



— BUREAU OF —
RECLAMATION

NEWS RELEASE

For Release: June 30, 2020

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Reclamation announces 60-day comment period for draft contracts for Central Valley Project South-of-Delta Contractors

FRESNO, Calif. - The Bureau of Reclamation announced today ongoing congressionally mandated contract conversions pursuant to the Water Infrastructure Improvements for the Nation Act (WIIN Act). Today's release includes draft repayment contracts from the Central Valley Project south-of-delta contractors for a 60-day public comment period. These are 15 of over 80 repayment contract conversions requested by federal Central Valley Project contractors.

The contractors include Banta-Carbona Irrigation District, Byron-Bethany Irrigation District, Contra Costa Water District, Del Puerto Water District, Eagle Field Water District, Mercy Springs Water District, The West Side Irrigation District, West Stanislaus Irrigation District, Westlands Water District - Assignment from Oro Loma Water District, Fresno Slough Water District, James Irrigation District, Patterson Irrigation District, Reclamation District No. 1606, Tranquility Irrigation District, and Tranquility Public Utility District.

Reclamation plans to release additional draft repayment contracts with south-of-delta contractors, as applicable for public review in 2020. Reclamation will continue to release more draft repayment contracts throughout the year.

Section 4011 of the WIIN Act directs Reclamation to convert water service contracts to repayment contracts upon a contractor's request and authorizes prepayment of outstanding CVP construction costs. Under Section 4011, full repayment is due within three years of the contract conversion.

Both the prepayment and accelerated repayment of the contracts will result in the federal government being repaid well in advance of the original repayment deadline. These dollars will be placed in an account to fund much-needed storage projects. Increasing storage capacity will allow Reclamation's projects to capture additional water in wet years to help meet the water needs for project purposes in dry years.

Written comments on this contract must be received by close of business on August 31, 2020 and sent to Erma Leal, South Central California Area Office, Bureau of Reclamation, 1243 N Street, Fresno CA 93721 or faxed to 559-262-0371 or emailed to eal@usbr.gov. Check the following links to learn more about WIIN Act CVP contract conversions:

All negotiated contracts are available at: <https://www.usbr.gov/mp/wiin-act/negotiated-conversion-contracts.html>.

The entire list of contract conversion requests can be viewed here: <https://www.usbr.gov/mp/wiin-act/docs/the-wiin-act-9d-conversion-tracker.xlsx>.

View contract and WIIN Act information at <https://www.usbr.gov/mp/wiin-act/>.

Contact Erma Leal for more information at 559-262-0350 or eal@usbr.gov or (TTY 800-877-8339).

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

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

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CONTRACT BETWEEN THE UNITED STATES
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FROM DELTA DIVISION AND FACILITIES REPAYMENT

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

14 WITNESSETH, That:

EXPLANATORY RECITALS

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

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

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

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

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

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

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

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

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

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

65 [10th] WHEREAS, the Contractor requested subsequent renewal and
66 consolidation of Contract No(s). 14-06-200-922-IR2 and 14-06-200-4323-IR1 pursuant to,
67 Federal Reclamation law, and the laws of the State of California, for water service from the
68 Central Valley Project; and

69 [11th] WHEREAS, the United States and the Contractor have pursuant to
70 Subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA),
71 subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-
72 200-922-IR3 and subsequent Interim Renewal Contracts 14-06-200-922-IR4 through 14-06-
73 200-922-IR10, which provided for water service to the Contractor from March 1, 1997
74 through February 28, 2006; and

75 [12th] WHEREAS, the United States and the Contractor entered into a long-term
76 contract identified as Contract No. 14-06-200-922-LTR1, hereinafter referred to as the Existing
77 Contract, which provided for the continued water service to the Contractor following expiration
78 of Contract No. 14-06-200-922-IR10, and which was in effect the date the WIIN Act was
79 enacted; and

80 [13th] WHEREAS, on December 16, 2016, the 114th Congress of the United
81 States of America enacted the WIIN Act; and

82 [14th] WHEREAS, Section 4011(a)(1) provides that “upon request of the
83 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
84 date of enactment of this subtitle and between the United States and a water users’ association

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

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

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

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

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

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

110 [19th] WHEREAS, the United States has determined that the Contractor
111 has fulfilled all of its obligations under the Existing Contract; and

