

RESOLUTION NO. 2020-04

**BEFORE THE BOARD OF DIRECTORS OF THE
TRANQUILLITY IRRIGATION DISTRICT**

A RESOLUTION TO

**AUTHORIZE THE APPROVAL, EXECUTION AND DELIVERY OF THE CONTRACT
BETWEEN THE UNITED STATES AND TRANQUILLITY IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE FROM DELTA DIVISION AND
FACILITIES REPAYMENT AND FILING OF A NOTICE OF STATUTORY
EXEMPTION AND CATEGORICAL EXEMPTIONS FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT FOR SAID CONTRACT**

WHEREAS, the Tranquillity Irrigation District (“District”) entered into Contract No. 14-06-200-701-A (“Original Contract”) with the United States on December 23, 1963, for the delivery of 20,200 acre feet (AF) of permanent Schedule 2 water (“Rights Water”) and 13,800 AF of supplemental Central Valley Project (“CVP”) water (“Project Water”); and

WHEREAS, the United States and the District have pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act, subsequently entered into interim renewal contract(s) identified as Contract No. 14-06-200-701-A-IR1 and 14-06-200-701-A-IR2 (“Interim Contracts”), which provided for the delivery of Project Water to the District from March 1, 2004, through February 28, 2006; and

WHEREAS, the United States and the District entered into a long-term contract identified as Contract No. 14-06-200-701-A-LTR1, (the “Existing Contract”), which provided for continued Project Water service to the District following expiration of the Interim Contracts and which is still in place currently; and

WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (the “WIIN Act”); and

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

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

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

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

WHEREAS, on May 29, 2019, pursuant to Section 4011(a)(1), of the WIIN Act, the District requested that the United States, through the United States Bureau of Reclamation (“Reclamation”), initiate the process to convert its Existing Contract, which was executed under Section 9(e) of the 1939 Act, to a repayment contract under Section 9(d) of the 1939 Act; and

WHEREAS, pursuant to and consistent with the WIIN Act, Reclamation and the District negotiated terms and conditions that amend and convert the Existing Contract to a repayment contract, and those terms and conditions are reflected in the attached water service contract between the United States and Tranquillity Irrigation District Providing for Project Water Service From Delta Division and Facilities Repayment (the “Conversion Contract”), which is incorporated herein by this reference as Exhibit “A”; and

WHEREAS, the Conversion Contract also reflects the current standard terms and conditions required by the Reclamation Manual; and

WHEREAS, the Conversion Contract does not affect the existing terms and conditions for delivery of Rights Water to the District, but continues Project Water service to the District in the same amounts as the Existing Contract, and within certain established parameters, in the same scope and nature as ongoing CVP operations and its existing facilities; and

WHEREAS, Project Water made available under the Conversion Contract will be diverted through the same CVP facilities as the water provided under the Original Contract, the Interim Renewal Contracts, and the Existing Contract; and

WHEREAS, the District has fully utilized, for reasonable and beneficial use, all water provided under the Existing Contract by receiving and delivering such water to lands within the District’s boundaries for irrigation purposes, or putting such water to beneficial use through conservation and transfer in accordance with California law and expects to fully utilize, for reasonable and beneficial use, the quantity of Project Water to be made available to it pursuant to the Conversion Contract; and

WHEREAS, the District has relied on water obtained from the CVP for more than 50 years, therefore it is imperative to the District and its landowners that the District continue to deliver the

same quantity of water service to its lands through a contract with the United States pursuant to Reclamation Law and more particularly the Act of Congress of July 2, 1956 (70 Stat. 483) and the Act of Congress of October 30, 1992 (96 Stat. 1262); and

WHEREAS, the District maintains in its records copies of contracts, water delivery reports, crop information and other data supporting these factual findings; and

WHEREAS, Reclamation initiated a 60-day public comment period for the Conversion Contract, which period ended on August 31, 2020, during which one comment was received for the District's Conversion Contract; and

WHEREAS, Reclamation has reviewed all public comments and has approved the Conversion Contract for execution by the District; and

WHEREAS, the District has reviewed the terms and conditions of the Conversion Contract and finds the form and content thereof to be acceptable to the District and appropriate for execution, and therefore proposes to enter into the Conversion Contract; and

WHEREAS, pursuant to the Ralph M. Brown Act (Gov. Code §§ 54950, et seq.), the District timely posted its agenda packet for this special meeting held on October 14, 2020, telephonically pursuant to Executive Order N-29-20, at least 24 hours prior to said meeting on its publicly accessible website through a prominent and direct link (www.trqid.com) and on-site at the District offices, indicating that the District's Board of Directors would be considering approval of and authorization for execution of the Conversion Contract.

NOW, THEREFORE, it is hereby resolved by the Board of Directors of the Tranquillity Irrigation District that:

1. The above recitals are true and correct, and this Board so finds and determines.
2. Executing the Conversion Contract is statutorily exempt from compliance with the California Environmental Quality Act ("CEQA") as provided in the California Public Resources Code and implemented through Title 14 of the California Code of Regulations, Sections 15260 through 15285, with particular reference to Section 15261, subdivision (a), because it is merely a continuation of a project approved, funded and fully operated prior to November 23, 1970, and no modification or alteration in the CVP or the amount of Project Water delivered is proposed.
3. To the extent that the Conversion Contract may involve a change in rates, tolls, fares, or other charges necessary to repay the capital costs for the CVP facilities, the Conversion Contract is also statutorily exempt from CEQA pursuant to Title 14 of the California Code of Regulations Section 15273.
4. Executing the Conversion Contract is also subject to the "common sense" categorical exemption from CEQA as provided in Title 14 of the California Code of Regulations Section 15061, subd. (b)(3) because it merely contemplates water delivery in the same nature and

scope as prior contracts, which have been in place for over 50 years, and therefore will not result in any further significant effects on the environment.

5. Execution of the Conversion Contract is categorically exempt from compliance with CEQA as provided in Title 14 of the California Code of Regulations, Section 15300 through 15333, with particular reference to Section 15301, because it provides for the continued operation of existing facilities with no expansion of the District’s current water use or infrastructure.

6. The Conversion Contract will not create any effects or impacts specified in Title 14 of the California Code of Regulations, Section 15300.2.

7. Execution of the Conversion Contract is exempt from CEQA based on its record of proceedings showing that the Conversion Contract continues water service to the District in the same amounts as the Existing Contract, within established parameters, in the same scope and nature as ongoing CVP operations and its existing facilities; it involves no increase in existing service; and no new construction, expansion, or any modification to the existing distribution system; nor any change in the source of water to be delivered, or the uses to which such supplies will be put.

8. The District shall prepare and file a Notice of Exemption with the Fresno County Clerk and the Office of Planning and Research as provided for in Title 14 of the California Code of Regulations, Section §§ 15062(c)(2) and (e), in substantially the form attached hereto as Exhibit “B”.

