



United States Department of the Interior

BUREAU OF RECLAMATION
2800 Cottage Way
Sacramento, California 95825-1898



IN REPLY REFER TO:

CGB-440
2.2.4.23

Board of Directors
Byron Bethany Irrigation District
7995 Bruns Road
Byron, CA 94514

Subject: Water Infrastructure Improvements for the Nation Act Contract No. 14-06-200-785-LTR1-P Between the United States and the Byron Bethany Irrigation District Providing for Project Water Service – Central Valley Project, California

Dear Board of Directors:

Enclosed is an executed original of the subject contract for your records. The Bureau of Reclamation appreciates the effort expended by the Byron Bethany Irrigation District and its representatives relative to this contract.

The exhibit titled, “Repayment Obligation – Current Calculation Under the WIIN Act, Section 4011 (a) (2)”, for the Contract Amendment will be finalized on the Effective Date of the Contract Amendment, in accordance with the Water Infrastructure Improvements for the Nation Act of 2016 (Public Law 114-322).

If there are any questions, please contact Mr. Stanley Data, Repayment Specialist, at 916-978-5246, or sdata@usbr.gov.

Sincerely,

Sheri A. Looper
Deputy Regional Resources Manager

Enclosure

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

CONTRACT BETWEEN THE UNITED STATES
AND
BYRON BETHANY IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION AND FACILITIES REPAYMENT

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

CONTRACT BETWEEN THE UNITED STATES
AND
BYRON BETHANY IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION AND FACILITIES REPAYMENT

1 THIS CONTRACT, made this 21st day of October, 2010, 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 BYRON BETHANY
12 IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency of the State
13 of California, 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. 14-06-200-785, as amended, which in Part A thereof, established terms for the delivery to the Contractor of Project Water from the Delta Division facilities from May 22, 1953, through February 28, 1994; and

[5th] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-200-785-IR1 and subsequent Interim Renewal Contracts 14-06-200-785-IR2 through 14-06-200-785-IR10, which provided for water service to the Contractor from March 1, 1994 through February 28, 2006; and

36 [6th] WHEREAS, the United States and the Contractor entered into a long-term
37 contract identified as Contract No. 14-06-200-785-LTR1, hereinafter referred to as the Existing
38 Contract, which provided for the continued water service to the Contractor following expiration
39 of Contract No. 14-06-200-785-IR10, and which was in effect the date the WIIN Act was
40 enacted; and

41 [7th] WHEREAS, Plain View Water District and Byron Bethany Irrigation
42 District determined that consolidation of the two districts would improve the administrative
43 efficiency of the districts and enhance the districts' stability; and

44 [8th] WHEREAS, San Joaquin Local Agency Formation Commission approved
45 consolidation of Plain View Water District and Byron Bethany Irrigation District on August 12,
46 2004, by dissolving Plain View Water District and reorganizing the territory to Byron Bethany
47 Irrigation District; and

48 [9th] WHEREAS, the consolidation referred to in the preceding two
49 explanatory recitals did not, in any manner, change the area to which the Project Water may be
50 delivered pursuant to the Existing Contract; and

51 [10th] WHEREAS, on December 16, 2016, the 114th Congress of the United
52 States of America enacted the WIIN Act; and

53 [11th] WHEREAS, Section 4011(a)(1) provides that "upon request of the
54 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
55 date of enactment of this subtitle and between the United States and a water users' association
56 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
57 mutually agreeable terms and conditions."; and

58 [12th] WHEREAS, Section 4011(a)(1) further provides that “the manner of
59 conversion under this paragraph shall be as follows: (A) Water service contracts that were
60 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under
61 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.
62 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9
63 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be
64 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

65 [13th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered
66 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,
67 repayment, exchange and transfer contractual rights between the water users’ association
68 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the
69 water users’ association [Contractor] and their landowners as provided under State law.”; and

70 [14th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that
71 “implementation of the provisions of this subtitle shall not alter... (3) the priority of a water
72 service or repayment contractor to receive water; or (4) except as expressly provided in this
73 section, any obligations under the Federal Reclamation law, including the continuation of
74 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and
75 repayment contractors making prepayments pursuant to this section.”; and

76 [15th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
77 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water
78 service contracts into repayment contracts, amend existing repayment contracts, and allow

79 contractors to prepay their construction cost obligations pursuant to applicable Federal
80 Reclamation law; and

81 [16th] WHEREAS, the United States has determined that the Contractor has
82 fulfilled all of its obligations under the Existing Contract; and

83 [17th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
84 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
85 reasonable and beneficial use and/or has demonstrated future demand for water use such that the
86 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
87 quantity of Project Water to be made available to it pursuant to this Contract; and

