant to subdivision (a) of Article 5 of this Contract at heads and
1391 elevations sufficient to irrigate by gravity the areas within the Contractor's Service Area
1392 below 700 feet mean sea level elevation.

1393 (b) With advance approval of the Contracting Officer, the Contractor
1394 may, at its own expense, furnish and install pumping facilities, and related electrical
1395 equipment, to enable it to divert and deliver Project Water from the Delta-Mendota and
1396 San Luis Canals before the United States furnishes and installs all the pumping plants
1397 referred to in subdivision (a) of this Article. The United States shall furnish the amount of
1398 Project power needed to operate such pumping facilities; *Provided, That* the Contractor
1399 maintains an agreement with an entity to convey such power to such facilities, and the
1400 Contractor agrees to pay any and all charges assessed by that entity for such service,

1401 (c) The furnishing of power by the United States shall be in conformance
1402 with operating criteria, rules, and regulations, including the Project use power policy,
1403 established by the Contracting Officer; *Provided, That* any such operating criteria, rules,
1404 and regulations, including the Project use power policy, established by the Contracting
1405 Officer shall not excuse the United States from its obligation under subdivision (a) of this

1406 Article. Such operating criteria, rules, and regulations shall be developed in cooperation
1407 with the Contractor and shall be based on acceptable irrigation management practices and the
1408 power generation capacity available to the United States for the furnishing of Project Water to
1409 the Contractor.

1410 (d) The Contracting Officer or his representative shall at all times have
1411 access to and may inspect and investigate the pumping facilities for the purpose of ascertaining
1412 if they are being kept in safe and proper operating condition.

1413 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND
1414 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

1415 29 (a) The Contracting Officer may, from time to time, examine the following:
1416 the Contractor's books, records, and reports; the project works being operated by the Contractor;
1417 the adequacy of the operation and maintenance program[s]; the reserve fund; and the water
1418 conservation program including the water conservation fund, if applicable. Notwithstanding title
1419 ownership, where the United States retains a financial, physical, or liability interest in facilities
1420 either constructed by the United States or with funds provided by the United States, the
1421 Contracting Officer may examine any or all of the project works providing such interest to the
1422 United States.

1423 (b) The Contracting Officer may, or the Contractor may ask the Contracting
1424 Officer to, conduct special inspections of any project works being operated by the Contractor and
1425 special audits of the Contractor's books and records to ascertain the extent of any operation and
1426 maintenance deficiencies to determine the remedial measures required for their correction and to
1427 assist the Contractor in solving specific problems. Except in an emergency, any special
1428 inspection or audit shall be made only after written notice thereof has been delivered to the
1429 Contractor by the Contracting Officer.

1430 (c) The Contractor shall provide access to the project works, operate any
1431 mechanical or electrical equipment, and be available to assist in the examination, inspection, or
1432 audit.

1433 (d) The Contracting Officer shall prepare reports based on the examinations,
1434 inspections, or audits and furnish copies of such reports and any recommendations to the
1435 Contractor.

1436 (e) The costs incurred by the United States in conducting operation and
1437 maintenance examinations, inspections, and audits and preparing associated reports and

1438 recommendations related to high- and significant-hazard dams and associated facilities shall be
1439 nonreimbursable. Associated facilities include carriage, distribution, and drainage systems;
1440 pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and
1441 storage dams (low-hazard); Type 2 bridges which are Bureau of Reclamation-owned bridges not
1442 located on a public road; regulating reservoirs (low-hazard); fish passage and protective
1443 facilities, including hatcheries; river channelization features; rural/municipal water systems;
1444 desalting and other water treatment plants; maintenance buildings and service yards; facilities
1445 constructed under Federal loan programs (until paid out); and recreation facilities (reserved
1446 works only); and any other facilities as determined by the Contracting Officer.

1447 (e) (1) The Contractor shall reimburse the actual cost incurred by the
1448 United States in making O&M examinations, inspections, and audits, and preparing
1449 associated reports and recommendations.

1450 (f) Expenses incurred by the Contractor, as applicable, in participating in the
1451 operation and maintenance site examination will be borne by the Contractor.

1452 (g) Requests by the Contractor for consultations, design services, or
1453 modification reviews, and the completion of any operation and maintenance activities identified
1454 in the formal recommendations resulting from the examination (unless otherwise noted) are to be
1455 funded as project operation and maintenance and are reimbursable by the Contractor to the extent
1456 of current project operation and maintenance allocations.

1457 (h) Site visit special inspections that are beyond the regularly scheduled
1458 operation and maintenance examinations conducted to evaluate particular concerns or problems
1459 and provide assistance relative to any corrective action (either as a follow up to an operation and
1460 maintenance examination or when requested by the Contractor) shall be nonreimbursable.