112 [20th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
113 Contracting Officer that the Contractor has utilized the Project Water supplies available
114 to it for reasonable and beneficial use and/or has demonstrated future demand for water
115 use such that the Contractor has the capability and expects to utilize fully for reasonable
116 and beneficial use the quantity of Project Water to be made available to it pursuant to
117 this Contract; and

118 [21st] WHEREAS, water obtained from the Project has been relied upon by
119 urban and agricultural areas within California for more than 50 years, and is considered
120 by the Contractor as an essential portion of its water supply; and

121 [22nd] WHEREAS, the economies of regions within the Project, including the
122 Contractor's, depend upon the continued availability of water, including water service
123 from the Project; and

124 [23rd] WHEREAS, the Secretary intends through coordination, cooperation, and
125 partnerships to pursue measures to improve water supply, water quality, and reliability of the
126 Project for all Project purposes; and

127 [24th] WHEREAS, the mutual goals of the United States and the Contractor
128 include: to provide for reliable Project Water supplies; to control costs of those supplies;

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

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

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

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

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

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

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

149

DEFINITIONS

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1. When used herein unless otherwise distinctly expressed, or manifestly

151

incompatible with the intent of the parties as expressed in this Contract, the term:

152

(a) "Additional Capital Obligation" shall mean construction costs or other

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capitalized costs incurred after the Effective Date or not reflected in the Existing Capital

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Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and

155

(a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130

156

Stat. 1628) ("WIIN Act");

157

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

158

both dates inclusive;

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(c) "Charges" shall mean the payments required by Federal Reclamation law

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in addition to the Rates and Tiered Pricing Component specified in this Contract as

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determined annually by the Contracting Officer pursuant to this Contract;

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(d) "Condition of Shortage" shall mean a condition respecting the Project

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during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the

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Contract Total;

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(e) "Contracting Officer" shall mean the Secretary of the Interior's duly

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authorized representative acting pursuant to this Contract or applicable Federal Reclamation law

167

or regulation;

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(f) "Contract Total" shall mean the maximum amount of water to which the

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Contractor is entitled under subdivision (a) of Article 3 of this Contract;

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

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

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

182 (j) "Eligible Lands" shall mean all lands to which Irrigation Water may be
183 delivered in accordance with Section 204 of the Reclamation Reform Act of 1982 (96 Stat.
184 1263), as amended;

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

188 (l) "Existing Capital Obligation" shall mean the remaining amount of
189 construction costs or other capitalized costs allocable to the Contractor as described in section
190 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
191 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

268 TERM OF CONTRACT – RIGHT TO USE OF WATER

269 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the
270 "Effective Date", and shall continue so long as the Contractor pays applicable Rates and Charges
271 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.
272 1195) as applicable, and applicable law;

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

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

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

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

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

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

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

302 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

303 3. (a) During each Year, consistent with all applicable State water rights
304 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and
305 12 of this Contract, the Contracting Officer shall make available for delivery to the
306 Contractor 140,210 acre-feet of Project Water for irrigation and M&I purposes. Water
307 Delivered to the Contractor in accordance with this subdivision shall be scheduled and
308 paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

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

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

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

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

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

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

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

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

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

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

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

390 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable
391 law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose
392 shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

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

405 TIME FOR DELIVERY OF WATER

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

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

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

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

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

434 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

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

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

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

479 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

754 NON-INTEREST BEARING O&M DEFICITS

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

758 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

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

797 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

816 TEMPORARY REDUCTIONS – RETURN FLOWS

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

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

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

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

840 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

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

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

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

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

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

897 UNAVOIDABLE GROUNDWATER PERCOLATION

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

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

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

905 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

911 PROTECTION OF WATER AND AIR QUALITY

912 15. (a) Omitted

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

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

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

927 (e) Omitted

928 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED
929 STATES

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

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

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

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

972 superseded from time to time.

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

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

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

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

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

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

1002 OPINIONS AND DETERMINATIONS

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

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

1016 regulations promulgated by the Secretary. Such determinations shall be made in
1017 consultation with the Contractor to the extent reasonably practicable.

1018 COORDINATION AND COOPERATION

1019 18. (a) In order to further their mutual goals and objectives, the Contracting
1020 Officer and the Contractor shall communicate, coordinate, and cooperate with each other,
1021 and with other affected Project Contractors, in order to improve the O&M of the
1022 Project. The communication, coordination, and cooperation regarding O&M shall
1023 include, but not be limited to, any action which will or may materially affect the quantity
1024 or quality of Project Water supply, the allocation of Project Water supply, and Project
1025 financial matters including, but not limited to, budget issues. The communication,
1026 coordination, and cooperation provided for hereunder shall extend to all provisions of
1027 this Contract. Each party shall retain exclusive decision making authority for all actions,
1028 opinions, and determinations to be made by the respective party.

