

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

CONTRACT BETWEEN THE UNITED STATES
AND
WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 1
PROVIDING FOR PROJECT WATER SERVICE
AND FACILITIES REPAYMENT

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THIS CONTRACT, made this ____ day of _____ 20__, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263) , October 27, 1986 (100 Stat. 3050), as amended Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706) , as amended, and the Water Infrastructure Improvements for the Nation Act (Public Law 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) (“WIIN Act”), all collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 1, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

WITNESSETH, That:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, 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-Mendota Canal and related facilities, hereinafter collectively referred to as the Delta Division facilities, 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 Widren Water District (District) and the United States entered into Contract No. 14-06-200-8018, which provided the District, Central Valley Project water from the Delta-Mendota Canal from September 28, 1959 to February 28, 1995; and

[4th] WHEREAS, the United States and the District entered into Contract No. 14-06-200-8018-IR1 and subsequent Interim Renewal Contracts 14-06-200-8018-IR2 through 14-06-200-8018-IR8, which provided for the continued water service to the District from March 1, 1995, through February 28, 2006; and

[5th] WHEREAS, the Contractor and the District executed an agreement on February 28, 2006, which assigned to the Contractor all right, title, and interest to Contract No. 14-06-200-8018-IR8; and

[6th] WHEREAS, the United States and the Contractor entered into Contract Number 14-06-200-8018-IR9 and subsequent Interim Renewal Contracts 14-06-200-8018-IR10 through 14-06-200-8018-IR16, the last of which is hereinafter referred to as the "Existing Contract",

which established terms for the delivery of Project Water to the Contractor from the Delta Division, and which was in effect the date the WIIN Act was enacted; and

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

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

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

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

[11th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water

service or repayment contractor to receive water; or (4) except as expressly provided in this section, any obligations under the Federal Reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

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

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

[14th] WHEREAS, the Contracting Officer has determined that the Contractor has the capability to fully utilize for reasonable and beneficial use, or shown projected future reasonable and beneficial use for, the quantity of Project Water to be made available to it pursuant to this Contract; and

[15th] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[16th] WHEREAS, the Contracting Officer and the Contractor agree to amend and convert the Existing Contract pursuant to section 4011 of the WIIN Act and other Federal Reclamation law on the terms and conditions set forth below;

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

DEFINITIONS

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

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

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

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

(d) "Contractor's Boundaries" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract;

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

(f) "Delivered Water" or "Water Delivered" shall mean Project Water made available to the Contractor and diverted at the point(s) of delivery approved by the Contracting Officer;

(g) "Eligible Lands" shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended;

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

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

(j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or 202(3) of the Reclamation Reform Act of 1982, whichever is applicable;

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

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

(m) "Landholder" shall mean an individual or entity attributed with the total irrigable acreage of one or more tracts of land situated in one or more districts owned and/or operated under a lease which is served with Irrigation Water pursuant to a contract with the United States;

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

(o) "Operation and Maintenance" or "O&M" shall mean normal and reasonable care, control, operation, repair, replacement and maintenance of Project facilities;

(p) "Operating Non-Federal Entity" shall mean a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Delta Division facilities pursuant to an agreement with the United States;

(q) "Project" shall mean the Central Valley Project owned by the United States and operated by the Department of the Interior, Bureau of Reclamation;

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

(s) "Project Water" shall mean all water that is developed, diverted, stored, or delivered by the United States in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of applicable water rights permits and licenses acquired by and/or issued to the United States pursuant to California law;

(t) "Rates" shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable water ratesetting policies for the Project;

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

(v) "Secretary" or "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or his duly authorized representative;

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

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

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

TERM OF CONTRACT – RIGHT TO USE OF WATER

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

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

(2) Provided, further, That the Contracting Officer shall not seek to suspend making water available or declaring Water Made Available pursuant to this Contract for non-compliance by the Contractor with the terms of this Contract or Federal law, unless the Contracting Officer has first provided at least thirty (30) calendar days written notice to the Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence

curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully cured within the thirty (30) calendar days' notice period. If the Contracting Officer has suspended making water available pursuant to this paragraph, upon cure of such non-compliance satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

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

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

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

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

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) Subject to the provisions set forth in Articles 11 and 12 of this Contract, and consistent with applicable State water rights, permits, and licenses, the Contractor is entitled to, and the Contracting Officer shall be obligated to make available to the Contractor up to 2,990 acre-feet of Project Water during any Year for Irrigation and/or Municipal and Industrial purposes. The quantity of Project Water delivered to the Contractor in accordance with this

subdivision of this Article 3 in any Year shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract, and shall not exceed the quantity of Project Water the Contractor intends to put to reasonable beneficial use within the Contractor's Boundaries or sold, transferred, or exchanged pursuant to Article 9 of this Contract.

