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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 \_\_\_\_\_  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM DELTA DIVISION

10 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2004, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
17 hereinafter referred to as the United States, and \_\_\_\_\_, hereinafter  
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and  
19 acting pursuant to the laws thereof, ~~with its principal place of business in California;~~

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20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood  
24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other  
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the  
27 San Joaquin River and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related  
29 facilities, hereinafter collectively referred to as the Delta Division Facilities, which will be used in  
30 part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and  
31 [Contractor specific issue w/respect to additional facilities]

32 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant  
33 to California law for operation of the Project; and

34 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No.  
35 \_\_\_\_\_, as amended, hereinafter referred to as the Existing Contract, (for binding  
36 agreement contractors) which established terms for the delivery to the Contractor of Project Water  
37 from the Delta Division Facilities from \_\_\_\_\_ through \_\_\_\_\_ [For

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38 binding agreement contractors only (hereinafter referred to as “Existing Contract”) and

39 [5<sup>th</sup>] [FOR IRC'S] WHEREAS, the Contractor and the United States have pursuant to  
40 subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered  
41 into interim renewal contract(s) identified as Contract No(s). \_\_\_\_\_, the  
42 current of which is hereinafter referred to as the Existing Contract, which provided for the continued  
43 water service to the Contractor from \_\_\_\_\_ through  
44 \_\_\_\_\_; and

45 [5<sup>th</sup>] [For binding agreement contractors] WHEREAS, the United States and the Contractor  
46 have, pursuant to Subsection 3404 (c)(3) of the Central Valley Project Improvement Act (CVPIA),  
47 subsequently entered into a binding agreement, identified as Binding Agreement No. \_\_\_\_\_  
48 which sets out the terms pursuant to which the Contractor agreed to renew the Existing Contract  
49 before its expiration date after completion of a programmatic environmental impact statement and  
50 other appropriate environmental documentation and negotiation of a renewal contract, and which also  
51 sets out the consequences of a subsequent decision not to renew; and

52 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of **the**  
53 **Existing Contract** ~~interim and existing long-term Project Water service contracts~~ following  
54 completion of appropriate environmental documentation, including a programmatic environmental  
55 impact statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) analyzing the  
56 direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of all

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57 existing contracts for Project Water; and [Contractor specific issue]

58 [6.1] Contractor Specific Issue recognizing partial assignment of the contract to a third  
59 party or the acquisition of Project Water through assignment(s), if such acquired water is being  
60 covered under this Contract

61 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
62 environmental review necessary to provide for long-term renewal of the Existing Contract; and

63 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
64 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the  
65 State of California, for water service from the Project; and

66 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
67 its obligations under the Existing Contract; and

68 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
69 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
70 beneficial use and/or has demonstrated projected future demand for water use such that the  
71 Contractor has the capability<sup>1</sup> and expects to utilize fully for reasonable and beneficial use the  
72 quantity of Project Water to be made available to it pursuant to this Contract; and [Contractor  
73 Specific]

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<sup>1</sup>Contractor specific issue – This recital may need to be modified for individual contractors who do not have the capability today to take Project Water but can demonstrate that they will have the capability to take Project Water prior to the delivery of water under this contract

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74 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and  
75 agricultural areas within California for more than fifty 50 years, and is considered by the Contractor  
76 as an essential portion of its water supply; and

77 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's,  
78 depend upon the continued availability of water, including water service from the Project; and

79 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
80 to pursue measures to improve water supply, water quality, and reliability of the Project for all  
81 Project purposes; and

82 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
83 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment  
84 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
85 reasonable balance among competing demands for use of Project Water; and to comply with all  
86 applicable environmental statutes, all consistent with the legal obligations of the United States  
87 relative to the Project; and

88 [~~14.1~~][15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
89 relationship in order to achieve their mutual goals; and

90 [15<sup>th</sup>][15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract

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91 assignments, rescheduling and conveyance of non-Project Water under this Contract as tools to  
92 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of Project Water;  
93 and

94 [15.42] WHEREAS, the parties desire and intend that this Contract not provide a disincentive  
95 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital  
96 immediately above; and

97 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this long-  
98 ~~term renewal~~ Contract pursuant to Federal Reclamation law on the terms and conditions set forth  
99 below;

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

#### 102 DEFINITIONS

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

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

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

110 (c) "Condition of Shortage" shall mean a condition respecting the Project during  
111 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract  
112 Total;<sup>2</sup>

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

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

117 (f) "Contractor's Service Area" shall mean the area to which the Contractor is  
118 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,  
119 which may be modified from time to time in accordance with Article 35 of this Contract without  
120 amendment of this Contract;<sup>3</sup>

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

123 (g.1) "Delta Division Facilities" shall mean those existing and future Project  
124 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the  
125 Tracy Pumping Plant, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir, used to  
126 divert, store and convey water to those Project Contractors entitled to receive water conveyed

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2 Contractor specific/ Unit specific issue

3 Contractor specific issue with respect to using legal description or service area map

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127 through the Delta-Mendota Canal.

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

131 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in  
132 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal  
133 Reclamation law;

134 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting  
135 Officer that shall amortize the expenditures for construction properly allocable to the Project  
136 irrigation or M&I functions, as appropriate, of facilities in service including **all** O&M deficits funded,  
137 less payments, over such periods as may be required under Federal Reclamation law, or applicable  
138 contract provisions. Interest will accrue on both the construction expenditures and funded O&M  
139 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case  
140 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with  
141 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual **O&M operation,**  
142 **maintenance,** and replacement costs consistent with Section 426.2 of the Rules and Regulations for  
143 the RRA;<sup>4</sup>

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4 This definition may be an issue with M&I contractors and those with Repayment contracts pursuant to section 9(d) of the Reclamation Projects Act 1939

144 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be  
145 delivered in accordance with Section 204 of the RRA;

146 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to  
147 the delivery of Irrigation Water;

148 (m) "Irrigation Water" shall mean water made available from the Project that is  
149 used primarily in the production of agricultural crops or livestock, including domestic use incidental  
150 thereto, and watering of livestock;

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

153 (o) "Municipal and Industrial (M&I) Water"<sup>5</sup> shall mean Project Water, other than  
154 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human  
155 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are  
156 kept for personal enjoyment or water delivered to landholdings operated in units of less than five (5)  
157 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of  
158 water delivered to any such landholding is a use described in subdivision (m) of this Article;

159 [Contractor Specific]

160 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable

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<sup>5</sup> Some Contractors may want to include "other water" definition in lieu of this definition.