1029 (b) Within 120 days following the Effective Date, the Contractor, other
1030 affected Project Contractors, and the Contracting Officer shall arrange to meet with
1031 interested Project Contractors to develop a mutually agreeable, written Project-wide
1032 process, which may be amended as necessary separate and apart from this Contract. The
1033 goal of this process shall be to provide, to the extent practicable, the means of mutual
1034 communication and interaction regarding significant decisions concerning Project O&M
1035 on a real-time basis.

1036 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
1037 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out

1038 this intent:

1039 (1) The Contracting Officer will, at the request of the Contractor,
1040 assist in the development of integrated resource management plans for the Contractor.
1041 Further, the Contracting Officer will, as appropriate, seek authorizations for implementation
1042 of partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

1058

CHARGES FOR DELINQUENT PAYMENTS

1059 19. (a) The Contractor shall be subject to interest, administrative, and penalty
1060 charges on delinquent payments. If a payment is not received by the due date, the
1061 Contractor shall pay an interest charge on the delinquent payment for each day the payment
1062 is delinquent beyond the due date. If a payment becomes 60 days delinquent, the
1063 Contractor shall pay, in addition to the interest charge, an administrative charge to
1064 cover additional costs of billing and processing the delinquent payment. If a payment is
1065 delinquent 90 days or more, the Contractor shall pay, in addition to the interest and
1066 administrative charges, a penalty charge for each day the payment is delinquent beyond the
1067 due date, based on the remaining balance of the payment due at the rate of 6 percent per
1068 year. The Contractor shall also pay any fees incurred for debt collection services associated
1069 with a delinquent payment.

1070 (b) The interest rate charged shall be the greater of either the rate prescribed
1071 quarterly in the Federal Register by the Department of the Treasury for application to
1072 overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged
1073 will be determined as of the due date and remain fixed for the duration of the delinquent
1074 period.

1075 (c) When a partial payment on a delinquent account is received, the amount
1076 received shall be applied first to the penalty charges, second to the administrative charges,
1077 third to the accrued interest, and finally to the overdue payment.

1078

EQUAL EMPLOYMENT OPPORTUNITY

1079 20. During the performance of this Contract, the Contractor agrees as follows:

1080 (a) The Contractor will not discriminate against any employee or applicant
1081 for employment because of race, color, religion, sex, sexual orientation, gender identity, or
1082 national origin. The Contractor will take affirmative action to ensure that applicants are
1083 employed, and that employees are treated during employment, without regard to their race,
1084 color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall
1085 include, but not be limited to, the following: employment, upgrading, demotion, or
1086 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
1087 forms of compensation; and selection for training, including apprenticeship. The Contractor
1088 agrees to post in conspicuous places, available to employees and applicants for employment,
1089 notices to be provided by the Contracting Officer setting forth the provisions of this
1090 nondiscrimination clause.

1091 (b) The Contractor will, in all solicitations or advertisements for employees
1092 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1093 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1094 gender identity, or national origin.

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

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

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

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

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

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

1134 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a
1135 result of such direction, the Contractor may request the United States to enter into such
1136 litigation to protect the interests of the United States.

1137 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1138 21. (a) The obligation of the Contractor to pay the United States as provided in
1139 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1140 obligation may be distributed among the Contractor's water users and notwithstanding the default
1141 of individual water users in their obligation to the Contractor.

1142 (b) The payment of charges becoming due pursuant to this Contract is a
1143 condition precedent to receiving benefits under this Contract. The United States shall not make
1144 water available to the Contractor through Project facilities during any period in which the
1145 Contractor is in arrears in the advance payment of water rates due the United States. The
1146 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1147 parties that are in arrears in the advance payment of water rates as levied or established by the
1148 Contractor.

1149 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1150 obligation to require advance payment for water rates which it levies.

1151 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1152 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1153 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1154 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1155 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
1156 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1157 applicable implementing regulations and any guidelines imposed by the U.S.
1158 Department of the Interior and/or Bureau of Reclamation.