1461 (i) The Contracting Officer may provide the State(s) an opportunity to
1462 observe and participate in, at its (their) own expense, the examinations and inspections. The
1463 State(s) may be provided copies of reports and any recommendations relating to such
1464 examinations and inspections.

1465 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1466 30. The expenditure or advance of any money or the performance of any obligation of
1467 the United States under this Contract shall be contingent upon appropriation or allotment
1468 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor
1469 from any obligations under this Contract. No liability shall accrue to the United States in case
1470 funds are not appropriated or allotted.

1471

BOOKS, RECORDS, AND REPORTS

1472 31. (a) The Contractor shall establish and maintain accounts and other books and
1473 records pertaining to administration of the terms and conditions of this Contract, including
1474 the Contractor's financial transactions; water supply data; project operations, maintenance, and
1475 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1476 census), land-ownership, land-leasing, and water-use data; and other matters that the
1477 Contracting Officer may require. Reports shall be furnished to the Contracting Officer
1478 in such form and on such date or dates as the Contracting Officer may require. Subject to
1479 applicable Federal laws and regulations, each party to this Contract shall have the right during
1480 office hours to examine and make copies of the other party's books and records relating to
1481 matters covered by this Contract.

1482 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1483 books, records, or other information shall be requested from the Contractor by the
1484 Contracting Officer unless such books, records, or information are reasonably related to the
1485 administration or performance of this Contract. Any such request shall allow the Contractor a
1486 reasonable period of time within which to provide the requested books, records, or
1487 information.

1488 (c) At such time as the Contractor provides information to the Contracting
1489 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1490 to the Operating Non-Federal Entity(ies).

1491 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1492 32. (a) The provisions of this Contract shall apply to and bind the successors and
1493 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1494 therein by either party shall be valid until approved in writing by the other party.

1495 (b) The assignment of any right or interest in this Contract by either party
1496 shall not interfere with the rights or obligations of the other party to this Contract absent the
1497 written concurrence of said other party.

1498 (c) The Contracting Officer shall not unreasonably condition or withhold
1499 approval of any proposed assignment.

1500 SEVERABILITY

1501 33. In the event that a person or entity who is neither (i) a party to a Project contract,
1502 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1503 an association or other form of organization whose primary function is to represent parties to
1504 Project contracts, brings an action in a court of competent jurisdiction challenging the
1505 legality or enforceability of a provision included in this Contract and said person, entity,
1506 association, or organization obtains a final court decision holding that such provision is
1507 legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in
1508 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i)
1509 within 30 days of the date of such final court decision identify by mutual agreement the
1510 provisions in this Contract which must be revised and (ii) within three months thereafter
1511 promptly agree on the appropriate revision(s). The time periods specified above may be
1512 extended by mutual agreement of the parties. Pending the completion of the actions
1513 designated above, to the extent it can do so without violating any applicable provisions of
1514 law, the United States shall continue to make the quantities of Project Water specified in this
1515 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1516 found to be legally invalid or unenforceable in the final court decision.

1517 RESOLUTION OF DISPUTES

1518 34. Should any dispute arise concerning any provisions of this Contract, or the
1519 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt

1520 to resolve the dispute. Prior to the Contractor commencing any legal action, or the
1521 Contracting Officer referring any matter to the Department of Justice, the party shall
1522 provide to the other party 30 days' written notice of the intent to take such action;
1523 Provided, That such notice shall not be required where a delay in commencing an action
1524 would prejudice the interests of the party that intends to file suit. During the 30-day
1525 notice period, the Contractor and the Contracting Officer shall meet and confer in an
1526 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended
1527 to waive or abridge any right or remedy that the Contractor or the United States may have.

1528 OFFICIALS NOT TO BENEFIT

1529 35. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1530 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1531 same manner as other water users or landowners.

1532 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1533 36. (a) While this Contract is in effect, no change may be made in the
1534 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1535 changes which may affect the respective rights, obligations, privileges, and duties of either the
1536 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1537 consolidation, or merger, except upon the Contracting Officer's written consent.

1538 (b) Within 30 days of receipt of a request for such a change, the Contracting
1539 Officer will notify the Contractor of any additional information required by the Contracting
1540 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1541 schedule for timely completion of the process. Such process will analyze whether the proposed
1542 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1543 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1544 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)

1545 have an impact on any Project Water rights applications, permits, or licenses. In addition,
1546 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will
1547 be responsible for all costs incurred by the Contracting Officer in this process, and such
1548 costs will be paid in accordance with Article 24 of this Contract.

1549 FEDERAL LAWS

1550 37. By entering into this Contract, the Contractor does not waive its rights to contest
1551 the validity or application in connection with the performance of the terms and
1552 conditions of this Contract of any Federal law or regulation; *Provided, That* the
1553 Contractor agrees to comply with the terms and conditions of this Contract unless and
1554 until relief from application of such Federal law or regulation to the implementing
1555 provision of the Contract is granted by a court of competent jurisdiction.