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161 to the delivery of M&I Water;

162 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable  
163 care, control, operation, repair, replacement (other than capital replacement), and maintenance of  
164 Project facilities;

165 (r) "Operating Non-Federal Entity"<sup>6</sup> shall mean the San Luis & Delta-Mendota  
166 Water Authority, its successors or assigns, a non-Federal entity which has the obligation to operate  
167 and maintain all or a portion of the Delta Division Facilities pursuant to an agreement with the United  
168 States, and which may have funding obligations with respect thereto; **[Contractor Specific]**

169 (s) "Project" shall mean the Central Valley Project owned by the United States and  
170 managed by the Department of the Interior, Bureau of Reclamation;

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

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

176 (v) "Rates" shall mean the payments determined annually by the Contracting

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<sup>6</sup> Contractor specific issue with respect to additional operating non-federal entities

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177 Officer in accordance with the then current applicable water ratesetting policies for the Project, as  
178 described in subdivision (a) of Article 7 of this Contract;

179 (w) "Recent Historic Average" shall mean the most recent five ~~(5)~~ year average of  
180 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its  
181 preceding contract(s);

182 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
183 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
184 through any agency of the Department of the Interior;

185 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for  
186 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

187 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for  
188 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;<sup>7</sup>

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

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



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207 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time  
208 of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to  
209 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the  
210 Contractor, shall be renewed for a period of ~~twenty-five~~ 25 years.

211 (2) The conditions which must be met for this Contract to be renewed are:  
212 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting  
213 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria  
214 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an  
215 effective water conservation and efficiency program based on the Contractor's water conservation  
216 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all  
217 water measuring devices and implementing all water measurement methods as approved by the  
218 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and  
219 beneficially used the Project Water supplies made available to it and, based on projected demands, is  
220 reasonably anticipated and expects to fully to utilize for reasonable and beneficial use the quantity of  
221 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying  
222 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal  
223 ability to deliver Project Water<sup>9</sup>.

224 (3) The terms and conditions of the renewal contract described in

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225 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent  
226 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and  
227 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the  
228 Contractor's need for continued delivery of Project Water; environmental conditions affected by  
229 implementation of the Contract to be renewed, and specifically changes in those conditions that  
230 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the  
231 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the  
232 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

233 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the  
234 Contractor, shall be renewed for successive periods of up to forty 40 years each, which periods shall  
235 be consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually  
236 agreeable to the parties and consistent with Federal and State law. [Contractor Specific]. The  
237 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed  
238 adoption and application of any revised ~~Reclamation-wide~~ policy applicable to the delivery of M&I  
239 Water that would limit the term of any subsequent renewal contract with the Contractor for the  
240 furnishing of M&I Water to less than ~~forty~~ 40 years.

241 (d) The Contracting Officer shall make a determination ten ~~(10)~~ years after the  
242 date of execution of this Contract, and every five ~~(5)~~ years thereafter during the term of this Contract,

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9 Refer to footnote 1 with respect to contractor capability to take delivery of water

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243 of whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of  
244 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (~~Public~~  
245 ~~Law 643~~ 70 Stat 483). The Contracting Officer shall also make a determination ten years after the  
246 date of execution of this Contract and every five years thereafter during the term of this Contract of  
247 whether a conversion of the relevant portion of this Contract to a contract under subsection 9 (c)(1)  
248 of the Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this  
249 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956  
250 (70 Stat. 483) ~~Public Law 643~~. [M&I contractor issue; conversion of M&I to ag] The Contracting  
251 Officer anticipates that during the term of this Contract, all authorized Project construction expected  
252 to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to  
253 allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time  
254 after such allocation is made, and subject to satisfaction of the condition set out in this subdivision,  
255 this Contract shall, at the request of the Contractor, be converted to a contract under ~~said~~ subsection  
256 9(d) or 9 ( c)(1), whichever is applicable of the Reclamation Project Act of 1939, subject to  
257 applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor  
258 and the Contracting Officer. A condition for such conversion to occur shall be a determination by the  
259 Contracting Officer that, account being taken of the amount credited to return by the Contractor as  
260 provided for under Federal Reclamation law, the remaining amount of construction costs assignable

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261 for ultimate return by the Contractor can probably be repaid to the United States within the term of a  
262 contract under ~~said~~ subsection 9(d) or 9 (c)(1), whichever is applicable. If the remaining amount of  
263 costs that are properly assignable to the Contractor cannot be determined during the term of this  
264 Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a  
265 determination could not be made. Further, the Contracting Officer shall make such a determination  
266 as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the  
267 conditions set out above, conversion to a contract under ~~said~~ subsection 9(d) or 9 (c)(1), whichever is  
268 applicable. In the event such determination of costs has not been made at a time which allows  
269 conversion of this Contract during the term of this Contract or the Contractor has not requested  
270 conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal  
271 contract as described in subdivision (b) of this Article a provision that carries forth in substantially  
272 identical terms the provisions of this subdivision.

273 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

274 3. (a) During each Year, consistent with all applicable State water rights, permits,  
275 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
276 Contract, the Contracting Officer shall make available for delivery to the Contractor \_\_\_\_\_ acre-feet  
277 of Project Water for irrigation and M&I purposes. ~~The quantity of Water Delivered to the Contractor~~  
278 in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of  
279 Articles 4 and 7 of this Contract.

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280 (b) Because the capacity of the Project to deliver Project Water has been  
281 constrained in recent years and may be constrained in the future due to many factors including  
282 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor  
283 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given  
284 Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected  
285 that the Contract Total set forth in this Contract will not be available to the Contractor in many  
286 years. During the most recent five (5) years, the Recent Historic Average of Water Made Available  
287 to the Contractor was \_\_\_\_ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights  
288 and obligations of the parties under any provision of this Contract.