1159 (b) These statutes prohibit any person in the United States from being
1160 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1161 discrimination under any program or activity receiving financial assistance from the Bureau
1162 of Reclamation on the grounds of race, color, national origin, disability, or age. By
1163 executing this Contract, the Contractor agrees to immediately take any measures necessary
1164 to implement this obligation, including permitting officials of the United States to inspect
1165 premises, programs, and documents.

1166 (c) The Contractor makes this Contract in consideration of and for the
1167 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1168 Federal financial assistance extended after the date hereof to the Contractor by the Bureau

1169 of Reclamation, including installment payments after such date on account of
1170 arrangements for Federal financial assistance which were approved before such date.
1171 The Contractor recognizes and agrees that such Federal assistance will be extended in
1172 reliance on the representations and agreements made in this Article and that the United
1173 States reserves the right to seek judicial enforcement thereof.

1174 (d) Complaints of discrimination against the Contractor shall be investigated
1175 by the Contracting Officer's Office of Civil Rights.

1176 PRIVACY ACT COMPLIANCE

1177 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1178 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy
1179 Act (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting
1180 records required to be submitted to the Contractor for compliance with Sections 206,
1181 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and
1182 390zz), and pursuant to 43 C.F.R. § 426.18.

1183 (b) With respect to the application and administration of the criminal penalty
1184 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1185 employees who are responsible for maintaining the certification and reporting records
1186 referenced in paragraph (a) above are considered to be employees of the Department of the
1187 Interior. See 5 U.S.C. § 552a(m).

1188 (c) The Contracting Officer or a designated representative shall provide the
1189 Contractor with current copies of the Department of the Interior Privacy Act regulations
1190 and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice
1191 (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding,
1192 and disclosure of information contained in the Landholders' certification and reporting
1193 records.

1194 (d) The Contracting Officer shall designate a full-time employee of the
1195 Bureau of Reclamation to be the System Manager responsible for making decisions on
1196 denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43
1197 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to
1198 their own records.

1199 (e) The Contractor shall forward promptly to the System Manager each
1200 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of
1201 records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral;
1202 and provide the System Manager with information and records necessary to prepare an
1203 appropriate response to the requester. These requirements do not apply to individuals
1204 seeking access to their own certification and reporting forms filed with the Contractor

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

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

1209 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

1218 WATER CONSERVATION

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

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

1230 Project Water delivery pursuant to this Contract shall be contingent upon the
1231 Contractor's continued implementation of such water conservation program. In the
1232 event the Contractor's water conservation plan or any revised water conservation plan
1233 completed pursuant to subdivision (d) of this Article 25 have not yet been determined by
1234 the Contracting Officer to meet such criteria, due to circumstances which the
1235 Contracting Officer determines are beyond the control of the Contractor, water deliveries
1236 shall be made under this Contract so long as the Contractor diligently works with the
1237 Contracting Officer to obtain such determination at the earliest practicable date, and
1238 thereafter the Contractor immediately begins implementing its water conservation and
1239 efficiency program in accordance with the time schedules therein.

1240 (b) Should the amount of M&I Water delivered pursuant to subdivision
1241 (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year,
1242 the Contractor shall implement the Best Management Practices identified by the time
1243 frames issued by the Mid-Pacific Region's then-existing conservation and efficiency
1244 criteria for such M&I Water unless any such practice is determined by the Contracting
1245 Officer to be inappropriate for the Contractor.

1246 (c) The Contractor shall submit to the Contracting Officer a report on the
1247 status of its implementation of the water conservation plan on the reporting dates specified in the
1248 then-existing conservation and efficiency criteria established under Federal law.

1249 (d) At five (5)-year intervals, the Contractor shall revise its water
1250 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1251 water conservation plans established under Federal law and submit such revised water

1252 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1253 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1254 existing conservation and efficiency criteria for evaluating water conservation plans established
1255 under Federal law.

1256 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1257 shall be described in the Contractor's water conservation plan.

1258 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1259 26. Except as specifically provided in Article 16 of this Contract, the provisions
1260 of this Contract shall not be applicable to or affect non-Project water or water rights now owned
1261 or hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1262 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1263 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1264 any water user within the Contractor's Service Area acquires or has available under any other
1265 contract pursuant to Federal Reclamation law.

1266 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY.

1267 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1268 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1269 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1270 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1271 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1272 affect the rights or obligations of the Contractor or the United States hereunder.