88 [18th] WHEREAS, water obtained from the Project has been relied upon by
89 urban and agricultural areas within California for more than 50 years, and is considered by the
90 Contractor as an essential portion of its water supply; and

91 [19th] WHEREAS, the economies of regions within the Project, including the
92 Contractor's, depend upon the continued availability of water, including water service from the
93 Project; and

94 [20th] WHEREAS, the Secretary intends through coordination, cooperation, and
95 partnerships to pursue measures to improve water supply, water quality, and reliability of the
96 Project for all Project purposes; and

97 [21st] WHEREAS, the mutual goals of the United States and the Contractor
98 include: to provide for reliable Project Water supplies; to control costs of those supplies; to
99 achieve repayment of the Project as required by law; to guard reasonably against Project Water
100 shortages; to achieve a reasonable balance among competing demands for use of Project Water;

101 and to comply with all applicable environmental statutes, all consistent with the legal obligations
102 of the United States relative to the Project; and

103 [22nd] WHEREAS, the parties intend by this Contract to maintain a cooperative
104 relationship in order to achieve their mutual goals; and

105 [23rd] WHEREAS, the Contractor has utilized or may utilize transfers, contract
106 assignments, rescheduling, and conveyance of Project Water and non-Project water under this
107 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the
108 beneficial use of water; and

109 [24th] WHEREAS, the parties desire and intend that this Contract not provide a
110 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
111 Explanatory Recital immediately above; and

112 [25th] WHEREAS, the Contracting Officer and the Contractor agree that this
113 Contract complies with Section 4011 of the WIIN Act; and

114 [26th] WHEREAS, the Contracting Officer and the Contractor agree to amend
115 and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal
116 Reclamation law on the terms and conditions set forth below.

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

119 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

151 (j) "Eligible Lands" shall mean all lands to which Irrigation Water may be
152 delivered in accordance with Section 204 of the Reclamation Reform Act of 1982 (96 Stat.
153 1263), as amended;

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

157 (l) "Existing Capital Obligation" shall mean the remaining amount of
158 construction costs or other capitalized costs allocable to the Contractor as described in Section
159 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central
160 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,
161 in the Final 2020 Ratebooks, as adjusted to reflect payments not reflected in such schedule. The
162 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in
163 Exhibit "C", which is incorporated herein by reference;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

233 TERM OF CONTRACT – RIGHT TO USE OF WATER

234 2. (a) This Contract shall be effective November 1, 2020, hereinafter known as
235 the “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and
236 Charges under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939
237 (53 Stat. 1195) as applicable, and applicable law;

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

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

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

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

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

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

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

267 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

268 3. (a) During each Year, consistent with all applicable State water rights permits,
269 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
270 Contract, the Contracting Officer shall make available for delivery to the Contractor 20,600 acre-
271 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in
272 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
273 Articles 4 and 7 of this Contract.

274 (b) Because the capacity of the Project to deliver Project Water has been
275 constrained in recent years and may be constrained in the future due to many factors including
276 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
277 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
278 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
279 programmatic environmental impact statement prepared pursuant to Section 3404(c) of the
280 CVPIA projected that the Contract Total set forth in this Contract will not be available to the
281 Contractor in many years. During the most recent five years prior to execution of the Existing
282 Contract, the Recent Historic Average Water Made Available to the Contractor was 13,555 acre-
283 feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the
284 parties under any provision of this Contract.

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

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

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

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

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

317 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
318 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
319 implement. The Existing Contract, which evidences in excess of 50 years of diversions for
320 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
321 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
322 required biological assessment(s) prepared pursuant to the ESA, and any other needed
323 environmental review. Nothing herein shall be construed to prevent the Contractor from
324 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
325 biological opinion or other environmental documentation referred to in this Article.

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

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

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

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

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

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

368 TIME FOR DELIVERY OF WATER

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

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

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

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

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

393 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

407 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
408 measured and recorded with equipment furnished, installed, operated, and maintained by the
409 Contracting Officer either directly or indirectly through its written agreements(s) with the
410 Operating Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the
411 Contracting Officer at the point or points of delivery established pursuant to subdivision (a) of
412 this Article. Upon the request of either party to this Contract, the Contracting Officer shall
413 investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies), the
414 accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
415 therein. For any period of time when accurate measurements have not been made, the
416 Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal
417 Entity(ies), if any, prior to making a final determination of the quantity delivered for that period
418 of time.