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

291 (d) The Contractor shall make reasonable and beneficial use of all Project Water ~~or~~  
292 **and** other water furnished pursuant to **subdivision (f) of this Article-Contract**. Groundwater recharge  
293 programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs,  
294 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract  
295 conducted within the Contractor's Service Area which are consistent with applicable State law and  
296 result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct  
297 recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted pursuant  
298 to Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates

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299 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the  
300 quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with  
301 Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface  
302 water storage programs, and other similar programs utilizing Project Water or other water furnished  
303 pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon  
304 written approval of the Contracting Officer, which approval will be based upon environmental  
305 documentation, Project Water rights, and Project operational concerns. The Contracting Officer will  
306 address such concerns in regulations, policies, or guidelines.

307 (e) The Contractor shall comply with requirements applicable to the Contractor in  
308 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
309 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are  
310 within the Contractor's legal authority to implement. The Existing Contract, which evidences in  
311 excess of \_\_\_\_\_ years of diversions for irrigation and/or ~~municipal and industrial~~ **M&I** purposes<sup>10</sup> of  
312 the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in  
313 developing an appropriate baseline for ~~the~~ biological assessment(s) prepared pursuant to the  
314 ~~Endangered Species Act~~ **ESA**, and any other needed environmental review. Nothing herein shall be  
315 construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent  
316 jurisdiction with respect to any biological opinion or other environmental documentation referred to in

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317 this Article.<sup>11</sup>

318 (f) Following the declaration of Water Made Available under Article 4 of this  
319 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
320 available to the Project, can be made available to the Contractor in addition to the Contract Total under  
321 this Article during the Year without adversely impacting other Project Contractors. At the request of  
322 the Contractor, the Contracting Officer will consult with the Contractor prior to making such a  
323 determination. If the Contracting Officer determines that Project Water, or other water available to the  
324 Project, can be made available to the Contractor, the Contracting Officer will announce the availability  
325 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will  
326 thereafter meet with the Contractor and other Project Contractors capable of taking such water to  
327 determine the most equitable and efficient allocation of such water. If the Contractor requests the  
328 delivery of any quantity of such water, the Contracting Officer shall make such water available to the  
329 Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to  
330 existing long-term contractual commitments, water rights and operational constraints, long-term  
331 Project Contractors shall have a first right to acquire such water, including Project Water made  
332 available pursuant to Section 215 of the RRA

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<sup>10</sup> Contractor Specific Issue. The type of water diverted will be addressed on a contractor specific basis

<sup>11</sup> Contractor Specific Issue. Land use authority

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

340 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable  
341 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the  
342 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during  
343 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations  
344 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the  
345 Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of  
346 this Contract or applicable provisions of any subsequent renewal contracts.

347 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
348 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this  
349 Contract upon written approval by the Contracting Officer in accordance with the terms and  
350 conditions of such approval.

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351 (j) The Contracting Officer shall make reasonable efforts to protect the water  
352 rights necessary for the Project and to provide the water available under this Contract. The  
353 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
354 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,  
355 however, That the Contracting Officer retains the right to object to the substance of the Contractor's  
356 position in such a proceeding; Provided further That in such proceedings the Contracting Officer  
357 shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

358 TIME FOR DELIVERY OF WATER

359 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall  
360 announce the Contracting Officer's expected declaration of the Water Made Available. Such  
361 declaration of ~~Project operations~~ will be expressed in terms of both Water Made Available and the  
362 Recent Historic Average and will be updated monthly, and more frequently if necessary, based on  
363 then-current operational and hydrologic conditions and a new declaration with changes, if any, to the  
364 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project  
365 operations and the basis of the estimate, with relevant supporting information, upon the written  
366 request of the Contractor. Concurrently with the declaration of the Water Made Available, the  
367 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

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368 (b)<sup>12</sup> On or before each March 1 and at such other times as necessary, the Contractor  
369 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,  
370 showing the monthly quantities of Project Water to be delivered by the United States to the  
371 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting  
372 Officer shall use all reasonable means to deliver Project Water according to the approved schedule  
373 for the Year commencing on such March 1.

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

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

382 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

383 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this

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<sup>12</sup> Contractor Specific with respect to binding agreement contractors

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384 Contract shall be delivered to the Contractor at a point or points and any additional point or points of  
385 delivery either on Project facilities or another location or locations mutually agreed to in writing by  
386 the Contracting Officer and the Contractor.

387 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
388 appropriate entity **as designated by the Contracting Officer (hereinafter referred to as the “Other**  
389 **Appropriate Entity”)**<sup>13</sup> shall make all reasonable efforts to maintain sufficient flows and levels of  
390 water in the Delta-Mendota Canal<sup>14</sup> to deliver Project Water to the Contractor at specific turnouts  
391 established pursuant to subdivision (a) of this Article.

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

396 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
397 measured and recorded with equipment furnished, installed, operated, and maintained by the United

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<sup>13</sup> Contractor specific issue with respect to referencing an Other Appropriate Entity

<sup>14</sup> Contractor specific/Unit specific issue with respect to including other appropriate facilities

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398 States, **or** the Operating Non-Federal Entity ~~or other appropriate entity as designated by the~~  
399 ~~Contracting Officer (hereafter "other appropriate entity")~~ at the point or points of delivery established  
400 pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the  
401 Contracting Officer shall investigate, or cause to be investigated by the responsible Operating Non-  
402 Federal Entity, the accuracy of such measurements and shall take any necessary steps to adjust any  
403 errors appearing therein. For any period of time when accurate measurements have not been made,  
404 the Contracting Officer shall consult with the Contractor and the responsible Operating Non-Federal  
405 Entity prior to making a final determination of the quantity delivered for that period of time.

406 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
407 responsible for the control, carriage, handling, use, disposal, or distribution of ~~Project~~ Water  
408 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in  
409 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,  
410 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever  
411 for which there is legal responsibility, including property damage, personal injury, or death arising  
412 out of or connected with the control, carriage, handling, use, disposal, or distribution of such ~~Project~~  
413 Water **Delivered** beyond such delivery points, except for any damage or claim arising out of: (i) acts  
414 or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including  
415 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in  
416 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,

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417 employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii)  
418 negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including  
419 any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction  
420 of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity;  
421 Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated the  
422 malfunctioning facility(ies) from which the damage claim arose.