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

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

1295 shall adjust those components of the Rates for Water Delivered under this Contract
1296 representing the cost associated with the activity being performed by Operating Non-
1297 Federal Entity San Luis & Delta-Mendota Water Authority, or its successor.

1298 (d) In the event the Operation and Maintenance of the Project facilities
1299 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota
1300 Water Authority is re-assumed by the United States during the term of this Contract, the
1301 Contracting Officer shall so notify the Contractor, in writing, and present to the
1302 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid
1303 by the Contractor for Project Water under this Contract representing the Operation and
1304 Maintenance costs of the portion of such Project facilities which have been re-assumed. The
1305 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to
1306 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised
1307 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1308 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1309 28. The expenditure or advance of any money or the performance of any obligation of
1310 the United States under this Contract shall be contingent upon appropriation or allotment
1311 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor
1312 from any obligations under this Contract. No liability shall accrue to the United States in case
1313 funds are not appropriated or allotted.

1314 BOOKS, RECORDS, AND REPORTS

1315 29. (a) The Contractor shall establish and maintain accounts and other books and
1316 records pertaining to administration of the terms and conditions of this Contract, including
1317 the Contractor's financial transactions; water supply data; project operations, maintenance, and
1318 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1319 census), land-ownership, land-leasing, and water-use data; and other matters that the
1320 Contracting Officer may require. Reports shall be furnished to the Contracting Officer
1321 in such form and on such date or dates as the Contracting Officer may require. Subject to
1322 applicable Federal laws and regulations, each party to this Contract shall have the right during

1323 office hours to examine and make copies of the other party's books and records relating to
1324 matters covered by this Contract.

1325 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1326 books, records, or other information shall be requested from the Contractor by the
1327 Contracting Officer unless such books, records, or information are reasonably related to the
1328 administration or performance of this Contract. Any such request shall allow the Contractor a
1329 reasonable period of time within which to provide the requested books, records, or
1330 information.

1331 (c) At such time as the Contractor provides information to the Contracting
1332 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1333 to the Operating Non-Federal Entity(ies).

1334 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1335 30. (a) The provisions of this Contract shall apply to and bind the successors and
1336 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1337 therein by either party shall be valid until approved in writing by the other party.

1338 (b) The assignment of any right or interest in this Contract by either party
1339 shall not interfere with the rights or obligations of the other party to this Contract absent the
1340 written concurrence of said other party.

1341 (c) The Contracting Officer shall not unreasonably condition or withhold
1342 approval of any proposed assignment.

1343 SEVERABILITY

1344 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1345 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1346 an association or other form of organization whose primary function is to represent parties to

1347 Project contracts, brings an action in a court of competent jurisdiction challenging the
1348 legality or enforceability of a provision included in this Contract and said person, entity,
1349 association, or organization obtains a final court decision holding that such provision is
1350 legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in
1351 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i)
1352 within 30 days of the date of such final court decision identify by mutual agreement the
1353 provisions in this Contract which must be revised and (ii) within three months thereafter
1354 promptly agree on the appropriate revision(s). The time periods specified above may be
1355 extended by mutual agreement of the parties. Pending the completion of the actions
1356 designated above, to the extent it can do so without violating any applicable provisions of
1357 law, the United States shall continue to make the quantities of Project Water specified in this
1358 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1359 found to be legally invalid or unenforceable in the final court decision.

1360

RESOLUTION OF DISPUTES

1361 32. Should any dispute arise concerning any provisions of this Contract, or the
1362 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt
1363 to resolve the dispute. Prior to the Contractor commencing any legal action, or the
1364 Contracting Officer referring any matter to the Department of Justice, the party shall
1365 provide to the other party 30 days' written notice of the intent to take such action;
1366 Provided, That such notice shall not be required where a delay in commencing an action
1367 would prejudice the interests of the party that intends to file suit. During the 30-day
1368 notice period, the Contractor and the Contracting Officer shall meet and confer in an

1369 attempt to resolve the dispute. Except as specifically provided, nothing herein is intended
1370 to waive or abridge any right or remedy that the Contractor or the United States may have.

1371 OFFICIALS NOT TO BENEFIT

1372 33. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1373 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1374 same manner as other water users or landowners.

1375 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1376 34. (a) While this Contract is in effect, no change may be made in the
1377 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1378 changes which may affect the respective rights, obligations, privileges, and duties of either the
1379 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1380 consolidation, or merger, except upon the Contracting Officer's written consent.