1556 NOTICES

1557 38. Any notice, demand, or request authorized or required by this Contract shall be
1558 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1559 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1560 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1561 postage prepaid, or delivered to the Board of Directors of the Panoche Water District, 52027
1562 West Althea Avenue, Firebaugh, CA 93622. The designation of the addressee or the address
1563 may be changed by notice given in the same manner as provided in this Article for other notices.

1564 EMERGENCY RESERVE FUND

1565 39. (a) Commencing on [Effective Date], the Contractor shall accumulate and
1566 maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other
1567 funds are available for use as an emergency reserve fund. The Contractor shall establish and
1568 maintain that emergency reserve fund to meet costs incurred during periods of special stress
1569 caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or
1570 causing interruption of water service.

1571 (b) The Contractor shall accumulate the reserve fund with annual deposits or
1572 investments of not less than [CONTRACTOR SPECIFIC] to a Federally insured, interest- or
1573 dividend-bearing account or in securities guaranteed by the Federal Government: *Provided, That*

1574 money in the reserve fund, including accrued interest, shall be available within a reasonable time
1575 to meet expenses for such purposes as those identified in paragraph (d) herein. Such annual
1576 deposits and the accumulation of interest to the reserve fund shall continue until the basic
1577 amount of [CONTRACTOR SPECIFIC] is accumulated. Following an emergency
1578 expenditure from the fund, the annual deposits shall continue from the year following the
1579 emergency expenditure until the previous balance is restored. After the initial amount is
1580 accumulated or after the previous balance is restored, the annual deposits may be discontinued,
1581 and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

1582 (c) Upon mutual written agreement between the Contractor and the
1583 Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to
1584 account for risk and uncertainty stemming from the size and complexity of the project; the size
1585 of the annual operation and maintenance budget; additions to, deletions from, or changes in
1586 project works; and operation and maintenance costs not contemplated when this Contract was
1587 executed.

1588 (d) The Contractor may make expenditures from the reserve fund only for
1589 meeting routine or recurring operation and maintenance costs incurred during periods of special
1590 stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary operation
1591 and maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or
1592 for meeting betterment costs (in situations where recurrence of severe problems can be
1593 eliminated) during periods of special stress. Proposed expenditures from the fund shall be
1594 submitted to the Contracting Officer in writing for review and written approval prior to
1595 disbursement. Whenever the reserve fund is reduced below the current balance by expenditures
1596 therefrom, the Contractor shall restore that balance by the accumulation of annual deposits as
1597 specified in paragraph (b) herein.

1598 (e) During any period in which any of the project works are operated and
1599 maintained by the United States, the Contractor agrees the reserve fund shall be available for like
1600 use by the United States.

1601 (f) On or before _____ of each year, the Contractor shall provide a current
1602 statement of the principal and accumulated interest of the reserve fund account to the Contracting
1603 Officer.

1604 ADMINISTRATION OF FEDERAL PROJECT LANDS

1605 40. (a) The lands and interests in lands acquired, withdrawn, or reserved and
1606 needed by the United States for the purposes of care, operation, and maintenance of San Luis
1607 Unit facilities may be used by the Contractor for such purposes. The Contractor shall ensure that
1608 no unauthorized encroachment occurs on Federal project lands and rights-of-way. The
1609 Contractor does not have the authority to issue any land-use agreement or grant that conveys an
1610 interest in Federal real property, nor to lease or dispose of any interest of the United States.

1611 (b) The United States retains responsibility for compliance with the National
1612 Historic Preservation Act of 1966 (NHPA), and the Native American Graves Protection and
1613 Repatriation Act of 1990 (NAGPRA). The Contractor will notify the Contracting Officer and,
1614 only when on tribal land, also notify the appropriate tribal official, immediately upon the
1615 discovery of any potential historic properties or Native American human remains, funerary
1616 objects, sacred objects, or objects of cultural patrimony.

1617 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

1618 41. (a) The Contractor shall not allow contamination or pollution of Federal
1619 project lands, project waters, or project works of the United States or administered by the United
1620 States and for which the Contractor has the responsibility for care, operation, and maintenance
1621 by its employees or agents. The Contractor shall also take reasonable precautions to prevent
1622 such contamination or pollution by third parties.

1623 (b) The Contractor shall comply with all applicable Federal, State, and local
1624 laws and regulations and Bureau of Reclamation policies and instructions existing, or hereafter
1625 enacted or promulgated, concerning any hazardous material that will be used, produced,
1626 transported, stored, released, or disposed of on or in Federal project lands, project waters, or
1627 project works.