9. The Conversion Contract, as finalized by Reclamation, presented to the Board and on file with the Secretary hereof, is hereby approved. The District’s Board President is hereby authorized to execute and deliver the Conversion Contract in the form attached hereto as Exhibit “A.”

10. The District’s officers, staff, and consultants are hereby authorized and directed to take all additional actions they deem necessary or appropriate to carry out the intent of this resolution and to ensure continued water service to the District and its water users.

11. A certified copy of this resolution shall be prepared and transmitted by the District’s Secretary to the United States Bureau of Reclamation.

PASSED AND ADOPTED this 14th day of October, 2020, by the following vote to wit:

AYES: 3
NOES: 0
ABSENT: 0
ABSTAIN: 0

**CERTIFICATE OF SECRETARY
OF
TRANQUILLITY IRRIGATION DISTRICT,
A California Irrigation District**

I, Elizabeth Reeves, do hereby certify that I am the duly authorized and appointed Secretary of the Tranquillity Irrigation District, a California Irrigation District (the "District"); that the following is a true and correct copy of that certain resolution duly and unanimously adopted and approved by the Board of Directors of the District on the 14th day of October, 2020; and that said resolution has not been modified or rescinded and remains in full force and effect as the date hereof:

IN WITNESS WHEREOF, I have executed this Certificate on this 14th day of October, 2020.

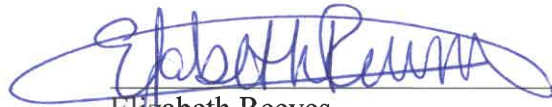

Elizabeth Reeves
Secretary of Tranquillity Irrigation District

EXHIBIT "A"
CONVERSION CONTRACT

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

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

1 THIS CONTRACT, made this ____ day of _____, 20____, 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 TRANQUILLITY
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:

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EXPLANATORY RECITALS

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

[2nd] WHEREAS, the United States constructed the Delta-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. 14-06-200-701-A, dated December 23, 1963, which established terms for the delivery of 20,200 acre feet of Schedule 2 water as a permanent adjustment and settlement of the Contractor's asserted claims of rights to water in Fresno Slough, tributary to the San Joaquin River in fulfillment of such rights; and

[5th] WHEREAS, Schedule 2 water is not the subject of this Contract and will continue to be delivered and administered under the terms and conditions of Contract No. 14-06-200-701-A; and

[6th] WHEREAS, Contract No. 14-06-200-701-A also established the terms for the delivery of 13,800 acre-feet of supplemental water, hereinafter referred to as Project Water,

37 to the Contractor from Delta Division facilities from December 23, 1963 through December 23,
38 2003; and

39 [7th] WHEREAS, the United States and the Contractor have pursuant to
40 Subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently
41 entered into interim renewal contract(s) identified as Contract No. 14-06-200-701-A-IR1 and
42 14-06-200-701-A-IR2, which provided for the delivery of Project Water to the Contractor from
43 March 1, 2004, through February 28, 2006; and

44 [8th] WHEREAS, the United States and the Contractor entered into a long-term
45 contract identified as Contract No. 14-06-200-701-A-LTR1, hereinafter referred to as the
46 Existing Contract, which provided for the continued water service to the Contractor following
47 expiration of Contract No. 14-06-200-701-A-IR2, and which was in effect the date the WIIN Act
48 was enacted; and

49 [9th] WHEREAS, on December 16, 2016, the 114th Congress of the United
50 States of America enacted the WIIN Act; and

51 [10th] WHEREAS, Section 4011(a)(1) provides that “upon request of the
52 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
53 date of enactment of this subtitle and between the United States and a water users’ association
54 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
55 mutually agreeable terms and conditions.”; and

56 [11th] WHEREAS, Section 4011(a)(1) further provides that “the manner of
57 conversion under this paragraph shall be as follows: (A) Water service contracts that were
58 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under

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

63 [12th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered
64 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,
65 repayment, exchange and transfer contractual rights between the water users’ association
66 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the
67 water users’ association [Contractor] and their landowners as provided under State law.”; and

68 [13th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that
69 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water
70 service or repayment contractor to receive water; or (4) except as expressly provided in this
71 section, any obligations under the Federal Reclamation law, including the continuation of
72 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and
73 repayment contractors making prepayments pursuant to this section.”; and

74 [14th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
75 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water
76 service contracts into repayment contracts, amend existing repayment contracts, and allow
77 contractors to prepay their construction cost obligations pursuant to applicable Federal
78 Reclamation law; and

79 [15th] WHEREAS, the United States has determined that the Contractor has
80 fulfilled all of its obligations under the Existing Contract; and

81 [16th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
82 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
83 reasonable and beneficial use and/or has demonstrated future demand for water use such that the
84 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
85 quantity of Project Water to be made available to it pursuant to this Contract; and

86 [17th] WHEREAS, water obtained from the Project has been relied upon by
87 urban and agricultural areas within California for more than 50 years, and is considered by the
88 Contractor as an essential portion of its water supply; and

89 [18th] WHEREAS, the economies of regions within the Project, including the
90 Contractor's, depend upon the continued availability of water, including water service from the
91 Project; and

92 [19th] WHEREAS, the Secretary intends through coordination, cooperation, and
93 partnerships to pursue measures to improve water supply, water quality, and reliability of the
94 Project for all Project purposes; and

95 [20th] WHEREAS, the mutual goals of the United States and the Contractor
96 include: to provide for reliable Project Water supplies; to control costs of those supplies; to
97 achieve repayment of the Project as required by law; to guard reasonably against Project Water
98 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
99 and to comply with all applicable environmental statutes, all consistent with the legal obligations
100 of the United States relative to the Project; and

101 [21st] WHEREAS, the parties intend by this Contract to maintain a cooperative
102 relationship in order to achieve their mutual goals; and

103 [22nd] WHEREAS, the Contractor has utilized or may utilize transfers, contract
104 assignments, rescheduling, and conveyance of Project Water and non-Project water under this
105 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the
106 beneficial use of water; and

107 [23rd] WHEREAS, the parties desire and intend that this Contract not provide a
108 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
109 Explanatory Recital immediately above; and

110 [25th] WHEREAS, the Contracting Officer and the Contractor agree that this
111 Contract complies with Section 4011 of the WIIN Act; and

112 [26th] WHEREAS, the Contracting Officer and the Contractor agree to amend
113 and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal
114 Reclamation law on the terms and conditions set forth below.

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

117 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

147 Plant, and the San Luis Reservoir, used to divert, store, and convey water to those Project
148 Contractors entitled to receive water conveyed through the Delta-Mendota Canal;

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

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

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

162 (m) “Full Cost Rate” shall mean an annual rate, as determined by the
163 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
164 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
165 deficits funded, less payments, over such periods as may be required under Federal Reclamation
166 law, or applicable contract provisions. Interest will accrue on both the construction expenditures
167 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
168 date incurred in the case of costs arising subsequent to October 12 1982, and shall be calculated

169 in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of 1982.