1381 (b) Within 30 days of receipt of a request for such a change, the Contracting
1382 Officer will notify the Contractor of any additional information required by the Contracting
1383 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1384 schedule for timely completion of the process. Such process will analyze whether the proposed
1385 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1386 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1387 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1388 have an impact on any Project Water rights applications, permits, or licenses. In addition,
1389 the Contracting Officer shall comply with the NEPA and the ESA. The Contractor will
1390 be responsible for all costs incurred by the Contracting Officer in this process, and such
1391 costs will be paid in accordance with Article 24 of this Contract.

1392

FEDERAL LAWS

1393

35. By entering into this Contract, the Contractor does not waive its rights to contest

1394

the validity or application in connection with the performance of the terms and

1395

conditions of this Contract of any Federal law or regulation; *Provided, That* the

1396

Contractor agrees to comply with the terms and conditions of this Contract unless and

1397

until relief from application of such Federal law or regulation to the implementing

1398

provision of the Contract is granted by a court of competent jurisdiction.

1399

RECLAMATION REFORM ACT OF 1982

1400

36. (a) Upon a Contractor's compliance with and discharge of the Repayment

1401

Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation

1402

Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

1403

(b) The obligation of a Contractor to pay the Additional Capital Obligation

1404

shall not affect the Contractor's status as having repaid all of the construction costs assignable to

1405

the Contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation

1406

Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1407

CERTIFICATION OF NONSEGREGATED FACILITIES

1408

37. The Contractor hereby certifies that it does not maintain or provide for its

1409

employees any segregated facilities at any of its establishments and that it does not permit its

1410

employees to perform their services at any location under its control where segregated facilities

1411

are maintained. It certifies further that it will not maintain or provide for its employees any

1412

segregated facilities at any of its establishments and that it will not permit its employees to

1413

perform their services at any location under its control where segregated facilities are

1414

maintained. The Contractor agrees that a breach of this certification is a violation of the Equal

1415

Employment Opportunity clause in this Contract. As used in this certification, the term

1416

“segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms,

1417

restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,

1418

parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing

1419

facilities provided for employees which are segregated by explicit directive or are in fact

1420 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1421 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1422 identical certifications from proposed subcontractors for specific time periods) it will obtain
1423 identical certifications from proposed subcontractors prior to the award of subcontracts
1424 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1425 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1426 following notice to such proposed subcontractors (except where the proposed subcontractors
1427 have submitted identical certifications for specific time periods):

1428 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
1429 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1430 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1431 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1432 Opportunity clause. The certification may be submitted either for each subcontract or for all
1433 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1434 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1435 NOTICES

1436 38. Any notice, demand, or request authorized or required by this Contract shall be
1437 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1438 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1439 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1440 postage prepaid, or delivered to the Board of Directors of the Del Puerto Water District, P. O.
1441 Box 1596, Patterson, California 95363-1596. The designation of the addressee or the address
1442 may be changed by notice given in the same manner as provided in this Article for other notices.

1443 MEDIUM FOR TRANSMITTING PAYMENT

1444 39. (a) All payments from the Contractor to the United States under this Contract
1445 shall be by the medium requested by the United States on or before the date payment is due. The
1446 required method of payment may include checks, wire transfers, or other types of payment
1447 specified by the United States.

1448 (b) Upon execution of this Contract, the Contractor shall furnish the
1449 Contracting Officer with the Contractor’s taxpayer’s identification number (TIN). The purpose
1450 for requiring the Contractor’s TIN is for collecting and reporting any delinquent amounts arising
1451 out of the Contractor’s relationship with the United States.

1452 CONTRACT DRAFTING CONSIDERATIONS

1453 40. This amended Contract has been negotiated and reviewed by the parties hereto,
1454 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1455 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by