(b) The Contractor shall utilize the Project Water made available to it pursuant to this Contract in accordance with all applicable requirements of any Biological Opinion addressing the execution of this Contract developed pursuant to Section 7 of the Endangered Species Act of 1973 as amended, and in accordance with environmental documentation as may be required for specific activities, including conversion of Irrigation Water to M&I Water.

(c) The Contractor shall make reasonable and beneficial use of Project Water or other water furnished pursuant to this Contract. In addition, use of Project Water in a groundwater recharge program shall be permitted under this Contract to the extent that it is carried out in accordance with California law: Provided, however, That such groundwater recharge program cannot be undertaken unless and until the Contractor submits a groundwater management plan pursuant to California law that demonstrates that such groundwater recharge program will result in a reasonable and beneficial use of such water.

(d) If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor in addition to the quantity of Project Water made available to the Contractor pursuant to subdivision (a) of this Article, the Contracting Officer shall so notify the Contractor. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

(e) If the Contractor requests permission to reschedule for use during the subsequent Year some or all of the Project Water made available to the Contractor during the current Year or to use, during the current Year, that quantity of Project Water the United States has agreed to make available to the Contractor during the subsequent Year, the Contracting Officer may permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

(f) The Contractor's rights pursuant to Federal Reclamation law and applicable State law to the beneficial use of water furnished pursuant to this Contract shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under subdivision (b) of Article 12 of this Contract.

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

TIME FOR DELIVERY OF WATER

4. (a) On or about February 20, of each Calendar Year, the Contracting Officer shall declare the amount of Project Water estimated to be made available to the Contractor pursuant to this Contract for the upcoming Year. The declaration will be updated monthly, as necessary, based on current hydrologic conditions. The Contracting Officer shall make available the forecast of Project operations, with relevant supporting information, upon the written request of the Contractor or its representatives. Upon written request of the Contractor, the Contracting

Officer shall provide the basis of the estimate which shall include, but not be limited to, a monthly pumping forecast for the O'Neill Pumping Plant, the projected carryover of Project reservoirs, projected CVPIA impacts, projected Endangered Species Act and all other regulatory impacts.

(b) On or before each March 1, the Contractor shall submit to the Contracting Officer and at such other times as necessary, a written schedule, satisfactory to the Contracting Officer, showing the times and quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract, and consistent with subdivision (a) of Article 3 of this Contract.

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

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) The Project Water to be furnished to the Contractor pursuant to this Contract shall be made available to the Contractor at either of the mileposts identified in Exhibit B and any additional point or points of delivery either on Delta Division facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor

(b) The Contracting Officer shall make all reasonable efforts to maintain sufficient flows and levels of water in the Delta-Mendota Canal to furnish Project Water to the Contractor at the full design capacity of the turnout(s) established as a delivery point(s) pursuant to subdivision (a) of this Article.

(c) Irrigation Water furnished to the Contractor pursuant to this Contract shall be delivered by the Contractor in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. Project Water shall not be delivered to land outside the Contractor's Boundaries unless approved in advance by the Contracting Officer.

(d) All Project Water delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the United States or the responsible Operating Non-Federal Entity at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. The Contractor shall advise the Contracting Officer on or before the 10th calendar day of each month of the quantity of M&I Water taken during the preceding month.

(e) Neither the United States nor any Operating Non-Federal Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water made available to the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor shall indemnify the United States its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any damage or claim arising out of (i) acts performed by the United States or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of creating the

situation resulting in any damage or claim; (ii) willful misconduct of the United States or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity, or (iii) negligence of the United States or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity.

MEASUREMENT OF WATER WITHIN THE DISTRICT

6. (a) Within five (5)-years of the effective date of this Contract, the Contractor shall ensure that, unless the Contractor establishes an alternative measurement program satisfactory to the Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Boundaries is measured at each agricultural turnout and such water delivered for Municipal and Industrial purposes is measured at each Municipal and Industrial service connection. All water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure proper management of the water; to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for Municipal and Industrial purposes by customer class as defined in its water conservation plan. Nothing herein contained in this Article, however, shall preclude the Contractor from establishing and collecting any charges, assessments or other revenues authorized by California law. The Contractor shall include a summary of its annual surface water deliveries in the annual report described in subdivision (d) of Article 24 of this Contract.