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

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

436 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

697 NON-INTEREST BEARING O&M DEFICITS

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

701 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

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

738 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

757 TEMPORARY REDUCTIONS – RETURN FLOWS

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

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

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

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

780 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

786 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting
787 or other similar operational errors affecting the Project; drought and other physical or natural
788 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer
789 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article
790 17 of this Contract, no liability shall accrue against the United States or any of its officers,
791 agents, or employees for any damage, direct or indirect, arising therefrom.

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

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

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

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

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

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

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

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

834 UNAVOIDABLE GROUNDWATER PERCOLATION

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

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

841 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

847 PROTECTION OF WATER AND AIR QUALITY

848 15. (a) Omitted

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

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

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

863 (e) Omitted

864 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED
865 STATES

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

877 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-
878 Project water are (were) constructed with funds made available pursuant to Federal Reclamation
879 law, the non-Project water will be subject to the acreage limitation provisions of Federal
880 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
881 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate
882 annually the cost to the Federal Government, including interest, of storing or delivering non-
883 Project water, which for purposes of this Contract shall be determined as follows: The quotient
884 shall be the unpaid distribution system costs divided by the total irrigable acreage within the
885 Contractor's Service Area. The incremental fee per acre is the mathematical result of such
886 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982
887 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full-cost land
888 within the Contractor's Service Area that receives non-Project water through Federally financed
889 or constructed facilities. The incremental fee calculation methodology will continue during the
890 term of this Contract absent the promulgation of a contrary Bureau of Reclamation-wide rule,
891 regulation, or policy adopted after the Contractor has been afforded the opportunity to review
892 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is
893 adopted, it shall supersede this provision.

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

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

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

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

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

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

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

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

932 OPINIONS AND DETERMINATIONS

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

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

948 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

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

986

CHARGES FOR DELINQUENT PAYMENTS

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

997 (b) The interest rate charged shall be the greater of either the rate prescribed
998 quarterly in the Federal Register by the Department of the Treasury for application to overdue
999 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
1000 determined as of the due date and remain fixed for the duration of the delinquent period.

1001 (c) When a partial payment on a delinquent account is received, the amount
1002 received shall be applied first to the penalty charges, second to the administrative charges, third
1003 to the accrued interest, and finally to the overdue payment.

1004

EQUAL EMPLOYMENT OPPORTUNITY

1005 20. During the performance of this Contract, the Contractor agrees as follows:

1006 (a) The Contractor will not discriminate against any employee or applicant for
1007 employment because of race, color, religion, sex, sexual orientation, gender identity, or national
1008 origin. The Contractor will take affirmative action to ensure that applicants are employed, and
1009 that employees are treated during employment, without regard to their race, color, religion, sex,
1010 sexual orientation, gender identity, or national origin. Such action shall include, but not be
1011 limited to, the following: employment, upgrading, demotion, or transfer; recruitment or
1012 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
1013 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
1014 places, available to employees and applicants for employment, notices to be provided by the
1015 Contracting Officer setting forth the provisions of this nondiscrimination clause.

1016 (b) The Contractor will, in all solicitations or advertisements for employees
1017 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1018 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1019 gender identity, or national origin.

1020 (c) The Contractor will not discharge or in any other manner discriminate
1021 against any employee or applicant for employment because such employee or applicant has

1022 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
1023 employee or applicant. This provision shall not apply to instances in which an employee who
1024 has access to the compensation information of other employees or applicants as part of such
1025 employee's essential job functions discloses the compensation of such other employees or
1026 applicants to individuals who do not otherwise have access to such information, unless such
1027 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
1028 proceeding, hearing, or action, including an investigation conducted by the employer, or is
1029 consistent with the Contractor's legal duty to furnish information.

1030 (d) The Contractor will send to each labor union or representative of workers
1031 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1032 to be provided by the Contracting Officer, advising the labor union or workers' representative of
1033 the Contractor's commitments under Section 202 of Executive Order No. 11246 of September
1034 24, 1965, and shall post copies of the notice in conspicuous places available to employees and
1035 applicants for employment.

1036 (e) The Contractor will comply with all provisions of Executive Order No.
1037 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
1038 Labor.

1039 (f) The Contractor will furnish all information and reports required by
1040 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the
1041 Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts
1042 by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain
1043 compliance with such rules, regulations, and orders.

1044 (g) In the event of the Contractor's noncompliance with the nondiscrimination
1045 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
1046 canceled, terminated, or suspended in whole or in part and the Contractor may be declared
1047 ineligible for further Government contracts in accordance with procedures authorized in
1048 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
1049 remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule,
1050 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1051 (h) The Contractor will include the provisions of paragraphs (a) through (g) in
1052 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1053 Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24,
1054 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor
1055 will take such action with respect to any subcontract or purchase order as may be directed by the
1056 Secretary of Labor as a means of enforcing such provisions, including sanctions for
1057 noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is
1058 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
1059 Contractor may request the United States to enter into such litigation to protect the interests of
1060 the United States.