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

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

174 (o) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable
175 to the delivery of Irrigation Water;

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

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

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

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

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

190 (u) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)
191 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of
192 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this

193 Contract was entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota
194 Water Authority;

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

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

200 (x) "Project Water" shall mean all water that is developed, diverted, stored, or
201 delivered by the Secretary in accordance with the statutes authorizing the Project and in
202 accordance with the terms and conditions of water rights acquired pursuant to California law;
203 however, Schedule 2 Water shall not be considered Project Water for purposes of this Contract;

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

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

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

215 (bb) "Schedule 2 Water" shall mean that water as so defined under Contract
216 No. 14-06-200-701-A with the United States, which will continue to be delivered and
217 administered under said contract;

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

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

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

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

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

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

235 TERM OF CONTRACT – RIGHT TO USE OF WATER

236 2. (a) This Contract shall be effective November 1, 2020, hereinafter known as
237 the “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and
238 Charges under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939
239 (53 Stat. 1195) as applicable, and applicable law;

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

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

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

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

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

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

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

269 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

270 3. (a) During each Year, consistent with all applicable State water rights permits,
271 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
272 Contract, the Contracting Officer shall make available for delivery to the Contractor 13,800 acre-
273 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in
274 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
275 Articles 4 and 7 of this Contract. Schedule 2 Water shall continue to be delivered to the

276 Contractor at no cost pursuant to Contract No. 14-06-200-701-A, dated December 23, 1963, and
277 shall not be subject to the provisions of this Contract, and said Contract No. 14-06-200-701-A
278 shall be in full force and effect insofar as it pertains to the furnishing of Schedule 2 Water.

279 (b) Because the capacity of the Project to deliver Project Water has been
280 constrained in recent years and may be constrained in the future due to many factors including
281 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
282 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
283 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
284 programmatic environmental impact statement prepared pursuant to Section 3404(c) of the
285 CVPIA projected that the Contract Total set forth in this Contract will not be available to the
286 Contractor in many years. During the most recent five years prior to execution of the Existing
287 Contract, the Recent Historic Average Water Made Available to the Contractor was 9,080 acre-
288 feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the
289 parties under any provision of this Contract.

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

292 (1) In the event any Project Contractor (other than a Cross Valley
293 Contractor) that receives Project Water through the Delta Division Facilities obtains a
294 contractual agreement that the Contracting Officer shall make Project Water available at a point
295 or points of delivery in or north of the Delta, at the request of the Contractor and upon
296 completion of any required environmental documentation, this Contract shall be amended to
297 provide for deliveries in or north of the Delta on mutually agreeable terms. Such amendments to

298 this Contract shall be limited solely to those changes made necessary by the addition of such
299 alternate points of delivery in or north of the Delta; *Provided, That* the Contracting Officer's use
300 of the Harvey O. Banks Pumping Plant to deliver Project Water does not trigger this right of
301 amendment.

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

319 (e) The Contractor shall comply with requirements applicable to the
320 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
321 of any water service contract between the Contracting Officer and the Contractor in effect
322 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
323 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
324 implement. The Existing Contract, which evidences in excess of 41 years of diversions for
325 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
326 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
327 required biological assessment(s) prepared pursuant to the ESA, and any other needed
328 environmental review. Nothing herein shall be construed to prevent the Contractor from
329 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
330 biological opinion or other environmental documentation referred to in this Article.

331 (f) Following the declaration of Water Made Available under Article 4 of this
332 Contract, the Contracting Officer will make a determination whether Project Water, or other
333 water available to the Project, can be made available to the Contractor in addition to the Contract
334 Total under this Article during the Year without adversely impacting other Project Contractors.
335 At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to
336 making such a determination. If the Contracting Officer determines that Project Water, or other
337 water available to the Project, can be made available to the Contractor, the Contracting Officer
338 will announce the availability of such water and shall so notify the Contractor as soon as
339 practical. The Contracting Officer will thereafter meet with the Contractor and other Project
340 Contractors capable of taking such water to determine the most equitable and efficient allocation

341 of such water. If the Contractor requests the delivery of any quantity of such water, the
342 Contracting Officer shall make such water available to the Contractor in accordance with
343 applicable statutes, regulations, guidelines, and policies. Subject to existing long-term
344 contractual commitments, water rights, and operational constraints, long-term Project
345 Contractors shall have a first right to acquire such water, including Project Water made available
346 pursuant to Section 215 of the Reclamation Reform Act of 1982.

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

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

361 (i) Project Water furnished to the Contractor pursuant to this Contract may be
362 delivered for purposes other than those described in subdivisions (p) and (r) of Article 1 of this

363 Contract upon written approval by the Contracting Officer in accordance with the terms and
364 conditions of such approval.

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

373 TIME FOR DELIVERY OF WATER

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

383 (b) On or before each March 1 and at such other times as necessary, the
384 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the

385 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
386 United States to the Contractor pursuant to this Contract for the Year commencing on such
387 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water
388 according to the approved schedule for the Year commencing on such March 1.

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

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

398 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

403 (b) The Contracting Officer, either directly or indirectly through its written
404 agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
405 maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to

406 the Contractor at the point or points of delivery established pursuant to subdivision (a) of this
407 Article.

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

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

424 (e) Absent a separate contrary written agreement with the Contractor, neither
425 the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the
426 control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor
427 pursuant to this Contract beyond the point or points of delivery established pursuant to

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

441 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

442 6. (a) The Contractor has established a measuring program satisfactory to the
443 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
444 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
445 water delivered for M&I purposes is measured at each M&I service connection. The water
446 measuring devices or water measuring methods of comparable effectiveness must be acceptable
447 to the Contracting Officer. The Contractor shall be responsible for installing, operating,
448 maintaining, and repairing all such measuring devices and implementing all such water
449 measuring methods at no cost to the United States. The Contractor shall use the information

450 obtained from such water measuring devices or water measuring methods to ensure its proper
451 management of the water; to bill water users for water delivered by the Contractor; and, if
452 applicable, to record water delivered for M&I purposes by customer class as defined in the
453 Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein
454 contained, however, shall preclude the Contractor from establishing and collecting any charges,
455 assessments, or other revenues authorized by California law. The Contractor shall include a
456 summary of all its annual surface water deliveries in the annual report described in subdivision
457 (c) of Article 25 of this Contract.

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

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

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

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

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

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

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

494 rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments
495 shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be
496 agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and
497 Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set
498 forth in Exhibit “B”, as may be revised annually.

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

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

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

516 Contractor shall be deemed to have elected the installment payment alternative, in which case,
517 the first such payment shall be made no later than December 30, 2020. The second payment
518 shall be made no later than the first anniversary of the first payment date. The third payment
519 shall be made no later than the second anniversary of the first payment date. The final payment
520 shall be made no later than November 1, 2023. If the installment payment option is elected by
521 the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation
522 by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting
523 Officer shall re-compute the remaining amount due to reflect the pre-payment using the same
524 methodology as was used to compute the initial annual installment payment amount, which is
525 illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be
526 established, receipt of the Contractor's payment of the Repayment Obligation to the United
527 States shall fully and permanently satisfy the Existing Capital Obligation.