(b) Omitted.

(c) All new surface water delivery systems installed within the Contractor's Boundaries after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (a) of this Article.

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

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

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

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

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

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

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

the third anniversary of the effective date of the contract]. If the installment payment option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using the same methodology as was used to compute the initial annual installment payment amount, which is illustrated in Exhibit C. Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

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

(1) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under section 4011 of the WIIN Act is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable

to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer notifies the Contractor of the Additional Capital Obligation; *Provided, That* the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

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

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

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

(1) Prior to July 1, of each Calendar Year, the Contracting Officer shall provide the Contractor the preliminary calculation of the Charges that will be applied for

the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and identify the statutes, regulations and guidelines used as the basis for such calculations. On or before September 15, of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "A."

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

(d) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall pay the United States the total amount payable pursuant to the applicable Rate(s) for all Project Water scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the end of the first month or part thereof of the Year, and before the end of each calendar month thereafter, the Contractor shall pay pursuant to the applicable Rate(s) for all Project Water scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between the payments for the scheduled amount of Project Water and the appropriate payments for quantities of Delivered Water furnished pursuant to this Contract each month shall be made before the end of the

434 following month: *Provided, That* any revised schedule submitted by the Contractor pursuant to
435 Article 4 of this Contract, which increases the amount of Project Water to be delivered pursuant
436 to this Contract during any month shall be accompanied with appropriate payment for Rates to
437 assure that Project Water is not furnished to the Contractor in advance of such payment. In any
438 month in which the quantity of Delivered Water furnished to the Contractor pursuant to this
439 Contract equals the quantity of Project Water scheduled and paid for by the Contractor, no
440 additional Project Water shall be made available to the Contractor unless and until payment of
441 Rates for such additional Project Water is made. Final adjustment between the payments of
442 Rates for the Project Water scheduled and the quantities of Delivered Water furnished during
443 each Year pursuant to this Contract shall be made as soon as possible but no later than April 30th
444 of the following Year.

445 (e) The Contractor shall also make a payment in addition to the Rate(s) in
446 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and
447 appropriate Tiered Pricing Component then in effect, before the end of the month following the
448 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
449 Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be
450 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the
451 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if
452 there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report
453 shall be deemed a bill for the payment of Charges and applicable Tiered Pricing Component for
454 Water Delivered. Adjustment for overpayment or underpayment of Charges and the Tiered
455 Pricing Component shall be made through the adjustment of payments due to the United States

for Charges for the next month. Any amount to be paid for past due payment of Charges shall be computed pursuant to Article 18 of this Contract.

(f) The Contractor shall pay for any Project Water provided under subdivision (d) or (e) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes, regulations, guidelines, and policies.

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

(h) Revenues received by the United States pursuant to this Contract shall be allocated and applied in accordance with Federal Reclamation law, including but not limited to, subsection 3 of Section 1 of the Act of July 2, 1956 (70 Stat. 483), and subsection (f) of Section 3405, subsection (c)(1) of Section 3406 and subsection (d)(2)(A) of Section 3407 of the CVPIA, and the associated regulations, including but not limited to, the Project Irrigation Water ratesetting policy and the Project M&I Water ratesetting policy promulgated pursuant to the Administrative Procedures Act.

(i) At the Contractor's request, the Contracting Officer shall provide to the Contractor an accounting of all of the expenses allocated and the disposition of all revenues received pursuant to this Contract in sufficient detail to allow the Contractor to determine that the allocation of expenses and disposition of all revenues received was accomplished in conformance with Federal Reclamation law and the associated regulations. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes arising out of said accounting of the Contractor's review thereof.

(j) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,

479 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,
480 and/or for making and allocating payments, other than those set forth in this Article would be in
481 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
482 agreements to modify the mechanisms, policies and procedures for any of those purposes while
483 this Contract is in effect without amending this Contract.

484 (k) 1. Beginning at such time as deliveries of Project Water in a Year
485 exceed 80 percent of the Contract Total, then before the end of the month following the month of
486 delivery the Contractor shall make an additional payment to the United States equal to the
487 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
488 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
489 Contract Total, shall equal one-half of the difference between the Rate established under
490 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
491 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
492 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
493 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water
494 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
495 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract
496 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in
497 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

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

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

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

511 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

512 8. The Contractor and the Contracting Officer concur that at the time of execution of
513 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and
514 shall have no further liability therefor.