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

1458

CONFIRMATION OF CONTRACT

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

1464

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

1467 UNITED STATES OF AMERICA

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

1472 DEL PUERTO WATER DISTRICT
1473 (SEAL)

1474 By: _____
1475 President of the Board of Directors

1476 Attest:

1477 By: _____
1478 Secretary of the Board of Directors

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

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

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

Exhibits

Exhibit A – Map of Contractor’s Service Area

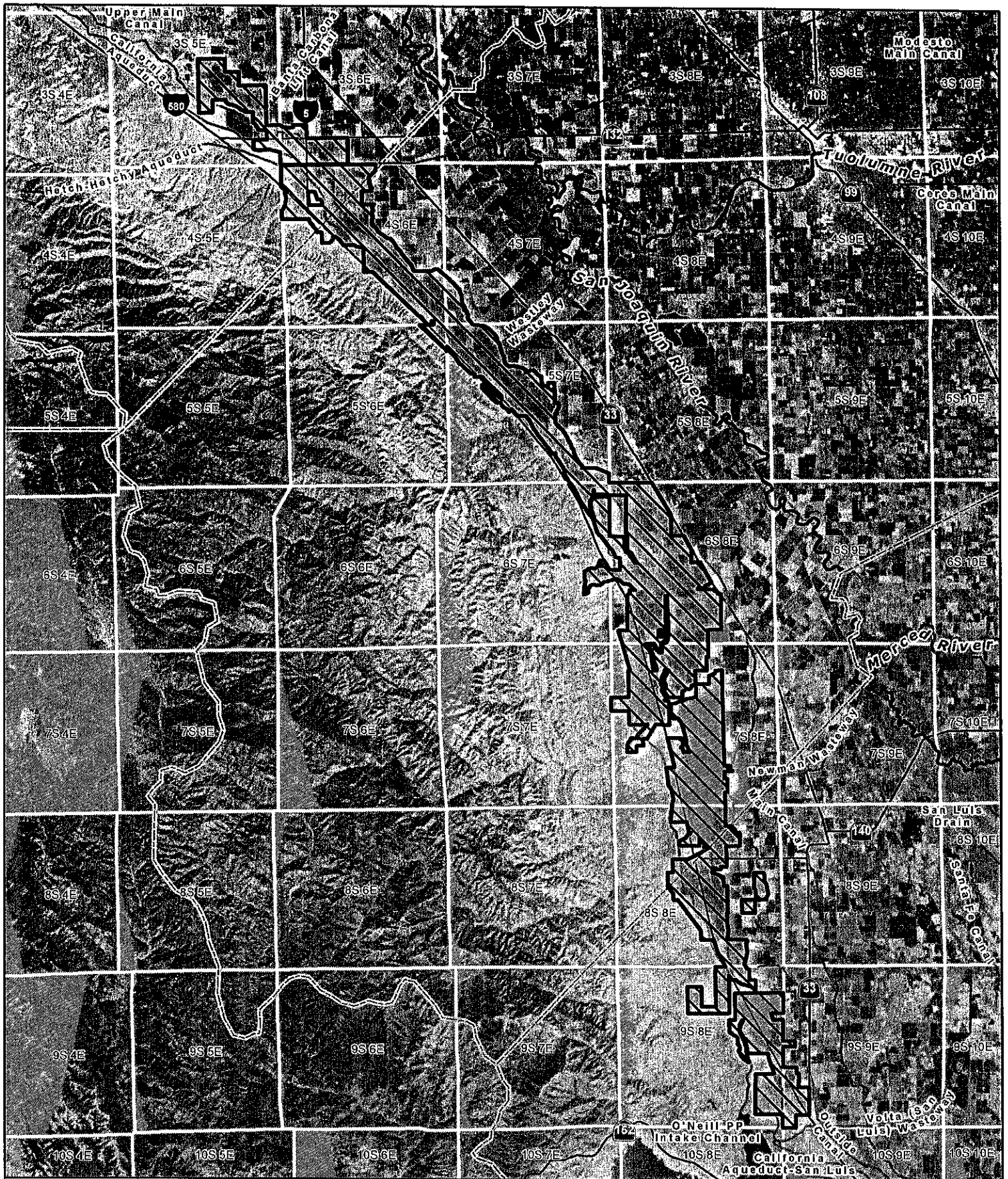
This Exhibit is unchanged from current Contract..



Exhibit B – Rates and Charges

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

Exhibit C – Repayment Obligation

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



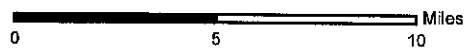
-  District Boundary
-  Contractor's Service Area

Del Puerto Water District

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



BUREAU OF
RECLAMATION



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

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

EXPLANATORY NOTES

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

Additional detail of rate components is available on the Internet at:

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

JL 3/20/20

Exhibit C[@]

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

Unpaid Construction Cost from the 2020 Water Rate Books*

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

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

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

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

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

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

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

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

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

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

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

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

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