1061 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1062 21. (a) The obligation of the Contractor to pay the United States as provided in
1063 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1064 obligation may be distributed among the Contractor's water users and notwithstanding the default
1065 of individual water users in their obligation to the Contractor.

1066 (b) The payment of charges becoming due pursuant to this Contract is a
1067 condition precedent to receiving benefits under this Contract. The United States shall not make
1068 water available to the Contractor through Project facilities during any period in which the
1069 Contractor is in arrears in the advance payment of water rates due the United States. The
1070 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1071 parties that are in arrears in the advance payment of water rates as levied or established by the
1072 Contractor.

1073 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1074 obligation to require advance payment for water rates which it levies.

1075 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1076 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1077 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1078 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1079 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
1080 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1081 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
1082 Interior and/or Bureau of Reclamation.

1083 (b) These statutes prohibit any person in the United States from being
1084 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1085 discrimination under any program or activity receiving financial assistance from the Bureau of
1086 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
1087 Contract, the Contractor agrees to immediately take any measures necessary to implement this
1088 obligation, including permitting officials of the United States to inspect premises, programs, and
1089 documents.

1090 (c) The Contractor makes this Contract in consideration of and for the
1091 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1092 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1093 Reclamation, including installment payments after such date on account of arrangements for
1094 Federal financial assistance which were approved before such date. The Contractor recognizes
1095 and agrees that such Federal assistance will be extended in reliance on the representations and

1096 agreements made in this Article and that the United States reserves the right to seek judicial
1097 enforcement thereof.

1098 (d) Complaints of discrimination against the Contractor shall be investigated
1099 by the Contracting Officer's Office of Civil Rights.

1100 PRIVACY ACT COMPLIANCE

1101 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1102 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act
1103 (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting records required
1104 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the
1105 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43
1106 C.F.R. § 426.18.

1107 (b) With respect to the application and administration of the criminal penalty
1108 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1109 employees who are responsible for maintaining the certification and reporting records referenced
1110 in paragraph (a) above are considered to be employees of the Department of the Interior. See 5
1111 U.S.C. § 552a(m).

1112 (c) The Contracting Officer or a designated representative shall provide the
1113 Contractor with current copies of the Department of the Interior Privacy Act regulations and the
1114 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-
1115 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of
1116 information contained in the Landholders' certification and reporting records.

1117 (d) The Contracting Officer shall designate a full-time employee of the
1118 Bureau of Reclamation to be the System Manager responsible for making decisions on denials
1119 pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72.
1120 The Contractor is authorized to grant requests by individuals for access to their own records.

1121 (e) The Contractor shall forward promptly to the System Manager each
1122 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records
1123 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the
1124 System Manager with information and records necessary to prepare an appropriate response to
1125 the requester. These requirements do not apply to individuals seeking access to their own
1126 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless
1127 the requester elects to cite the Privacy Act as an authority for the request.

1128 (f) Upon complete payment of the Repayment Obligation by the Contractor,
1129 this Article 23 will no longer be applicable.

1130 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1131 24. In addition to all other payments to be made by the Contractor pursuant to this
1132 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1133 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1134 of direct cost incurred by the United States for work requested by the Contractor associated with
1135 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1136 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1137 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1138 contract administration.

1139 WATER CONSERVATION

1140 25. (a) Prior to the delivery of water provided from or conveyed through
1141 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1142 shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation
1143 Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).
1144 Additionally, an effective water conservation and efficiency program shall be based on the
1145 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1146 the conservation and efficiency criteria for evaluating water conservation plans established under
1147 Federal law. The water conservation and efficiency program shall contain definite water
1148 conservation objectives, appropriate economically feasible water conservation measures, and
1149 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1150 Contract shall be contingent upon the Contractor's continued implementation of such water
1151 conservation program. In the event the Contractor's water conservation plan or any revised water
1152 conservation plan completed pursuant to subdivision (d) of this Article 25 have not yet been

1153 determined by the Contracting Officer to meet such criteria, due to circumstances which the
1154 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1155 made under this Contract so long as the Contractor diligently works with the Contracting Officer
1156 to obtain such determination at the earliest practicable date, and thereafter the Contractor
1157 immediately begins implementing its water conservation and efficiency program in accordance
1158 with the time schedules therein.

1159 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1160 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1161 Contractor shall implement the Best Management Practices identified by the time frames issued
1162 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I
1163 Water unless any such practice is determined by the Contracting Officer to be inappropriate for
1164 the Contractor.