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

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

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

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

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

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

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

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

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

579 (d) At the time the Contractor submits the initial schedule for the delivery of
580 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
581 Contractor shall make an advance payment to the United States equal to the total amount payable

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

602 (e) The Contractor shall also make a payment in addition to the Rate(s) in
603 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the

604 appropriate Tiered Pricing Component then in effect, before the end of the month following the
605 month of delivery; *Provided, That* the Contractor may be granted an exception from the Tiered
606 Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be
607 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the
608 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if
609 there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report
610 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component
611 for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made
612 through the adjustment of payments due to the United States for Charges for the next month.
613 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall
614 be computed pursuant to Article 19 of this Contract.

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

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

623 (h) All revenues received by the United States from the Contractor relating to
624 the delivery of Project Water or the delivery of non-Project water through Project facilities shall
625 be allocated and applied in accordance with Federal Reclamation law and the associated rules or

626 regulations, and the then-current Project ratesetting policies for M&I Water or Irrigation Water.

627 (i) The Contracting Officer shall keep its accounts pertaining to the
628 administration of the financial terms and conditions of its long-term contracts, in accordance
629 with applicable Federal standards, so as to reflect the application of Project costs and revenues.

630 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
631 Contractor a detailed accounting of all Project and Contractor expense allocations, the
632 disposition of all Project and Contractor revenues, and a summary of all water delivery
633 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
634 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

642 (k) 1. Beginning at such time as deliveries of Project Water in a Year
643 exceed 80 percent of the Contract Total, then before the end of the month following the month of
644 delivery the Contractor shall make an additional payment to the United States equal to the
645 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
646 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
647 Contract Total, shall equal one-half of the difference between the Rate established under

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

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

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

669 (1) For the term of this Contract, Rates applied under the respective

670 ratesetting policies will be established to recover only reimbursable O&M (including any
671 deficits) and capital costs of the Project, as those terms are used in the then-current Project
672 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is
673 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in
674 practices which implement the Contracting Officer's ratesetting policies will not be implemented
675 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,
676 need, and impact of the proposed change.

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

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

687 (o) Omitted

688 NON-INTEREST BEARING O&M DEFICITS

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

SALES, TRANSFERS, OR EXCHANGES OF WATER

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

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation

714 and the Contracting Officer's compliance determination shall be reviewed every five years and
715 updated, as necessary, prior to the expiration of the then existing five (5)-year period. All
716 subsequent environmental documentation shall include an alternative to evaluate not less than the
717 quantity of Project Water historically transferred within the same geographical area.

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

729 APPLICATION OF PAYMENTS AND ADJUSTMENTS

730 10. (a) The amount of any overpayment by the Contractor of the Contractor's
731 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
732 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
733 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount
734 of such overpayment, at the option of the Contractor, may be credited against amounts to become
735 due to the United States by the Contractor. With respect to overpayment, such refund or

736 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to
737 have the right to the use of any of the Project Water supply provided for by this Contract. All
738 credits and refunds of overpayments shall be made within 30 days of the Contracting Officer
739 obtaining direction as to how to credit or refund such overpayment in response to the notice to
740 the Contractor that it has finalized the accounts for the Year in which the overpayment was
741 made.

742 (b) All advances for miscellaneous costs incurred for work requested by the
743 Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs
744 when the work has been completed. If the advances exceed the actual costs incurred, the
745 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
746 advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this
747 Contract.

748 TEMPORARY REDUCTIONS – RETURN FLOWS

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

754 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may
755 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein
756 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any
757 of the Project facilities or any part thereof necessary for the delivery of Project Water to the

758 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies)
759 will give the Contractor due notice in advance of such temporary discontinuance or reduction,
760 except in case of emergency, in which case no notice need be given; *Provided, That* the United
761 States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon
762 resumption of service after such discontinuance or reduction, and if requested by the Contractor,
763 the United States will, if possible, deliver the quantity of Project Water which would have been
764 delivered hereunder in the absence of such discontinuance or reduction.

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

771 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

777 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting
778 or other similar operational errors affecting the Project; drought and other physical or natural
779 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer
780 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article
781 17 of this Contract, no liability shall accrue against the United States or any of its officers,
782 agents, or employees for any damage, direct or indirect, arising therefrom.

783 (c) In any Year in which there may occur a Condition of Shortage for any of

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

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

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

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

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

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

825 UNAVOIDABLE GROUNDWATER PERCOLATION

826 13. (a) To the extent applicable, the Contractor shall not be deemed to have
827 delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this

828 Contract if such lands are irrigated with groundwater that reaches the underground strata as an
829 unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

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

832 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

838 PROTECTION OF WATER AND AIR QUALITY

839 15. (a) Omitted

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

845 None of the foregoing affects or modifies the obligations of the United States under Contract No.
846 14-06-200-701-A, dated December 23, 1963, with respect to Schedule 2 Water, including but not
847 limited to, Article 10 of said contract.

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

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

857 (e) Omitted

858 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED
859 STATES

860 16. (a) Water or water rights now owned or hereafter acquired by the Contractor
861 other than from the United States and Irrigation Water furnished pursuant to the terms of this
862 Contract may be simultaneously transported through the same distribution facilities of the
863 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
864 and non-Project water were constructed without funds made available pursuant to Federal
865 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
866 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive
867 Irrigation Water must be established through the certification requirements as specified in the
868 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of
869 Eligible Lands within the Contractor's Service Area can be established and the quantity of
870 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such
871 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-
872 Project water are (were) constructed with funds made available pursuant to Federal Reclamation
873 law, the non-Project water will be subject to the acreage limitation provisions of Federal
874 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
875 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate
876 annually the cost to the Federal Government, including interest, of storing or delivering non-
877 Project water, which for purposes of this Contract shall be determined as follows: The quotient
878 shall be the unpaid distribution system costs divided by the total irrigable acreage within the
879 Contractor's Service Area. The incremental fee per acre is the mathematical result of such

880 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982
881 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full-cost land
882 within the Contractor's Service Area that receives non-Project water through Federally financed
883 or constructed facilities. The incremental fee calculation methodology will continue during the
884 term of this Contract absent the promulgation of a contrary Bureau of Reclamation-wide rule,
885 regulation, or policy adopted after the Contractor has been afforded the opportunity to review
886 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is
887 adopted, it shall supersede this provision.

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

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

899 (2) Delivery of such non-Project water in and through Project facilities
900 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
901 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water

902 available to other Project Contractors; (iii) interfere with the delivery of contractual water
903 entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of
904 the Project facilities.