423 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA<sup>15</sup>

424 6. (a) The Contractor has established a measuring program satisfactory to the  
425 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
426 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water  
427 delivered for M&I purposes is measured at each M&I service connection. The water measuring  
428 devices or water measuring methods of comparable effectiveness must be acceptable to the  
429 Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining  
430 and repairing all such measuring devices and implementing all such water measuring methods at no  
431 cost to the United States. The Contractor shall use the information obtained from such water  
432 measuring devices or water measuring methods to ensure its proper management of the water, to bill  
433 water users for water delivered by the Contractor; and, if applicable, to record water delivered for  
434 M&I purposes by customer class as defined in the Contractor's water conservation plan provided for

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435 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from  
436 establishing and collecting any charges, assessments, or other revenues authorized by California law.

437 The Contractor shall include a summary of all its annual surface water deliveries in the annual report  
438 described in subdivision (c) of Article 26.

439 (b) To the extent the information has not otherwise been provided, upon execution  
440 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing  
441 the measurement devices or water measuring methods being used or to be used to implement  
442 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service  
443 connections or alternative measurement programs approved by the Contracting Officer, at which such  
444 measurement devices or water measuring methods are being used, and, if applicable, identifying the  
445 locations at which such devices and/or methods are not yet being used including a time schedule for  
446 implementation at such locations. The Contracting Officer shall advise the Contractor in writing  
447 within ~~sixty~~ 60 days as to the adequacy of, and necessary modifications, if any, of the measuring  
448 devices or water measuring methods identified in the Contractor's report and if the Contracting  
449 Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer  
450 notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within

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15 Contractor specific issue which may require additional language

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451 ~~sixty~~ 60 days following the Contracting Officer's response, negotiate in good faith the earliest  
452 practicable date by which the Contractor shall modify said measuring devices and/or measuring  
453 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this  
454 Article.

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

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

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

464 RATES AND METHOD OF PAYMENT FOR WATER

465 7. (a) The Contractor shall pay the United States as provided in this Article for all  
466 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
467 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's  
468 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,  
469 modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal

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470 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
471 provisions of this Contract. Payments shall be made by cash transaction, **electronic funds transfer**  
472 ~~wire~~, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting  
473 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon  
474 execution of this Contract are set forth in Exhibit "B", as may be revised annually.

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

477 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
478 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
479 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
480 the basis for such estimate. The Contractor shall be allowed not less than two (~~2~~) months to review  
481 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
482 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October  
483 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
484 notification shall revise Exhibit "B."

485 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
486 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project  
487 Water for the following Year and the computations and cost allocations upon which those Rates are  
488 based. The Contractor shall be allowed not less than two (~~2~~) months to review and comment on such

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489 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer  
490 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for  
491 the upcoming Year, and such notification shall revise Exhibit "B".

492

493 (c) At the time the Contractor submits the initial schedule for the delivery of  
494 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
495 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
496 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
497 delivered pursuant to this Contract during the first two (~~2~~) calendar months of the Year. Before the  
498 end of the first month and before the end of each calendar month thereafter, the Contractor shall  
499 make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article,  
500 for the Water Scheduled to be delivered pursuant to this Contract during the second month  
501 immediately following. Adjustments between advance payments for Water Scheduled and payments  
502 at Rates due for Water Delivered shall be made before the end of the following month; Provided,  
503 That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which  
504 increases the amount of Water Delivered pursuant to this Contract during any month shall be  
505 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project  
506 Water is not delivered to the Contractor in advance of such payment. In any month in which the  
507 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water

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508 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the  
509 Contractor unless and until an advance payment at the Rates then in effect for such additional Project  
510 Water is made. Final adjustment between the advance payments for the Water Scheduled and  
511 payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be  
512 made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days  
513 after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if  
514 such water is not delivered by the last day of February.

515 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
516 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
517 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
518 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
519 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
520 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
521 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating  
522 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for  
523 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.

524 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of  
525 payments due to the United States for Charges for the next month. Any amount to be paid for past  
526 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20

527 of this Contract.

528 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or  
529 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
530 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;  
531 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall  
532 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision  
533 (a) of this Article.

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

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

540 (h) The Contracting Officer shall keep its accounts pertaining to the administration  
541 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal  
542 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer  
543 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all  
544 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,  
545 and a summary of all water delivery information. The Contracting Officer and the Contractor shall

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546 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,  
547 reports, or information.

548 (i) The parties acknowledge and agree that the efficient administration of this  
549 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
550 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,  
551 and/or for making and allocating payments, other than those set forth in this Article may be in the  
552 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to  
553 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in  
554 effect without amending this Contract.

555 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed  
556 ~~eighty~~ 80 percent of the Contract Total, then before the end of the month following the month of  
557 delivery the Contractor shall make an additional payment to the United States equal to the applicable  
558 Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in  
559 excess of ~~eighty~~ 80 percent of the Contract Total, but less than or equal to ~~ninety~~ 90 percent of the  
560 Contract Total, shall equal ~~the~~ one-half of the difference between the Rate established under  
561 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
562 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which  
563 exceeds ~~ninety~~ 90 percent of the Contract Total shall equal the difference between (i) the Rate  
564 established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I

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565 Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of  
566 Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall  
567 be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual  
568 deliveries of each bear to the cumulative total Water Delivered.

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

576 (3) For purposes of determining the applicability of the Tiered Pricing  
577 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
578 transfers to others but shall not include Project Water transferred ~~and delivered~~ to the Contractor, ~~nor~~  
579 shall it include the additional water provided to the Contractor under the provisions of subdivision (d)  
580 of Article 3 of this Contract.

581 (k) For the term of this Contract, Rates applied under the respective ratesetting  
582 policies will be established to recover only reimbursable ~~Operation and Maintenance~~ O&M  
583 (including any deficits) and capital costs of the Project, as those terms are used in the then-current

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

589 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,  
590 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted  
591 upward or downward to reflect the changed costs of delivery if any, **incurred by the Contracting**  
592 **Officer in the delivery** of the transferred Project Water to the transferee's point of delivery in  
593 accordance with the then applicable CVP Ratesetting Policy. If the Contractor is receiving lower  
594 Rates and Charges because of inability to pay and is transferring Project Water to another entity  
595 whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for  
596 transferred Project Water shall be the Contractor's Rates and Charges unadjusted for inability to pay.

597 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting  
598 Officer is authorized to adjust determinations of ability to pay every five ~~(5)~~ years.