1165 (c) The Contractor shall submit to the Contracting Officer a report on the
1166 status of its implementation of the water conservation plan on the reporting dates specified in the
1167 then-existing conservation and efficiency criteria established under Federal law.

1168 (d) At five (5)-year intervals, the Contractor shall revise its water
1169 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1170 water conservation plans established under Federal law and submit such revised water
1171 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1172 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1173 existing conservation and efficiency criteria for evaluating water conservation plans established
1174 under Federal law.

1175 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1176 shall be described in the Contractor's water conservation plan.

1177 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1178 26. Except as specifically provided in Article 16 of this Contract, the provisions of
1179 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1180 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1181 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1182 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1183 any water user within the Contractor's Service Area acquires or has available under any other
1184 contract pursuant to Federal Reclamation law.

1185 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

1186 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1187 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1188 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1189 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1190 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1191 affect the rights or obligations of the Contractor or the United States hereunder.

1192 (b) The Contracting Officer has previously notified the Contractor in writing
1193 that the O&M of a portion of the Project facilities which serve the Contractor has been
1194 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and
1195 therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
1196 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under

1197 the terms and conditions of the separate agreement between the United States and the Operating
1198 Non-Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of
1199 this Article, all rates, charges, or assessments of any kind, including any assessment for reserve
1200 funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1201 such successor determines, sets, or establishes for the O&M of the portion of the Project
1202 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-
1203 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal
1204 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the
1205 Contractor of its obligation to pay directly to the United States the Contractor's share of the
1206 Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-
1207 Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the
1208 United States in accordance with the separate agreement identified in subdivision (a) of this
1209 Article.

1210 (c) For so long as the O&M of any portion of the Project facilities serving the
1211 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1212 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1213 Rates for Water Delivered under this Contract representing the cost associated with the activity
1214 being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1215 or its successor.

1216 (d) In the event the O&M of the Project facilities operated and maintained by
1217 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by
1218 the United States during the term of this Contract, the Contracting Officer shall so notify the

1219 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
1220 the portion of the Rates to be paid by the Contractor for Project Water under this Contract
1221 representing the O&M costs of the portion of such Project facilities which have been re-assumed.
1222 The Contractor shall, thereafter, in the absence of written notification from the Contracting
1223 Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the
1224 revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1225 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1226 28. The expenditure or advance of any money or the performance of any obligation of
1227 the United States under this Contract shall be contingent upon appropriation or allotment of
1228 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1229 obligations under this Contract. No liability shall accrue to the United States in case funds are
1230 not appropriated or allotted.

1231 BOOKS, RECORDS, AND REPORTS

1232 29. (a) The Contractor shall establish and maintain accounts and other books and
1233 records pertaining to administration of the terms and conditions of this Contract, including the
1234 Contractor's financial transactions; water supply data; project operations, maintenance, and
1235 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1236 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1237 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
1238 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
1239 and regulations, each party to this Contract shall have the right during office hours to examine
1240 and make copies of the other party's books and records relating to matters covered by this
1241 Contract.

1242 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1243 books, records, or other information shall be requested from the Contractor by the Contracting
1244 Officer unless such books, records, or information are reasonably related to the administration or
1245 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1246 time within which to provide the requested books, records, or information.

1247 (c) At such time as the Contractor provides information to the Contracting
1248 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1249 to the Operating Non-Federal Entity(ies).

1250 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1251 30. (a) The provisions of this Contract shall apply to and bind the successors and
1252 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1253 therein by either party shall be valid until approved in writing by the other party.

1254 (b) The assignment of any right or interest in this Contract by either party
1255 shall not interfere with the rights or obligations of the other party to this Contract absent the
1256 written concurrence of said other party.

1257 (c) The Contracting Officer shall not unreasonably condition or withhold
1258 approval of any proposed assignment.

1259 SEVERABILITY

1260 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1261 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1262 an association or other form of organization whose primary function is to represent parties to
1263 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1264 enforceability of a provision included in this Contract and said person, entity, association, or
1265 organization obtains a final court decision holding that such provision is legally invalid or
1266 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1267 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1268 final court decision identify by mutual agreement the provisions in this Contract which must be
1269 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).