515 TRANSFERS OR EXCHANGES OF WATER

516 9. The right to Project Water provided for in this Contract may be sold, transferred,
517 or exchanged to others for beneficial uses within the State of California if such sale, transfer, or
518 exchange is authorized by applicable Federal laws, State laws, and applicable guidelines or
519 regulations then in effect. The right to sell, transfer, or exchange Project Water shall include,
520 and the Contracting Officer shall apply this Article in a manner that does not impede or restrict,
521 lawful short-term sales, transfers, or exchanges of the type the District and Contractor
522 historically carried out with approval of the Contracting Officer under Contract No. 14-06-200-
523 8018, as amended, assigned, and renewed. No sale, transfer, or exchange of the right to Project
524 Water under this Contract may take place without the prior written approval of the Contracting
525 Officer.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor shall be applied first to any accrued indebtedness arising out of this Contract then due and payable by the Contractor. Any amount of such overpayment then remaining shall, at the option of the Contractor, be refunded to the Contractor or credited upon amounts to become due to the United States from the Contractor under the provisions of this Contract in the following months. With respect to overpayment, such adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the water supply provide for in this Contract.

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

TEMPORARY REDUCTIONS – RETURN FLOWS

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

(b) The United States may temporarily discontinue or reduce the quantity of Project Water to be delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as

feasible the Contracting Officer will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given: *Provided, That* the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction: *Provided, further, That* with respect to any quantity of Project Water not delivered after a discontinuance or reduction the Contractor shall be relieved of its scheduling and payment obligations for such quantity of Project Water.

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

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

(c) In any Year in which there may occur a shortage for any of the reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion the available Project Water supply among the Contractor and others entitled, under existing contracts and future contracts (to the extent such future contracts are permitted under subsections (a) and (b) of Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the contractual obligations of the United States.

(d) Subject to subdivision (c) of this Article, in any Year in which there may occur a shortage for any of the reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion the available Project Water among the Contractor and others entitled to receive Project Water from the Delta-Mendota Canal as follows:

(1) A determination shall be made of the total quantity of water scheduled to be delivered during the respective Year under all contracts then in force for the delivery of water from the Delta-Mendota Canal, the quantity so determined being herein referred to as the contractual commitments from the Delta-Mendota Canal.

(2) The total quantity of water scheduled to be delivered to the Contractor from the Delta-Mendota Canal during the respective Year under subdivision (a) of Article 3 of this Contract shall be divided by the contractual commitments, the quotient thus obtained being herein referred to as the Contractor's contractual entitlement from the Delta-Mendota Canal.

(3) The supply determined by the Contracting Officer to be available from the Delta-Mendota Canal shall be multiplied by the Contractor's contractual entitlement and the result shall be the quantity of water required to be delivered by the United States to the Contractor for the respective Year from the Delta-Mendota Canal.

UNAVOIDABLE GROUNDWATER PERCOLATION

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

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

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

PROTECTION OF WATER AND AIR QUALITY

15. (a) Omitted

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

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

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

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

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

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

OPINIONS AND DETERMINATIONS

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

reserve the right to relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner.

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

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

686 limited to, the following: employment, upgrading, demotion, or transfer; recruitment or
687 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
688 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
689 places, available to employees and applicants for employment, notices to be provided by the
690 Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

695 (c) The Contractor will not discharge or in any other manner discriminate
696 against any employee or applicant for employment because such employee or applicant has
697 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
698 employee or applicant. This provision shall not apply to instances in which an employee who
699 has access to the compensation information of other employees or applicants as part of such
700 employee's essential job functions discloses the compensation of such other employees or
701 applicants to individuals who do not otherwise have access to such information, unless such
702 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
703 proceeding, hearing, or action, including an investigation conducted by the employer, or is
704 consistent with the Contractor's legal duty to furnish information.

705 (d) The Contractor will send to each labor union or representative of workers
706 with which it has a collective bargaining agreement or other contract or understanding, a notice,
707 to be provided by the Contracting Officer, advising the labor union or workers' representative of
708 the Contractor's commitments under section 202 of Executive Order No. 11246 of September
709 24, 1965, and shall post copies of the notice in conspicuous places available to employees and
710 applicants for employment.

711 (e) The Contractor will comply with all provisions of Executive Order No.
712 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
713 of Labor.

714 (f) The Contractor will furnish all information and reports required by
715 Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of
716 the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and
717 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to
718 ascertain compliance with such rules, regulations, and orders.