599 (n) **With respect to the Rates for M&I water,** the Contractor asserts that it is not  
600 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the  
601 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the  
602 Contractor does not waive any legal rights or remedies that it may have with respect to such disputed

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603 issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor  
604 may challenge in the appropriate administrative or judicial forums; (1) the existence, the  
605 computation, or imposition of any deficit charges accruing during the term of the Existing Contract  
606 **and any preceding interim renewal contracts, if applicable**; (2) interest accruing on any such deficits;  
607 (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United  
608 States of payments made by the Contractor under its Existing Contract **and any preceding interim**  
609 **renewal contracts**; and (5) the application of such payments in the Rates. The Contracting Officer  
610 agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in  
611 favor of any ~~other~~ Project M&I contractor on any of these issues, and credits for payments heretofore  
612 made, provided that the basis for such ruling is applicable to the Contractor. [Contractor Specific]

613 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS<sup>16</sup>

614 8. The Contractor and the Contracting Officer concur that, as of the effective date of this  
615 Contract, the Contractor has no non-interest bearing ~~operation and maintenance~~ **O&M** deficits and  
616 shall have no further liability therefore.

617 [Or,]

618 The Contractor and the Contracting Officer have entered into a written agreement  
619 specifying a mutually acceptable mechanism through which the Contractor will retire its outstanding  
620 non-interest bearing ~~Operation and Maintenance~~ **O&M** deficits.

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SALES, TRANSFERS, OR EXCHANGES OF WATER

624

9. (a) The right to receive Project Water provided for in this Contract may be sold,

625 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if

626 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable

627 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this

628 Contract may take place without the prior written approval of the Contracting Officer, except as

629 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be

630 approved absent all appropriate environmental documentation, including but not limited to,

631 documents prepared pursuant to the **NEPA and ESA**. ~~National Environmental Policy Act and the~~

632 ~~Endangered Species Act~~. Such environmental documentation should include, as appropriate, an

633 analysis of groundwater impacts and economic and social effects, including environmental justice, of

634 the proposed water transfers on both the transferor and transferee.

635

(b) In order to facilitate efficient water management by means of water transfers of

---

16 Contractor specific.

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636 the type historically carried out among Project Contractors located within the same geographical area  
637 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
638 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental  
639 documentation, ~~required by Federal law,~~ including but not limited to **documents prepared pursuant to**  
640 **NEPA and ESA,** ~~the National Environmental Policy Act and the Endangered Species Act~~ analyzing  
641 annual transfers within such geographical areas and the Contracting Officer shall determine whether  
642 such transfers comply with applicable law. Following the completion of the environmental  
643 documentation, such transfers addressed in such documentation shall be conducted with advance  
644 notice to the Contracting Officer, but shall not require prior written approval by the Contracting  
645 Officer. Such environmental documentation and the Contracting Officer's compliance determination  
646 shall be reviewed every five (5) years and updated, as necessary, prior to the expiration of the then  
647 existing five (5) year period. All subsequent environmental documentation shall include an  
648 alternative to evaluate not less than the quantity of Project Water historically transferred within the  
649 same geographical area.

650 (c) For a water transfer to qualify under subdivision (b) of this Article, such water  
651 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
652 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface  
653 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to  
654 established cropland, wildlife refuges, groundwater basins or **M&I** ~~municipal and industrial~~ use; (ii)

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655 occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water  
656 through existing facilities with no new construction or modifications to facilities and be between  
657 existing Project Contractors and/or the Contractor and the United States, Department of the Interior;  
658 and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed  
659 for protection of the environment and Indian Trust Assets, as defined under Federal law.

660 APPLICATION OF PAYMENTS AND ADJUSTMENTS

661 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
662 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
663 the Contractor arising out of this Contract then due and payable. Overpayments of more than ~~One~~  
664 ~~Thousand Dollars~~ \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any  
665 amount of such overpayment at the option of the Contractor, may be credited against amounts to  
666 become due to the United States by the Contractor. With respect to overpayment, such refund or  
667 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have  
668 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of  
669 overpayments shall be made within ~~thirty~~ 30 days of the Contracting Officer obtaining direction as to  
670 how to credit or refund such overpayment in response to the notice to the Contractor that it has  
671 finalized the accounts for the Year in which the overpayment was made.

672 (b) All advances for miscellaneous costs incurred for work requested by the  
673 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when

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674 the work has been completed. If the advances exceed the actual costs incurred, the difference will be  
675 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will  
676 be billed for the additional costs pursuant to Article 25. ~~of this Contract.~~

677 TEMPORARY REDUCTIONS--RETURN FLOWS

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

683 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
684 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the  
685 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project  
686 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far  
687 as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due  
688 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in  
689 which case no notice need be given; Provided, That the United States shall use its best efforts to  
690 avoid any discontinuance or reduction in such service. Upon resumption of service after such  
691 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,

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692 deliver the quantity of Project Water which would have been delivered hereunder in the absence of  
693 such discontinuance or reduction.

694 (c) The United States reserves the right to all seepage and return flow water  
695 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the  
696 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United  
697 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this  
698 Contract within the Contractor's Service Area<sup>17</sup> by the Contractor or those claiming by, through, or  
699 under the Contractor.<sup>18</sup>

700 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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<sup>17</sup>Refer to footnote 3

<sup>18</sup> Contractor specific issue with respect to reclaimed water

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706 (b) If there is a Condition of Shortage because of errors in physical operations of  
707 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions  
708 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)  
709 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,  
710 agents, or employees for any damage, direct or indirect, arising therefrom.

711 (c) In any Year in which there may occur a Condition of Shortage for any of the  
712 reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation  
713 Water among the Contractor and others entitled to Irrigation Water (which for purposes of this  
714 Article 12(c) only, shall include other Project Water that is subject to Irrigation Water shortage  
715 criteria) from Delta Division Facilities under long-term water service or repayment contracts as  
716 follows:

717 (1) The Contracting Officer shall make ~~A~~ an initial and subsequent  
718 determination as necessary ~~shall be made~~ of the total quantity of Irrigation Water estimated to be  
719 scheduled or actually scheduled under subdivision (b) of Article 4 of this Contract  
720 and under all other long-term water service or repayment contracts then in force for the delivery of  
721 Irrigation Water by the United States from Delta Division Facilities during the relevant Year, the  
722 quantity so determined being hereinafter referred to as the total scheduled entitlements ~~contractual~~  
723 ~~commitments~~;