1270 The time periods specified above may be extended by mutual agreement of the parties. Pending
1271 the completion of the actions designated above, to the extent it can do so without violating any
1272 applicable provisions of law, the United States shall continue to make the quantities of Project
1273 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1274 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1275 RESOLUTION OF DISPUTES

1276 32. Should any dispute arise concerning any provisions of this Contract, or the
1277 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1278 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1279 Officer referring any matter to the Department of Justice, the party shall provide to the other
1280 party 30 days' written notice of the intent to take such action; *Provided, That* such notice shall
1281 not be required where a delay in commencing an action would prejudice the interests of the party
1282 that intends to file suit. During the 30-day notice period, the Contractor and the Contracting
1283 Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically
1284 provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor
1285 or the United States may have.

1286 OFFICIALS NOT TO BENEFIT

1287 33. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1288 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1289 same manner as other water users or landowners.

1290 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1291 34. (a) While this Contract is in effect, no change may be made in the
1292 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1293 changes which may affect the respective rights, obligations, privileges, and duties of either the

1294 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1295 consolidation, or merger, except upon the Contracting Officer's written consent.

1296 (b) Within 30 days of receipt of a request for such a change, the Contracting
1297 Officer will notify the Contractor of any additional information required by the Contracting
1298 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1299 schedule for timely completion of the process. Such process will analyze whether the proposed
1300 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1301 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1302 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1303 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1304 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1305 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1306 be paid in accordance with Article 24 of this Contract.

1307 FEDERAL LAWS

1308 35. By entering into this Contract, the Contractor does not waive its rights to contest
1309 the validity or application in connection with the performance of the terms and conditions of this
1310 Contract of any Federal law or regulation; *Provided, That* the Contractor agrees to comply with
1311 the terms and conditions of this Contract unless and until relief from application of such Federal
1312 law or regulation to the implementing provision of the Contract is granted by a court of
1313 competent jurisdiction.

1314 RECLAMATION REFORM ACT OF 1982

1315 36. (a) Upon a Contractor's compliance with and discharge of the Repayment
1316 Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation
1317 Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

1318 (b) The obligation of a Contractor to pay the Additional Capital Obligation
1319 shall not affect the Contractor's status as having repaid all of the construction costs assignable to
1320 the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation
1321 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1322 CERTIFICATION OF NONSEGREGATED FACILITIES

1323 37. The Contractor hereby certifies that it does not maintain or provide for its
1324 employees any segregated facilities at any of its establishments and that it does not permit its
1325 employees to perform their services at any location under its control where segregated facilities
1326 are maintained. It certifies further that it will not maintain or provide for its employees any
1327 segregated facilities at any of its establishments and that it will not permit its employees to
1328 perform their services at any location under its control where segregated facilities are
1329 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
1330 Employment Opportunity clause in this Contract. As used in this certification, the term
1331 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
1332 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
1333 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
1334 facilities provided for employees which are segregated by explicit directive or are in fact
1335 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1336 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1337 identical certifications from proposed subcontractors for specific time periods) it will obtain
1338 identical certifications from proposed subcontractors prior to the award of subcontracts
1339 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1340 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1341 following notice to such proposed subcontractors (except where the proposed subcontractors
1342 have submitted identical certifications for specific time periods):

1343 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
1344 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1345 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1346 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment

1347 Opportunity clause. The certification may be submitted either for each subcontract or for all
1348 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1349 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1350 NOTICES

1351 38. Any notice, demand, or request authorized or required by this Contract shall be
1352 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1353 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1354 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1355 postage prepaid, or delivered to the Board of Directors of the Byron Bethany Irrigation District,
1356 7995 Bruns Road, Byron, California 94514. The designation of the addressee or the address may
1357 be changed by notice given in the same manner as provided in this Article for other notices.

1358 MEDIUM FOR TRANSMITTING PAYMENT

1359 39. (a) All payments from the Contractor to the United States under this Contract
1360 shall be by the medium requested by the United States on or before the date payment is due. The
1361 required method of payment may include checks, wire transfers, or other types of payment
1362 specified by the United States.

1363 (b) Upon execution of this Contract, the Contractor shall furnish the
1364 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1365 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1366 out of the Contractor's relationship with the United States.

1367 CONTRACT DRAFTING CONSIDERATIONS

1368 40. This amended Contract has been negotiated and reviewed by the parties hereto,
1369 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1370 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1371 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1372 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.


1373 CONFIRMATION OF CONTRACT

1374 41. Promptly after the execution of this amended Contract, the Contractor will
1375 provide to the Contracting Officer a certified copy of a final decree of a court of competent
1376 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1377 for the authorization of the execution of this amended Contract. This amended Contract shall not
1378 be binding on the United States until the Contractor secures a final decree.


1379

1380 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1381 day and year first above written.