1628 (c) "Hazardous material" means (1) any substance falling within the
1629 definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the
1630 Comprehensive Environmental Response, Compensation and Liability Act
1631 (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act
1632 (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution,
1633 refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides,
1634 and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal,
1635 State, local or Tribal law.

1636 (d) Upon discovery of any event which may or does result in contamination or
1637 pollution of Federal project lands, project water, or project works, the Contractor shall
1638 immediately undertake all measures necessary to protect public health and the environment,
1639 including measures necessary to contain or abate any such contamination or pollution, and shall
1640 report such discovery with full details of the actions taken to the Contracting Officer. Reporting
1641 shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery
1642 if it is an emergency and the first working day following discovery in the event of a non-
1643 emergency.

1644 (e) If violation of the provisions of this Article occurs and the Contractor does
1645 not take immediate corrective action, as determined by the Contracting Officer, the Contractor
1646 may be subject to remedies imposed by the Contracting Officer, which may include termination
1647 of this Contract.

1648 (f) The Contractor shall be liable for any response action or corrective
1649 measure necessary to protect public health and the environment or to restore Federal project
1650 lands, project waters, or project works that are adversely affected as a result of such violation,
1651 and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State,
1652 local, or Tribal laws and regulations concerning hazardous material. At the discretion of the
1653 Contracting Officer, the United States may also terminate this Contract, as a result of such
1654 violation.

1655 (g) The Contractor shall defend, indemnify, protect and save the United States
1656 harmless from and against any costs, expenses, claims, damages, demands, or other liability
1657 arising from or relating to Contractor's violation of this Article.

1658 (h) The Bureau of Reclamation agrees to provide information necessary for
1659 the Contractor, using reasonable diligence, to comply with the provisions of this Article.

1660 RECLAMATION REFORM ACT OF 1982

1661 42. (a) Upon a Contractor's compliance with and discharge of the Repayment
1662 Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation
1663 Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

1664 (b) The obligation of a Contractor to pay the Additional Capital Obligation
1665 shall not affect the Contractor's status as having repaid all of the construction costs assignable to
1666 the Contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation
1667 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1668 CERTIFICATION OF NONSEGREGATED FACILITIES

1669 43. The Contractor hereby certifies that it does not maintain or provide for its
1670 employees any segregated facilities at any of its establishments and that it does not permit its
1671 employees to perform their services at any location under its control where segregated facilities
1672 are maintained. It certifies further that it will not maintain or provide for its employees any
1673 segregated facilities at any of its establishments and that it will not permit its employees to
1674 perform their services at any location under its control where segregated facilities are
1675 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
1676 Employment Opportunity clause in this Contract. As used in this certification, the term
1677 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
1678 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
1679 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing

1717 (d) Programs for the control of undesirable plants and animals on Federal
1718 project lands, and in Federal project waters and Federal project works for which the Contractor
1719 has operation and maintenance responsibility will incorporate Integrated Pest Management
1720 (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible
1721 program to maintain pest populations within economically and environmentally tolerable levels.
1722 In implementing an IPM program, the Contractor will adhere to applicable Federal and State
1723 laws and regulations and Department of the Interior and Bureau of Reclamation policies,
1724 directives, guidelines, and manuals, including but not limited to, the Department of the Interior
1725 Manual, Part 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the
1726 Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February
1727 3, 1999.

1728 MEDIUM FOR TRANSMITTING PAYMENT

1729 45. (a) All payments from the Contractor to the United States under this Contract
1730 shall be by the medium requested by the United States on or before the date payment is due. The
1731 required method of payment may include checks, wire transfers, or other types of payment
1732 specified by the United States.

1733 (b) Upon execution of this Contract, the Contractor shall furnish the
1734 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1735 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1736 out of the Contractor's relationship with the United States.

1737 CONTRACT DRAFTING CONSIDERATIONS

1738 46. This amended Contract has been negotiated and reviewed by the parties hereto,
1739 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1740 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1741 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1742 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1743 CONFIRMATION OF CONTRACT

1744 47. Promptly after the execution of this amended Contract, the Contractor will
1745 provide to the Contracting Officer a certified copy of a final decree of a court of competent
1746 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1747 for the authorization of the execution of this amended Contract. This amended Contract shall not
1748 be binding on the United States until the Contractor secures a final decree.

1749

1750 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1751 and year first above written.

1752 UNITED STATES OF AMERICA

1753 By: _____
1754 Regional Director
1755 Interior Region 10: California-Great Basin
1756 Bureau of Reclamation

1757 PANOUCHE WATER DISTRICT
1758 (SEAL)

1759 By: _____
1760 President of the Board of Directors

1761 Attest:

1762 By: _____
1763 Secretary of the Board of Directors