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

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

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

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

926 OPINIONS AND DETERMINATIONS

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

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

942 COORDINATION AND COOPERATION

943 18. (a) In order to further their mutual goals and objectives, the Contracting
944 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
945 with other affected Project Contractors, in order to improve the O&M of the Project. The

946 communication, coordination, and cooperation regarding O&M shall include, but not be limited
947 to, any action which will or may materially affect the quantity or quality of Project Water supply,
948 the allocation of Project Water supply, and Project financial matters including, but not limited to,
949 budget issues. The communication, coordination, and cooperation provided for hereunder shall
950 extend to all provisions of this Contract. Each party shall retain exclusive decision making
951 authority for all actions, opinions, and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

980 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

998 EQUAL EMPLOYMENT OPPORTUNITY

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

1000 (a) The Contractor will not discriminate against any employee or applicant for
1001 employment because of race, color, religion, sex, sexual orientation, gender identity, or national
1002 origin. The Contractor will take affirmative action to ensure that applicants are employed, and
1003 that employees are treated during employment, without regard to their race, color, religion, sex,
1004 sexual orientation, gender identity, or national origin. Such action shall include, but not be
1005 limited to, the following: employment, upgrading, demotion, or transfer; recruitment or
1006 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
1007 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
1008 places, available to employees and applicants for employment, notices to be provided by the
1009 Contracting Officer setting forth the provisions of this nondiscrimination clause.

1010 (b) The Contractor will, in all solicitations or advertisements for employees
1011 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1012 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1013 gender identity, or national origin.

1014 (c) The Contractor will not discharge or in any other manner discriminate
1015 against any employee or applicant for employment because such employee or applicant has
1016 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
1017 employee or applicant. This provision shall not apply to instances in which an employee who
1018 has access to the compensation information of other employees or applicants as part of such
1019 employee's essential job functions discloses the compensation of such other employees or
1020 applicants to individuals who do not otherwise have access to such information, unless such
1021 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
1022 proceeding, hearing, or action, including an investigation conducted by the employer, or is
1023 consistent with the Contractor's legal duty to furnish information.

1024 (d) The Contractor will send to each labor union or representative of workers
1025 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1026 to be provided by the Contracting Officer, advising the labor union or workers' representative of
1027 the Contractor's commitments under Section 202 of Executive Order No. 11246 of September
1028 24, 1965, and shall post copies of the notice in conspicuous places available to employees and
1029 applicants for employment.

1030 (e) The Contractor will comply with all provisions of Executive Order No.
1031 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
1032 Labor.

1033 (f) The Contractor will furnish all information and reports required by
1034 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the
1035 Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts
1036 by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain
1037 compliance with such rules, regulations, and orders.

1038 (g) In the event of the Contractor's noncompliance with the nondiscrimination
1039 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
1040 canceled, terminated, or suspended in whole or in part and the Contractor may be declared
1041 ineligible for further Government contracts in accordance with procedures authorized in
1042 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
1043 remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule,
1044 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1045 (h) The Contractor will include the provisions of paragraphs (a) through (g) in
1046 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1047 Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24,
1048 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor
1049 will take such action with respect to any subcontract or purchase order as may be directed by the
1050 Secretary of Labor as a means of enforcing such provisions, including sanctions for
1051 noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is
1052 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
1053 Contractor may request the United States to enter into such litigation to protect the interests of
1054 the United States.

1055 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1056 21. (a) The obligation of the Contractor to pay the United States as provided in
1057 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1058 obligation may be distributed among the Contractor's water users and notwithstanding the default
1059 of individual water users in their obligation to the Contractor.

1060 (b) The payment of charges becoming due pursuant to this Contract is a
1061 condition precedent to receiving benefits under this Contract. The United States shall not make
1062 water available to the Contractor through Project facilities during any period in which the
1063 Contractor is in arrears in the advance payment of water rates due the United States. The
1064 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1065 parties that are in arrears in the advance payment of water rates as levied or established by the
1066 Contractor.

1067 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1068 obligation to require advance payment for water rates which it levies.

1069 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1070 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1071 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1072 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1073 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-
1074 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1075 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
1076 Interior and/or Bureau of Reclamation.

1077 (b) These statutes prohibit any person in the United States from being
1078 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1079 discrimination under any program or activity receiving financial assistance from the Bureau of
1080 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
1081 Contract, the Contractor agrees to immediately take any measures necessary to implement this
1082 obligation, including permitting officials of the United States to inspect premises, programs, and
1083 documents.

1084 (c) The Contractor makes this Contract in consideration of and for the
1085 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1086 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1087 Reclamation, including installment payments after such date on account of arrangements for
1088 Federal financial assistance which were approved before such date. The Contractor recognizes
1089 and agrees that such Federal assistance will be extended in reliance on the representations and
1090 agreements made in this Article and that the United States reserves the right to seek judicial
1091 enforcement thereof.

1092 (d) Complaints of discrimination against the Contractor shall be investigated
1093 by the Contracting Officer's Office of Civil Rights.

1094 PRIVACY ACT COMPLIANCE

1095 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1096 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act
1097 (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting records required
1098 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the
1099 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43
1100 C.F.R. § 426.18.

1101 (b) With respect to the application and administration of the criminal penalty
1102 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1103 employees who are responsible for maintaining the certification and reporting records referenced
1104 in paragraph (a) above are considered to be employees of the Department of the Interior. See 5
1105 U.S.C. § 552a(m).

1106 (c) The Contracting Officer or a designated representative shall provide the
1107 Contractor with current copies of the Department of the Interior Privacy Act regulations and the
1108 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-
1109 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of
1110 information contained in the Landholders' certification and reporting records.

1111 (d) The Contracting Officer shall designate a full-time employee of the
1112 Bureau of Reclamation to be the System Manager responsible for making decisions on denials
1113 pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72.
1114 The Contractor is authorized to grant requests by individuals for access to their own records.

1115 (e) The Contractor shall forward promptly to the System Manager each
1116 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records
1117 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the
1118 System Manager with information and records necessary to prepare an appropriate response to
1119 the requester. These requirements do not apply to individuals seeking access to their own
1120 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless
1121 the requester elects to cite the Privacy Act as an authority for the request.

1122 (f) Upon complete payment of the Repayment Obligation by the Contractor,
1123 this Article 23 will no longer be applicable.

1124 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1125 24. In addition to all other payments to be made by the Contractor pursuant to this
1126 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1127 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1128 of direct cost incurred by the United States for work requested by the Contractor associated with
1129 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1130 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed

1131 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1132 contract administration.

1133 WATER CONSERVATION

1134 25. (a) Prior to the delivery of water provided from or conveyed through
1135 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1136 shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation
1137 Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

1138 Additionally, an effective water conservation and efficiency program shall be based on the
1139 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1140 the conservation and efficiency criteria for evaluating water conservation plans established under
1141 Federal law. The water conservation and efficiency program shall contain definite water
1142 conservation objectives, appropriate economically feasible water conservation measures, and
1143 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1144 Contract shall be contingent upon the Contractor's continued implementation of such water
1145 conservation program. In the event the Contractor's water conservation plan or any revised water
1146 conservation plan completed pursuant to subdivision (d) of this Article 25 have not yet been
1147 determined by the Contracting Officer to meet such criteria, due to circumstances which the
1148 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1149 made under this Contract so long as the Contractor diligently works with the Contracting Officer
1150 to obtain such determination at the earliest practicable date, and thereafter the Contractor
1151 immediately begins implementing its water conservation and efficiency program in accordance
1152 with the time schedules therein.