724 (2) A determination shall be made of the total quantity of Irrigation Water

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725 that is available for meeting the **total scheduled entitlements** ~~contractual commitments~~, the quantity  
726 so determined being hereinafter referred to as the available supply;

727 (3) The total quantity of Irrigation Water estimated to be scheduled or  
728 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4  
729 hereof, shall be divided by the **total scheduled entitlements** ~~contractual commitments~~, the quotient  
730 thus obtained being hereinafter referred to as the Contractor's **proportionate entitlement**; and

731 (4) The available supply shall be multiplied by the Contractor's **proportionate**  
732 **entitlement** and the result shall be the quantity of Irrigation Water ~~required to be delivered~~ **made**  
733 **available** by the United States to the Contractor for the relevant Year **in accordance with the schedule**  
734 **developed by the Contracting Officer under subdivision (c)(1)**, but in no event shall such amount  
735 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the  
736 Contracting Officer can increase **or needs to decrease** the available supply for delivery from Delta  
737 Division Facilities to long-term water service and repayment Contractors during the relevant Year,  
738 such **additions or reductions to the available supply** ~~additional Irrigation Water~~ shall be apportioned  
739 consistent with subparagraphs (1) through (4), inclusive.

740 (d) Project Water furnished under this long-term renewal contract for M&I  
741 purposes will be allocated in accordance with the then existing Project M&I Water Shortage Policy.  
742 Such policy shall be amended, modified, or superceded only through a public notice and comment

743 procedure. [Contractor Specific]

744 (e) By entering into this Contract, the Contractor does not waive any legal rights  
745 or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
746 (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy adopted after the  
747 effective date of this Contract was promulgated; (ii) the substance of such a policy; or (iii) the  
748 applicability of such a policy. By agreeing to the foregoing, the Contracting Officer does not waive  
749 any legal defenses or remedies that it may then have to assert in such a proceeding. [Contractor  
750 Specific]

751 UNAVOIDABLE GROUNDWATER PERCOLATION

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

756 RULES AND REGULATIONS

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

761 WATER AND AIR POLLUTION CONTROL



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778 surface and subsurface agricultural drainage discharges generated through the use of Federal or  
779 Contractor facilities or Project Water provided by the Contractor within the Contractor's Service  
780 Area.

781 (c) [San Luis Unit specific issue regarding Drainage language]

782 WATER ACQUIRED BY THE CONTRACTOR  
783 OTHER THAN FROM THE UNITED STATES

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

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797 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43  
798 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the  
799 cost to the Federal Government, including interest of storing or delivering non-Project water, which  
800 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid  
801 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.  
802 The incremental fee per acre is the mathematical result of such quotient times the interest rate  
803 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental  
804 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that  
805 receives non-Project water through Federally financed or constructed facilities. The incremental fee  
806 calculation methodology will continue during the term of this Contract absent the promulgation of a  
807 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded  
808 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,  
809 regulation or policy is adopted it shall supercede this provision.

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

815 (1) The Contractor may introduce non-Project water into Project facilities

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816 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,  
817 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
818 appropriate rate as determined by the **applicable** CVP Ratesetting Policy and the RRA, each as  
819 amended, modified or superceded from time to time. In addition, if electrical power is required to  
820 pump non-Project water through the facilities, the Contractor shall be responsible for obtaining the  
821 necessary power and paying the necessary charges therefore.

822 (2) Delivery of such non-Project water in and through Project facilities  
823 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as  
824 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other  
825 Project **Contractors** ~~water service contractors~~; (iii) interfere with the delivery of contractual water  
826 entitlements to any other Project **Contractors** ~~water service contractors~~; or (iv) interfere with the  
827 physical maintenance of the Project facilities.

828 (3) Neither the United States nor the Operating Non-Federal Entity shall be  
829 responsible for control, care or distribution of the non-Project water before it is introduced into or  
830 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend  
831 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,  
832 agents, and employees, from any claim for damage to persons or property, direct or indirect, **resulting**  
833 **from** ~~arising out of or relating to~~ the Contractor's or its officer's employee's agent's or assigns, act(s)

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834 of (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project  
835 water into Project facilities.

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

839 (5) After Project purposes are met, as determined by the Contracting  
840 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of  
841 the facilities declared to be available by the Contracting Officer for conveyance and transportation of  
842 non-Project water prior to any such remaining capacity being made available to non-Project  
843 contractors. **[Divisional Issue]**

844 OPINIONS AND DETERMINATIONS

845 18. (a) Where the terms of this Contract provide for actions to be based upon the  
846 opinion or determination of either party to this Contract, said terms shall not be construed as  
847 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
848 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
849 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or  
850 unreasonable opinion or determination. Each opinion or determination by either party shall be

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851 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to  
852 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or  
853 determination implementing a specific provision of Federal law embodied in statute or regulation.

854  
855 (b) The Contracting Officer shall have the right to make determinations necessary  
856 to administer this Contract that are consistent with the provisions of this Contract, the laws of the  
857 United States and of the State of California, and the rules and regulations promulgated by the  
858 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to  
859 the extent reasonably practicable.

860 COORDINATION AND COOPERATION

861 19. (a) In order to further their mutual goals and objectives, the Contracting Officer  
862 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
863 affected Project Contractors, in order to improve the operation and management of the Project. The  
864 communication, coordination, and cooperation regarding operations and management shall include,  
865 but not be limited to, any action which will or may materially affect the quantity or quality of Project  
866 Water supply, the allocation of Project Water supply, and Project financial matters including, but not  
867 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder  
868 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making  
869 authority for all actions, opinions, and determinations to be made by the respective party.

870                   (b)     Within ~~one hundred twenty~~ 120 days following the effective date of this  
871 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange  
872 to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide  
873 process, which may be amended as necessary separate and apart from this Contract. The goal of this  
874 process shall be to provide, to the extent practicable, the means of mutual communication and  
875 interaction regarding significant decisions concerning Project operation and management on a real-  
876 time basis.

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

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

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

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

888                             (4)     The Secretary will coordinate actions of agencies within the

889 Department of the Interior that may impact the availability of water for Project purposes.

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

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

898 CHARGES FOR DELINQUENT PAYMENTS

899 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
900 on delinquent installments or payments. When a payment is not received by the due date, the  
901 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
902 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
903 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
904 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
905 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
906 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
907 payment.