719 (g) In the event of the Contractor's noncompliance with the nondiscrimination
720 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
721 canceled, terminated or suspended in whole or in part and the Contractor may be declared
722 ineligible for further Government contracts in accordance with procedures authorized in
723 Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed
724 and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by
725 rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

21. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. 6101, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

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

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

PRIVACY ACT COMPLIANCE

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

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

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

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

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

(f) Upon complete payment of the Repayment Obligation by the Contractor, this Article 22 will no longer be applicable.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

24. (a) Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations). Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives.

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

(c) As part of the water conservation program, the Contractor shall develop and be implementing a tiered block water pricing program that promotes conservation and the efficient management of Project Water within eighteen (18) months of the effective date of this Contract. Such pricing program for Project Water shall take into account all relevant circumstances, including without limitation, water shortages imposed under this Contract and the availability and cost of the Contractor's and individual water user's non-Project alternative sources of supply, including groundwater and other non-Project water supplies, so that the Contractor's pricing structure provides incentives for conservation and the efficient management of overall water supply available to water users served by the Contractor. Provided, That no such tiered block water pricing program need be implemented by the Contractor if the Contracting Officer determines, based on information provided by the Contractor, that (i) such a pricing structure will not result in significant conservation of water available for use within the Contractor's Boundaries, including groundwater or (ii) other pricing program, conservation, or management measures are more appropriate and/or will result in comparable or better conservation of the water supplies available within the Contractor's Boundaries. Provided, further, That if the Contractor fails to, or elects not to, comply with this subdivision of this Article 24, then any subsequent Contract shall contain a tiered pricing contractual provision pursuant to subsection (d) of Section 3405 of the CVPIA.

(d) The Contractor shall submit to the Contracting Officer by December 31, of each Calendar Year, an annual report on the status of its implementation of the water conservation program.

(e) At five (5)-year intervals, the Contractor shall revise its water conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating

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

(ef) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, subsection (b) of this Article 24 of this Contract shall no longer be applicable.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

26. (a) The responsibility for performing and, in some cases, funding the O&M of all or any portion of the Delta Division facilities may be transferred to an Operating Non-Federal Entity by one or more separate agreements between the United States and the Operating Non-Federal Entity. Any such agreement(s) shall require the Operating Non-Federal Entity to perform the O&M in compliance with the provisions of this Contract and shall not interfere with the rights and obligations of the Contractor and the United States under this Contract.

(b) The Contracting Officer has previously notified the Contractor in writing that the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets, or establishes for the Operation and Maintenance of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity or such successor. Such direct payments to Operating Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article.

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

specified in the revised Exhibit “A” directly to the United States in compliance with Article 7 of this Contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

BOOKS, RECORDS, AND REPORTS

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

SEVERABILITY

30. In the event that a person or entity who is neither (i) a party to a Project Contract, nor (ii) a person or entity that receives Project Water from a party to a Project Contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project Contracts, brings an action in a court of competent jurisdiction challenging the legality or

enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

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

RECLAMATION REFORM ACT OF 1982

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

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

CERTIFICATION OF NONSEGREGATED FACILITIES

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

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

MEDIUM FOR TRANSMITTING PAYMENT

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

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

995 NOTICES

996 36. Any notice, demand, or request authorized or required by this Contract shall be
997 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
998 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
999 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1000 postage prepaid, or delivered to the Board of Directors of the Westlands Water District
1001 Distribution District No. 1, P.O. Box 6056, Fresno, California 93703-6056. The designation of
1002 the addressee or the address may be changed by notice given in the same manner as provided in
1003 this Article for other notices.

1004 CONTRACT DRAFTING CONSIDERATIONS

1005 37. This amended Contract has been negotiated and reviewed by the parties hereto,
1006 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1007 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1008 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1009 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1010 CONFIRMATION OF CONTRACT

1011 38. Promptly after the execution of this amended Contract, the Contractor will
1012 provide to the Contracting Officer a certified copy of a final decree of a court of competent
1013 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1014 for the authorization of the execution of this amended Contract. This amended Contract shall not
1015 be binding on the United States until the Contractor secures a final decree.

1017 and year first above written.

1018 UNITED STATES OF AMERICA

1019 By: _____
1020 Regional Director
1021 Mid-Pacific Region
1022 Bureau of Reclamation

1023 WESTLANDS WATER DISTRICT DISTRIBUTION
1024 DISTRICT NO. 1
1025 (SEAL)

1026 By: _____
1027 President of the Board of Directors

1028 Attest:

1029 By: _____
1030 Secretary of the Board of Directors