1382 UNITED STATES OF AMERICA

1383 By: 
1384 Regional Director
1385 Interior Region 10: California-Great Basin
1386 Bureau of Reclamation

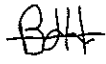
1387 BYRON BETHANY IRRIGATION DISTRICT
1388 (SEAL)

1389 By: 
1390 President of the Board of Directors

1391 Attest: 
1392 By: _____
1393 Secretary of the Board of Directors

1380 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1381 day and year first above written.

1382 UNITED STATES OF AMERICA

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY - REVIEWED BY:

Digitally signed by
BRIAN HUGHES
Date: 2020.10.16
18:16:44 -07'00'
OFFICE OF THE REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR
TIME STAMP: 1:37 pm, May 11 2020

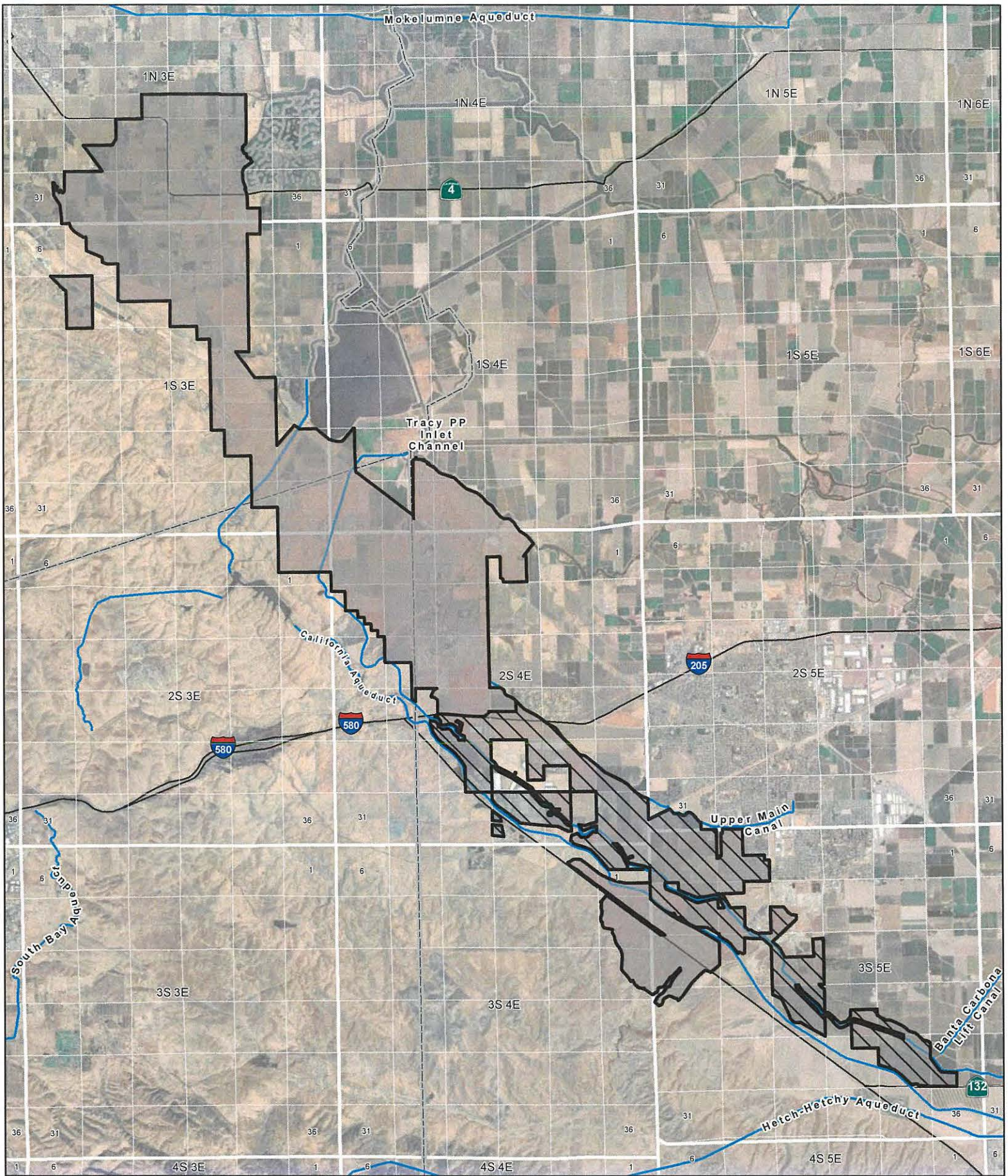
1383 By: _____
1384 Regional Director
1385 Interior Region 10: California-Great Basin
1386 Bureau of Reclamation