908 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
909 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
910 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation  
911 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
912 date and remain fixed for the duration of the delinquent period.

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

916  
917  
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920

EQUAL OPPORTUNITY

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

922 (a) The Contractor will not discriminate against any employee or applicant for  
923 employment because of race, color, religion, sex, or national origin. The Contractor will take  
924 affirmative action to ensure that applicants are employed, and that employees are treated during  
925 employment, without regard to their race, color, religion, sex, or national origin. Such action shall  
926 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;  
927 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of  
928 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in  
929 conspicuous places, available to employees and applicants for employment, notices to be provided by  
930 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

931 (b) The Contractor will, in all solicitations or advertisements for employees placed  
932 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for  
933 employment without discrimination because of race, color, religion, sex, or national origin.

934 (c) The Contractor will send to each labor union or representative of workers with  
935 which it has a collective bargaining agreement or other contract or understanding, a notice, to be  
936 provided by the Contracting Officer, advising the said labor union or workers' representative of the  
937 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and  
938 shall post copies of the notice in conspicuous places available to employees and applicants for  
939 employment.

940 (d) The Contractor will comply with all provisions of Executive Order  
941 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of  
942 the Secretary of Labor.

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943 (e) The Contractor will furnish all information and reports required by said  
944 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
945 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer  
946 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,  
947 regulations, and orders.

948 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
949 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
950 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible  
951 for further Government contracts in accordance with procedures authorized in said amended  
952 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said  
953 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided  
954 by law.

955 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
956 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
957 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
958 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
959 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
960 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That  
961 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor  
962 or vendor as a result of such direction, the Contractor may request the United States to enter into such  
963 litigation to protect the interests of the United States.

964 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

969 (b) The payment of charges becoming due hereunder is a condition precedent to  
970 receiving benefits under this Contract. The United States shall not make water available to the  
971 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
972 the advance payment of water rates due the United States. The Contractor shall not furnish water  
973 made available pursuant to this Contract for lands or parties which are in arrears in the advance

974 payment of water rates levied or established by the Contractor.

975 (c) With respect to subdivision (b) of this Article, the Contractor shall have no

976 obligation to require advance payment for water rates which it levies.

977

978

979

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

980 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42  
981 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
982 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as  
983 well as with their respective implementing regulations and guidelines imposed by the U.S.  
984 Department of the Interior and/or Bureau of Reclamation.

985 (b) These statutes require that no person in the United States shall, on the grounds  
986 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the  
987 benefits of, or be otherwise subjected to discrimination under any program or activity receiving  
988 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor  
989 agrees to immediately take any measures necessary to implement this obligation, including  
990 permitting officials of the United States to inspect premises, programs, and documents.

991 (c) The Contractor makes this agreement in consideration of and for the purpose  
992 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
993 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
994 installment payments after such date on account of arrangements for Federal financial assistance  
995 which were approved before such date. The Contractor recognizes and agrees that such Federal  
996 assistance will be extended in reliance on the representations and agreements made in this Article,  
997 and that the United States reserves the right to seek judicial enforcement thereof.

998

PRIVACY ACT COMPLIANCE

999 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
1000 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
1001 maintaining Landholder acreage certification and reporting records, required to be submitted to the

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1002 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96  
1003 Stat. 1266), and pursuant to 43 CFR 426.18.

1004 (b) With respect to the application and administration of the criminal penalty  
1005 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible  
1006 for maintaining the certification and reporting records referenced in (a) above are considered to be  
1007 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1008 (c) The Contracting Officer or a designated representative shall provide the  
1009 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
1010 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
1011 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
1012 contained in the Landholder's certification and reporting records.  
1013

1014 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1015 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
1016 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
1017 authorized to grant requests by individuals for access to their own records.

1018 (e) The Contractor shall forward promptly to the System Manager each proposed  
1019 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
1020 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1021 information and records necessary to prepare an appropriate response to the requester. These  
1022 requirements do not apply to individuals seeking access to their own certification and reporting forms  
1023 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy  
1024 Act as a basis for the request.

1025 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1026 25. In addition to all other payments to be made by the Contractor pursuant to this  
1027 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill  
1028 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1029 of direct cost incurred by the United States for work requested by the Contractor associated with this

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1030 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1031 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
1032 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1033 administration.

1034 WATER CONSERVATION

1035 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1036 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1037 implementing an effective water conservation and efficiency program based on the Contractor's water  
1038 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
1039 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
1040 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
1041 economically feasible water conservation measures, and time schedules for meeting those objectives.  
1042 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
1043 continued implementation of such water conservation program. In the event the Contractor's water  
1044 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
1045 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
1046 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
1047 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
1048 works with the Contracting Officer to obtain such determination at the earliest practicable date, and

1049 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
1050 program in accordance with the time schedules therein.

1051 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1052 Article 3 of this Contract equal or exceed ~~two thousand~~ 2,000 acre-feet per Year, the Contractor shall  
1053 implement the Best Management Practices identified by the time frames issued by the California  
1054 Urban Water Conservation Council for such M&I Water unless any such practice is determined by  
1055 the Contracting Officer to be inappropriate for the Contractor.

1056 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1057 its implementation of the water conservation plan on the reporting dates specified in the then existing  
1058 conservation and efficiency criteria established under Federal law.

1059 (d) At ~~five~~ 5 year intervals, the Contractor shall revise its water conservation plan  
1060 to reflect the then current conservation and efficiency criteria for evaluating water conservation plans  
1061 established under Federal law and submit such revised water management plan to the Contracting  
1062 Officer for review and evaluation. The Contracting Officer will then determine if the water  
1063 conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1064 evaluating water conservation plans established under Federal law.

1065 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1066 be described in the Contractor's water conservation plan.

1067 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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1068           27.     Except as specifically provided in Article 17 of this Contract, the provisions of this  
1069 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter  
1070 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
1071 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
1072 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
1073 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1074 Reclamation law.

1075           OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY<sup>20</sup>

1076           28.     (a)     The **O&M** ~~Operation and Maintenance~~ of a portion of the Project facilities  
1077 which serve the Contractor, and responsibility for funding a portion of the costs of such **O&M**  
1078 ~~Operation and Maintenance~~, have been transferred to the Operating Non-Federal Entity by separate  
1079 agreement between the United States and the Operating Non-Federal Entity. That separate  
1080 agreement shall not interfere with or affect the rights or obligations of the Contractor or the United  
1081 States hereunder.