1153 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1154 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1155 Contractor shall implement the Best Management Practices identified by the time frames issued
1156 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I
1157 Water unless any such practice is determined by the Contracting Officer to be inappropriate for
1158 the Contractor.

1159 (c) The Contractor shall submit to the Contracting Officer a report on the
1160 status of its implementation of the water conservation plan on the reporting dates specified in the
1161 then-existing conservation and efficiency criteria established under Federal law.

1162 (d) At five (5)-year intervals, the Contractor shall revise its water
1163 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1164 water conservation plans established under Federal law and submit such revised water
1165 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1166 will then determine if the water conservation plan meets the Bureau of Reclamation's then-
1167 existing conservation and efficiency criteria for evaluating water conservation plans established
1168 under Federal law.

1169 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1170 shall be described in the Contractor's water conservation plan.

1171 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1172 26. Except as specifically provided in Article 16 of this Contract, the provisions of
1173 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1174 hereafter acquired by the Contractor or any user of such water within the Contractor's Service

1175 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1176 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1177 any water user within the Contractor's Service Area acquires or has available under any other
1178 contract pursuant to Federal Reclamation law.

1179 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

1180 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1181 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1182 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate
1183 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San
1184 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or
1185 affect the rights or obligations of the Contractor or the United States hereunder.

1186 (b) The Contracting Officer has previously notified the Contractor in writing
1187 that the O&M of a portion of the Project facilities which serve the Contractor has been
1188 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and
1189 therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
1190 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under
1191 the terms and conditions of the separate agreement between the United States and the Operating
1192 Non-Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of
1193 this Article, all rates, charges, or assessments of any kind, including any assessment for reserve
1194 funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1195 such successor determines, sets, or establishes for the O&M of the portion of the Project
1196 facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-

1197 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal
1198 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the
1199 Contractor of its obligation to pay directly to the United States the Contractor's share of the
1200 Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-
1201 Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the
1202 United States in accordance with the separate agreement identified in subdivision (a) of this
1203 Article.

1204 (c) For so long as the O&M of any portion of the Project facilities serving the
1205 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1206 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1207 Rates for Water Delivered under this Contract representing the cost associated with the activity
1208 being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1209 or its successor.

1210 (d) In the event the O&M of the Project facilities operated and maintained by
1211 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by
1212 the United States during the term of this Contract, the Contracting Officer shall so notify the
1213 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
1214 the portion of the Rates to be paid by the Contractor for Project Water under this Contract
1215 representing the O&M costs of the portion of such Project facilities which have been re-assumed.
1216 The Contractor shall, thereafter, in the absence of written notification from the Contracting
1217 Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the
1218 revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1219 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1220 28. The expenditure or advance of any money or the performance of any obligation of
1221 the United States under this Contract shall be contingent upon appropriation or allotment of
1222 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1223 obligations under this Contract. No liability shall accrue to the United States in case funds are
1224 not appropriated or allotted.

1225 BOOKS, RECORDS, AND REPORTS

1226 29. (a) The Contractor shall establish and maintain accounts and other books and
1227 records pertaining to administration of the terms and conditions of this Contract, including the
1228 Contractor's financial transactions; water supply data; project operations, maintenance, and
1229 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1230 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1231 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
1232 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
1233 and regulations, each party to this Contract shall have the right during office hours to examine
1234 and make copies of the other party's books and records relating to matters covered by this
1235 Contract.

1236 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1237 books, records, or other information shall be requested from the Contractor by the Contracting
1238 Officer unless such books, records, or information are reasonably related to the administration or
1239 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1240 time within which to provide the requested books, records, or information.

1241 (c) At such time as the Contractor provides information to the Contracting
1242 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1243 to the Operating Non-Federal Entity(ies).

1244 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1245 30. (a) The provisions of this Contract shall apply to and bind the successors and
1246 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1247 therein by either party shall be valid until approved in writing by the other party.

1248 (b) The assignment of any right or interest in this Contract by either party
1249 shall not interfere with the rights or obligations of the other party to this Contract absent the
1250 written concurrence of said other party.

1251 (c) The Contracting Officer shall not unreasonably condition or withhold
1252 approval of any proposed assignment.

1253 SEVERABILITY

1254 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1255 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1256 an association or other form of organization whose primary function is to represent parties to
1257 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1258 enforceability of a provision included in this Contract and said person, entity, association, or
1259 organization obtains a final court decision holding that such provision is legally invalid or
1260 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1261 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1262 final court decision identify by mutual agreement the provisions in this Contract which must be
1263 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).

1264 The time periods specified above may be extended by mutual agreement of the parties. Pending
1265 the completion of the actions designated above, to the extent it can do so without violating any
1266 applicable provisions of law, the United States shall continue to make the quantities of Project
1267 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1268 Contract which were not found to be legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

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

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OFFICIALS NOT TO BENEFIT

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

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CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

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

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(b) Within 30 days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed

1294 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1295 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1296 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1297 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1298 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1299 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1300 be paid in accordance with Article 24 of this Contract.

1301 FEDERAL LAWS

1302 35. By entering into this Contract, the Contractor does not waive its rights to contest
1303 the validity or application in connection with the performance of the terms and conditions of this
1304 Contract of any Federal law or regulation; *Provided, That* the Contractor agrees to comply with
1305 the terms and conditions of this Contract unless and until relief from application of such Federal
1306 law or regulation to the implementing provision of the Contract is granted by a court of
1307 competent jurisdiction.

1308 RECLAMATION REFORM ACT OF 1982

1309 36. (a) Upon a Contractor's compliance with and discharge of the Repayment
1310 Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation
1311 Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

1312 (b) The obligation of a Contractor to pay the Additional Capital Obligation
1313 shall not affect the Contractor's status as having repaid all of the construction costs assignable to

1314 the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation
1315 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1316 CERTIFICATION OF NONSEGREGATED FACILITIES

1317 37. The Contractor hereby certifies that it does not maintain or provide for its
1318 employees any segregated facilities at any of its establishments and that it does not permit its
1319 employees to perform their services at any location under its control where segregated facilities
1320 are maintained. It certifies further that it will not maintain or provide for its employees any
1321 segregated facilities at any of its establishments and that it will not permit its employees to
1322 perform their services at any location under its control where segregated facilities are
1323 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
1324 Employment Opportunity clause in this Contract. As used in this certification, the term
1325 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
1326 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
1327 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
1328 facilities provided for employees which are segregated by explicit directive or are in fact
1329 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
1330 disability, or otherwise. The Contractor further agrees that (except where it has obtained
1331 identical certifications from proposed subcontractors for specific time periods) it will obtain
1332 identical certifications from proposed subcontractors prior to the award of subcontracts
1333 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment
1334 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
1335 following notice to such proposed subcontractors (except where the proposed subcontractors
1336 have submitted identical certifications for specific time periods):

1337 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
1338 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1339 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1340 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1341 Opportunity clause. The certification may be submitted either for each subcontract or for all
1342 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1343 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1344 NOTICES

1345 38. Any notice, demand, or request authorized or required by this Contract shall be
1346 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1347 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1348 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1349 postage prepaid, or delivered to the Board of Directors of the Tranquillity Irrigation District, P.O.