1387 BYRON BETHANY IRRIGATION DISTRICT
1388 (SEAL)

1389 By: _____
1390 President of the Board of Directors

1391 Attest:

1392 By: _____
1393 Secretary of the Board of Directors



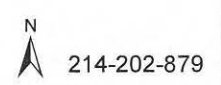
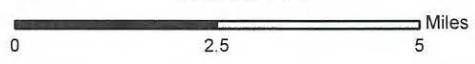
-  District Boundary
-  Contractor's Service Area

Byron Bethany Irrigation District

Contract No. 14-06-200-785-LTR1-P
EXHIBIT A



Date: 4/2/2020
N:\Districts\Contracts\byron_bethany\byron_bethany_785_20200401.mxd



**EXHIBIT B
 BYRON BETHANY IRRIGATION DISTRICT
 2020 Rates and Charges
 (Per Acre-Foot)**

	Irrigation Water	M&I Water Water
COST-OF-SERVICE (COS) RATE		
Construction Costs	\$71.17	\$0.72
DMC Aqueduct Intertic	\$0.99	
O&M Components		
Water Marketing	\$8.97	\$6.12
Storage	\$18.01	\$14.99
Deficit Cost	\$0.00	
TOTAL COS RATE	\$99.14	\$21.83
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.	TBD	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	TBD	
M&I FULL COST RATE		
		TBD
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)	TBD	
Tier 3 Rate : >90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate] (Amount to be added to Tier 1 Rate)	TBD	
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)		TBD
Tier 3 Rate : >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to Be Added to Tier 1 Rate)		TBD
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 = 853 AF; 2011 = 907 AF; 2017 = 1,002 AF; which equals a M&I Historic use average quantity of 921 AF.

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

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

Exhibit C^a

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

Unpaid Construction Cost from the 2020 Water Rate Books*

Contractor: Byron Bethany ID
Facility: Delta Mendota Canal
Contract: 14-06-200-785-LTR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost	Discount	
Construction Cost	~ \$ 2,409,570		
2019 Repayment (Estimate) **	\$ 255,198		
Adjusted Construction Cost	\$ 2,154,372	\$ 2,091,040	
Intertie Construction Cost (N/A):	\$ 133,419	\$ 119,494	
Total	\$ 2,287,791	\$ 2,210,535	
If Paid in Installments (Used 20 yr CMT)			
	Due****		
Payment 1	9/1/2020	\$ 559,559	
Payment 2	9/1/2021	\$ 559,559	
Payment 3	9/1/2022	\$ 559,559	
Payment 4 ~~	9/1/2023	\$ 559,559	
Total Installment Payments		\$ 2,238,235	
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:	~ \$ 6,212
2019 Repayment (Estimate) **	
Adjusted Construction Cost***:	\$ 6,212

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	\$ 2,154,372	\$ 195,852	\$ 194,801	\$ 133,419	\$ 3,032	\$ 3,016	\$ 197,817
2021	\$ 1,958,520	\$ 195,852	\$ 193,908	\$ 130,387	\$ 3,032	\$ 3,002	\$ 196,910
2022	\$ 1,762,668	\$ 195,852	\$ 192,943	\$ 127,355	\$ 3,032	\$ 2,987	\$ 195,931
2023	\$ 1,566,816	\$ 195,852	\$ 191,983	\$ 124,322	\$ 3,032	\$ 2,972	\$ 194,956
2024	\$ 1,370,964	\$ 195,852	\$ 191,028	\$ 121,290	\$ 3,032	\$ 2,958	\$ 193,986
2025	\$ 1,175,112	\$ 195,852	\$ 190,078	\$ 118,258	\$ 3,032	\$ 2,943	\$ 193,021
2026	\$ 979,260	\$ 195,852	\$ 189,132	\$ 115,226	\$ 3,032	\$ 2,928	\$ 192,060
2027	\$ 783,408	\$ 195,852	\$ 188,191	\$ 112,193	\$ 3,032	\$ 2,914	\$ 191,105
2028	\$ 587,556	\$ 195,852	\$ 187,255	\$ 109,161	\$ 3,032	\$ 2,899	\$ 190,154
2029	\$ 391,704	\$ 195,852	\$ 186,323	\$ 106,129	\$ 3,032	\$ 2,885	\$ 189,208
2030	\$ 195,852	\$ 195,852	\$ 185,396	\$ 103,097	\$ 3,032	\$ 2,870	\$ 188,267
2031-63				\$ 100,064	\$ 100,064	\$ 87,120	\$ 87,120
Total, Lump Sum Payment			\$ 2,091,040			\$ 119,494	\$ 2,210,535

Amount of Reduction, Lump Sum \$ 63,332 \$ 13,925 \$ 77,257

* 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.