1082           (b)     The Contracting Officer has previously notified the Contractor in writing that  
1083 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has

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<sup>20</sup> Contractor/Unit specific. Other ONFE's may need to be referenced for each individual contractor

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1084 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1085 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under  
1086 the terms and conditions of the separate agreement between the United States and the Operating Non-  
1087 Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any  
1088 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such  
1089 successor determines, sets, or establishes for the **O&M Operation and Maintenance** of the portion of  
1090 the Project facilities operated and maintained by the Operating Non-Federal Entity or such successor.

1091 Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the  
1092 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project  
1093 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal  
1094 Entity collects payments on behalf of the United States in accordance with the separate agreement  
1095 identified in subdivision (a) of this Article.

1096 (c) For so long as the **O&M Operation and Maintenance** of any portion of the  
1097 Project facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any  
1098 successor thereto, the Contracting Officer shall adjust those components of the Rates for Water  
1099 Delivered under this Contract representing the cost associated with the activity being performed by  
1100 the Operating Non-Federal Entity or its successor.

1101 (d) In the event the **O&M Operation and Maintenance** of the Project facilities  
1102 operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States

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1103 during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and  
1104 present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid  
1105 by the Contractor for Project Water under this Contract representing the **O&M** Operation and  
1106 ~~Maintenance~~ costs of the portion of such Project facilities which have been re-assumed. The  
1107 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the  
1108 contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised Exhibit  
1109 "B" directly to the United States in compliance with Article 7 of this Contract.

1110 **[Insertion of Contractor Specific Issue for Other Appropriate Entity]**

1111 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1112 29. The expenditure or advance of any money or the performance of any obligation of the  
1113 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1114 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1115 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1116 or allotted.

1117 BOOKS, RECORDS, AND REPORTS

1118 30. (a) The Contractor shall establish and maintain accounts and other books and  
1119 records pertaining to administration of the terms and conditions of this Contract, including: the  
1120 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1121 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1122 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1123 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1124 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1125 during office hours to examine and make copies of the other party's books and records relating to  
1126 matters covered by this Contract.

1127 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,

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1128 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1129 such books, records, or information are reasonably related to the administration or performance of  
1130 this Contract. Any such request shall allow the Contractor a reasonable period of time within which  
1131 to provide the requested books, records, or information.

1132 (c) At such time as the Contractor provides information to the Contracting Officer  
1133 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1134 Operating Non-Federal Entity.

1135 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1136 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1137 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1138 therein shall be valid until approved in writing by the Contracting Officer.

1139 (b) The assignment of any right or interest in this Contract by either party shall not  
1140 interfere with the rights or obligations of the other party to this Contract absent the written  
1141 concurrence of said other party.

1142 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1143 of any proposed assignment.

1144 SEVERABILITY

1145 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1146 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1147 association or other form of organization whose primary function is to represent parties to Project

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1148 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1149 enforceability of a provision included in this Contract and said person, entity, association, or  
1150 organization obtains a final court decision holding that such provision is legally invalid or  
1151 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1152 parties to this Contract shall use their best efforts to (i) within ~~thirty~~ 30 days of the date of such final  
1153 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1154 and (ii) within ~~three~~ 3 months thereafter promptly agree on the appropriate revision(s). The time  
1155 periods specified above may be extended by mutual agreement of the parties. Pending the  
1156 completion of the actions designated above, to the extent it can do so without violating any  
1157 applicable provisions of law, the United States shall continue to make the quantities of Project Water  
1158 specified in this Contract available to the Contractor pursuant to the provisions of this Contract which  
1159 were not found to be legally invalid or unenforceable in the final court decision.

1160 RESOLUTION OF DISPUTES

1161 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1162 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1163 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1164 any matter to the Department of Justice, the party shall provide to the other party ~~thirty~~ 30 days'  
1165 written notice of the intent to take such action; Provided, That such notice shall not be required where  
1166 a delay in commencing an action would prejudice the interests of the party that intends to file suit.

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1167 During the ~~thirty~~ 30 day notice period, the Contractor and the Contracting Officer shall meet and  
1168 confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is  
1169 intended to waive or abridge any right or remedy that the Contractor or the United States may have.

1170 OFFICIALS NOT TO BENEFIT

1171 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1172 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1173 manner as other water users or landowners.

1174 CHANGES IN CONTRACTOR'S SERVICE AREA

1175 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1176 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or  
1177 otherwise, except upon the Contracting Officer's written consent.

1178 (b) Within ~~thirty~~ 30 days of receipt of a request for such a change, the Contracting  
1179 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1180 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1181 timely completion of the process. Such process will analyze whether the proposed change is likely  
1182 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of  
1183 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1184 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1185 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with  
1186 the **NEPA and the ESA**. ~~National Environmental Policy Act and the Endangered Species Act~~. The

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1187 Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and  
1188 such costs will be paid in accordance with Article 25 of this Contract.

1189

1190

### FEDERAL LAWS

1191 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1192 validity or application in connection with the performance of the terms and conditions of this  
1193 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1194 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1195 regulation to the implementing provision of the Contract is granted by a court of competent  
1196 jurisdiction.

1197

### NOTICES

1198 37. Any notice, demand, or request authorized or required by this Contract shall be  
1199 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1200 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on  
1201 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors/City  
1202 Council of the \_\_\_\_\_. The designation of the addressee or the address  
1203 may be changed by notice given in the same manner as provided in this Article for other notices.

1204

### CONFIRMATION OF CONTRACT<sup>21</sup>

1205 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1206 decree of a court of competent jurisdiction of the State of California, confirming the execution of this

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<sup>21</sup> Contractor Specific

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1207 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1208 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1209 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1210 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1211 year first above written.

1212 THE UNITED STATES OF AMERICA

1213 By: \_\_\_\_\_  
1214 Regional Director, Mid-Pacific Region  
1215 Bureau of Reclamation

1216 [NAME OF CONTRACTOR]

1217 By: \_\_\_\_\_  
1218 President of the Board of Directors

1219 Attest:

1220 By: \_\_\_\_\_  
1221 Secretary of the Board of Directors

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1222  
1223

EXHIBIT A  
[Map or Description of Service Area]

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**EXHIBIT B**  
[Initial Rates and Charges]

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