1350 Box 487, Tranquillity, California 93668. The designation of the addressee or the address may be
1351 changed by notice given in the same manner as provided in this Article for other notices.

1352 MEDIUM FOR TRANSMITTING PAYMENT

1353 39. (a) All payments from the Contractor to the United States under this Contract
1354 shall be by the medium requested by the United States on or before the date payment is due. The
1355 required method of payment may include checks, wire transfers, or other types of payment
1356 specified by the United States.

1357 (b) Upon execution of this Contract, the Contractor shall furnish the
1358 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1359 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1360 out of the Contractor's relationship with the United States.

1361 CONTRACT DRAFTING CONSIDERATIONS

1362 40. This amended Contract has been negotiated and reviewed by the parties hereto,
1363 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1364 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1365 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1366 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1367 CONFIRMATION OF CONTRACT

1368 41. Promptly after the execution of this amended Contract, the Contractor will
1369 provide to the Contracting Officer a certified copy of a final decree of a court of competent
1370 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1371 for the authorization of the execution of this amended Contract. This amended Contract shall not
1372 be binding on the United States until the Contractor secures a final decree.

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1374 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1375 day and year first above written.

1376 UNITED STATES OF AMERICA

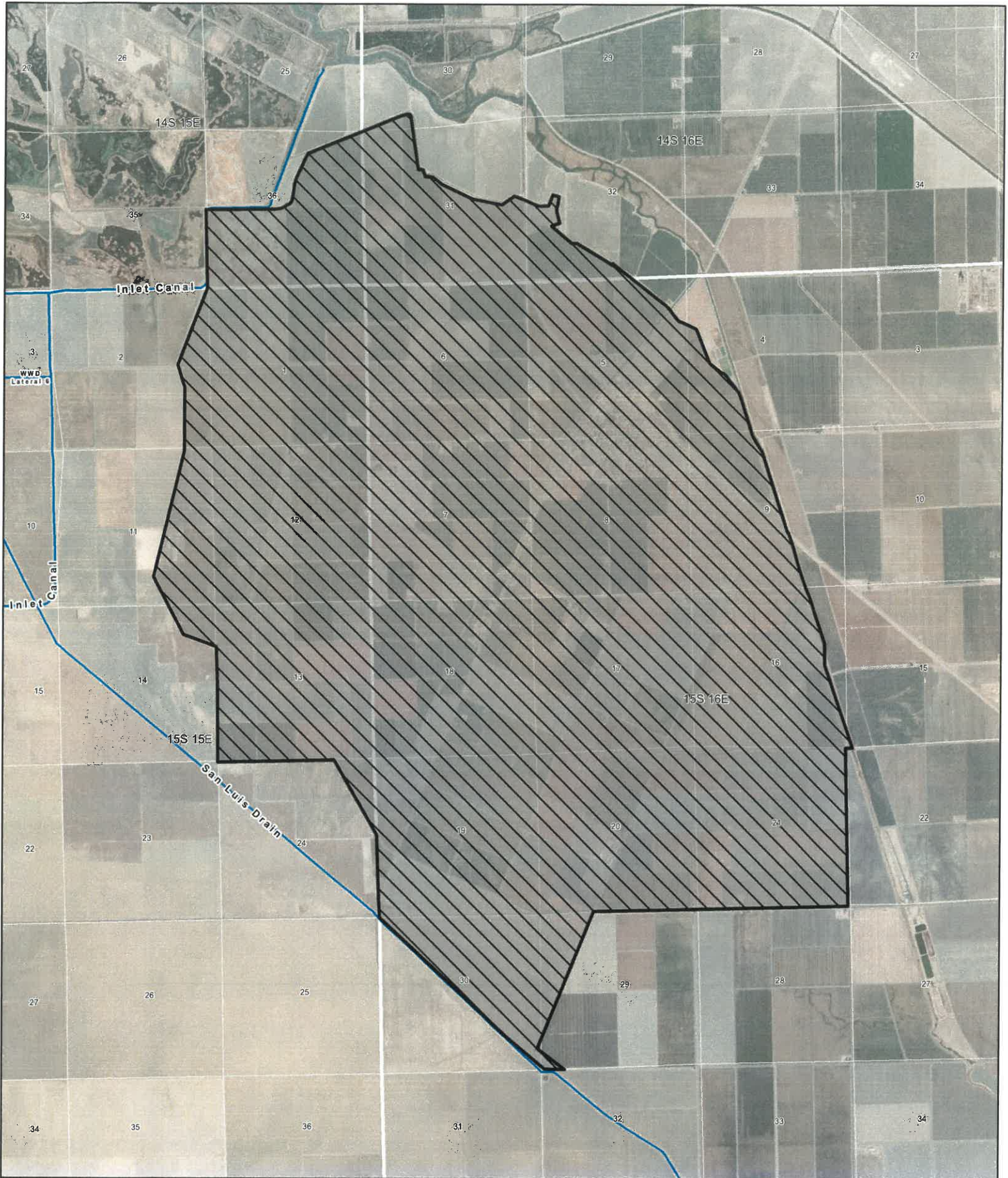
1377 By: _____
1378 Regional Director
1379 Interior Region 10: California-Great Basin
1380 Bureau of Reclamation



1381 TRANQUILLITY IRRIGATION DISTRICT
1382 (SEAL)

1383 By: _____
1384 President of the Board of Directors

1385 Attest:

1386 By: _____
1387 Secretary of the Board of Directors



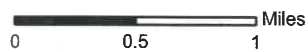
-  District Boundary
-  Contractor's Service Area

Tranquillity Irrigation District

Contract No. 14-06-200-701-A-LTR1-P
Exhibit A



— BUREAU OF —
RECLAMATION



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

	Irrigation Water	M&I Water¹
COST-OF-SERVICE (COS) RATE		
Construction Costs	\$59.84	
DMC Aqueduct Intertie	\$1.01	
O&M Components		
Water Marketing	\$8.97	
Storage	\$18.01	
Deficit Cost (ARRA Cost included)	\$0.00	
TOTAL COS RATE (Tier 1 Rate)	\$87.83	
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	
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	
CHARGES AND ASSESSMENTS (Payments in addition to Rates)		
P.L. 102-575 Surcharge (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$10.91	
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12	

EXPLANATORY NOTES

The Contractor has not projected any delivery of M&I Water for the 2020 contract year. A temporary M&I Rate will be applied upon any M&I water delivery.

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

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

EXHIBIT "B"
NOTICE OF EXEMPTION

NOTICE OF EXEMPTION

To: Office of Planning and Research
Post Office Box 3044, Room 212
Sacramento, CA 95812-3044

From: Tranquillity Irrigation District
25390 W Silveira Street
Tranquillity, CA 93668

Fresno County Clerk
2221 Kern Street
Fresno, CA 93721

Project Title: WIIN Act Conversion Contract

Project Location – Specific: Tranquillity Irrigation District

Project Location – City: Tranquillity **Project Location – County:** Fresno

Description of Nature, Purpose and Beneficiaries of Project:

This project is for the execution of a contract to amend and convert Tranquillity Irrigation District’s (“District”) existing contract with the United States, by and through the United States Bureau of Reclamation, for the delivery of 13,800 acre-feet (AF) of Central Valley Project water (“Conversion Contract”). Authorized by the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) (the “WIIN Act”), the Conversion Contract continues water service to the District in the same amounts as the District’s CVP contract dating back to 1963, and is in the same scope and nature as ongoing CVP operations. The Conversion Contract allows the District to repay in one lump sum the capital construction costs incurred by the United States Bureau of Reclamation (“Reclamation”) for the existing CVP facilities. The purpose of this Conversion Contract is to continue long-term and reliable delivery of CVP water to the District.

The beneficiaries of this project are the landowners within the District. By converting its existing contract, the District will ensure continued water delivery that allows the District to continue to convey and deliver irrigation water to the landowners in the District. The District, on behalf of its landowners, owns, operates, and maintains the facilities that supply CVP water from and deliver it to landowners in the District. Without the District, the landowners now receiving water would have a difficult time diverting and receiving surface water.

Name of Public Agency Approving Project: Tranquillity Irrigation District

Name of Person or Agency Carrying Out Project: Tranquillity Irrigation District

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);**
- Declared Emergency (Sec. 21080(b)(3); 15269(a));**
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));**

- **Categorical Exemption. State type and section number:** Existing Facilities – Cal. Code Regs., tit. 14, § 15301; and Common Sense Exemption – Cal. Code Regs., tit. 14, § 15061, subd. (b)(3)
- **Statutory Exemption. State code number:** Ongoing Project – Cal. Code Regs., tit. 14, § 15261; Rates, Tolls, Fares, and Charges – Cal. Code Regs., tit. 14, § 15273, subd. (a)(4)

Reasons why project is exempt:

CEQA Guidelines, § 15261 – Executing the Conversion Contract is statutorily exempt from CEQA because the water deliveries currently under contract were approved prior to November 23, 1970. The District entered into Contract No. 14-06-200-701-A (“Original Contract”) with the United States on December 23, 1963 for the delivery of 20,200 acre feet (AF) of permanent Schedule 2 water (“Rights Water”) and 13,800 AF of supplemental CVP water (“Project Water”). Section 3(a) of the Conversion Contract confirms that the project does not alter the terms of the District’s Rights Water, which continues to operate under the terms of the Original Contract.

The Original Contract for Project Water was extended pursuant to Subsection 3404(c)(1) of the Central Valley Project Improvement Act, whereby the United States and the District entered into interim renewal contract(s) identified as Contract No. 14-06-200-701-A-IR1 and 14-06-200-701-A-IR2 (“Interim Contracts”), which provided for the delivery of Project Water to the District from March 1, 2004, through February 28, 2006.

The United States and the District then entered into a long-term contract identified as Contract No. 14-06-200-701-A-LTR1 (“Existing Contract”), which provided for continued water service to the District following expiration of the Interim Contracts. The Existing Contract was still in place as the Conversion Contract was being negotiated.

As in the Original, Interim, and Existing Contracts, the quantity and timing of Project Water delivered to the District in any given year depends on a number of conditions. The Conversion Contract would not change those terms and thus would not result in any increase or decrease in the amount of water the District receives. The District will continue to receive Project Water through the same CVP – Delta Division facilities it currently uses, and no new construction, expansion, or modification is contemplated as part of the project. The District would continue to use the amount of up to 13,800 AF of Project Water received annually for municipal, irrigation, and beneficial recharge and transfer consistent with California law. Therefore, because the Conversion Contract represents the ongoing delivery of Project Water to the District in the same nature and scope as the Original 1963 Contract, this statutory exemption applies.

CEQA Guidelines, § 15301 – A Class 1 exemption “consists of the operation, repair, maintenance, permitting, leasing, licensing or minor alternation of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination The key consideration is whether the project involves negligible or no expansion of existing use.” (CEQA Guidelines, § 15301.) This categorical exemption applies because the Project Water the District receives pursuant to the Conversion Contract will be through existing facilities and involves no expansion of use beyond that already existing.

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Moreover, this is a single contract conversion which will not result in successive similar projects. Entering into the Conversion Contract will merely ensure continued reliable delivery of Project Water to the District in the same amounts and through the same facilities as the Original, Interim, and Existing Contracts.

Common Sense Exemption – The “Common Sense Exemption” applies to this project. As described above, the Conversion Contract contemplates delivery in the same nature and scope as prior contracts which have been in place for over fifty years. The District’s landowners have relied on this water for the same amount of time and in similar amounts. While the Project Water actually delivered will, as always, depend on seasonal and annual availability, the Conversion Contract does not change the contracted quantity, purpose of use, timing, or facilities used. Therefore, there is no possibility the Conversion Contract may have a significant effect on the environment within the District’s service area or in neighboring areas.

CEQA Guidelines § 15273 – This statutory exemption applies because part of the purpose of the Conversion Contract is to provide for the lump sum repayment of construction costs for the development of existing CVP facilities that provide water to the District. Since the passage of the Reclamation Act of 1902, federal water contractors have been required to repay an allocated portion of the construction costs for those water projects. Converting the Existing Contract to a repayment contract allows the District to repay the capital construction costs allocated to the District in one lump sum, which would normally be repaid annually. Thus, the District is “modifying” or “restructuring” the capital construction charges it would annually be charging to its irrigation customers. This restructuring is necessary to maintain water services throughout the District. However, the District will not be charging its landowners any more for the payout costs, as those funds are already held within the District’s prudent reserves. Therefore, to the extent that this project may involve a change in rates, tolls, fares, or other charges necessary to repay the capital costs for the CVP facilities, this statutory exemption applies.

Lead Agency

Contact Person: Elizabeth Reeves

Area Code/Telephone/Ext: 559 -698-7225

If filed by applicant:

1. **Attach certified document of exemption finding.**
2. **Has a Notice of Exemption been filed by the public agency approving the project?** Yes No

Signature: _____

Date: _____

Title: _____

- Signed by Lead Agency**
 Signed by Applicant