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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
PROVIDING FOR PROJECT WATER SERVICE  
FROM SAN LUIS UNIT AND DELTA DIVISION

THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2005, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 3, 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and \_\_\_\_\_ hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

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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 San Luis Unit, hereinafter collectively  
29 referred to as the San Luis Unit facilities, which will be used in part for the furnishing of water to the  
30 Contractor pursuant to the terms of this Contract; and

31 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant  
32 to California law for operation of the Project; and

33 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. \_\_\_\_\_,  
34 which established terms for the delivery to the Contractor of Project Water from the San Luis Unit  
35 facilities, **including the San Luis Canal and Dos Amigos Pumping Plant**, and the Delta Division

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36 Facilities from \_\_\_\_\_ through \_\_\_\_\_, hereinafter referred to as the Existing Contract; and

37 [5<sup>th</sup>] WHEREAS, the United States and the Contractor have pursuant to Subsection  
38 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a  
39 binding agreement identified as Binding Agreement No. \_\_\_\_\_ BA, which sets out the terms  
40 pursuant to which the Contractor agreed to renew the Existing Contract before the expiration date  
41 after completion of the Programmatic Environmental Impact Statement (PEIS) and other appropriate  
42 environmental documentation and negotiation of a renewal contract; and which also sets out the  
43 consequences of a subsequent decision not to renew: and

44 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal the  
45 Existing Contract following completion of appropriate environmental documentation, including a  
46 PEIS pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect  
47 impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts  
48 for Project Water; and

49 [6.1] Contractor Specific Issue recognizing partial assignment of the contract to a third  
50 party or the acquisition of Project Water through assignment(s), if such acquired water is being  
51 covered under this Contract; and

52 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate

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53 environmental review necessary to provide for long-term renewal of the Existing Contract; and

54 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
55 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the  
56 State of California, for water service from the Project; and

57 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
58 its obligations under the Existing Contract; and

59 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
60 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
61 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project  
62 Water to be made available to it pursuant to this Contract; and

63 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and  
64 agricultural areas within California for more than 50 years, and is considered by the Contractor as an  
65 essential portion of its water supply; and

66 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's,  
67 depend upon the continued availability of water, including water service from the Project; and

68 (12.1) WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that  
69 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to

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70 provide drainage service to the San Luis Unit; and

71 (12.2) WHEREAS, the Contractor and the Contracting Officer recognize that adequate  
72 drainage service is required to maintain agricultural production within certain areas served with  
73 Project Water made available under this Contract and all renewals thereof; and

74 (12.3) WHEREAS, the Contracting Officer intends, to the extent appropriated funds are  
75 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

76 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
77 to pursue measures to improve water supply, water quality, and reliability of the Project for all  
78 Project purposes; and

79 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
80 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment  
81 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
82 reasonable balance among competing demands for use of Project Water; and to comply with all  
83 applicable environmental statutes, all consistent with the legal obligations of the United States  
84 relative to the Project; and

85 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative  
86 relationship in order to achieve their mutual goals; and

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87 [15<sup>th</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,  
88 rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the  
89 impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

90 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive  
91 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital  
92 immediately above; and

93 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
94 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

97 DEFINITIONS

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

100 (a) “Calendar Year” shall mean the period January 1 through December 31, both  
101 dates inclusive;

102 (b) “Charges” shall mean the payments required by Federal Reclamation law in  
103 addition to the Rates and Tiered Pricing Components specified in this Contract as determined

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104 annually by the Contracting Officer pursuant to this Contract;

105 (c) "Condition of Shortage" shall mean a condition respecting the Project during  
106 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract  
107 Total;

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

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

113 (f) "Contractor's Service Area" shall mean the area to which the Contractor is  
114 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,  
115 which may be modified from time to time in accordance with Article 35 of this Contract without  
116 amendment of this Contract; `

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

119 (g.1) "Delta Division Facilities" shall mean those existing and future Project  
120 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the

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121 Tracy Pumping Plant, **the O’Neill Forebay**, the O’Neill Pumping/Generating Plant, and the San Luis  
122 Reservoir, used to divert, store and convey water to those Project Contractors entitled to receive  
123 water conveyed through the Delta-Mendota Canal.

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

127 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in  
128 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal  
129 Reclamation law;

130 (j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting  
131 Officer that shall amortize the expenditures for construction properly allocable to the Project  
132 irrigation or M&I functions, as appropriate, of facilities in service including all Operation and  
133 Maintenance (O&M) deficits funded, less payments, over such periods as may be required under  
134 Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the  
135 construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at  
136 that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and  
137 shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full-Cost

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138 Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of  
139 the Rules and Regulations for the RRA;

140 (k) “Ineligible Lands” shall mean all lands to which irrigation water may not be  
141 delivered in accordance with Section 204 of the RRA;

142 (l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to  
143 the delivery of Irrigation Water;

144 (m) “Irrigation Water” shall mean water made available from the Project that is  
145 used primarily in the production of agricultural crops or livestock, including domestic use incidental  
146 thereto, and watering of livestock;

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

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

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155 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the  
156 delivery of M&I Water;

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

160 (r) "Operating Non-Federal Entity" shall mean the Operating Non-Federal  
161 Entity(ies), it's (their) successors or assigns, which has (have) the obligation to operate and maintain  
162 all or a portion of the Delta Facilities pursuant to a written agreement(s) with the United States.  
163 When this Contract was entered into, the Operating Non-Federal Entity(ies) was (were) San Luis &  
164 Delta-Mendota Water Authority, Department of Water Resources; (**Westlands Water District**)  
165 **Contractor Specific)**

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

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

170 (u) "Project Water" shall mean all water that is developed, diverted, stored, or  
171 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance

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172 with the terms and conditions of water rights acquired pursuant to California law;

173 (v) “Rates” shall mean the payments determined annually by the Contracting  
174 Officer in accordance with the then current applicable water ratesetting policies for the Project, as  
175 described in subdivision (a) of Article 7 of this Contract;

176 (w) “Recent Historic Average” shall mean the most recent five year average of the  
177 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding  
178 contract(s);

179 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed  
180 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
181 through any agency of the Department of the Interior;

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

184 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for  
185 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

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

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

194 TERM OF CONTRACT

195 2. (a) This Contract shall be effective March 1, 200\_, through February 28, (29),  
196 20\_\_ , and supercedes the Existing Contract . In the event the Contractor wishes to renew this  
197 Contract beyond February, 28, (29), \_\_\_\_\_, the Contractor shall submit a request for renewal in  
198 writing to the Contracting Officer no later than two years prior to the date this Contract expires. The  
199 renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor  
200 shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it  
201 pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this  
202 Article.

203 (b) (1) Under terms and conditions of a renewal contract that are mutually  
204 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time  
205 of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to

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206 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the  
207 Contractor, shall be renewed for a period of 25 years.

208 (2) The conditions which must be met for this Contract to be renewed are:

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

221 (3) The terms and conditions of the renewal contract described in  
222 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent

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

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

238 (d) The Contracting Officer shall make a determination ten years after the date of  
239 execution of this Contract, and every five years thereafter during the term of this Contract, of whether

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

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

269 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

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274 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of  
275 this Contract.

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

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

287 (d) The Contractor shall make reasonable and beneficial use of all water furnished  
288 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater  
289 banking programs, surface water storage programs, and other similar programs utilizing Project  
290 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service

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291 Area which are consistent with applicable State law and result in use consistent with Federal  
292 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in  
293 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,  
294 further, That such water conservation plan demonstrates sufficient lawful uses exist in the  
295 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is  
296 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.  
297 Groundwater recharge programs, groundwater banking programs, surface water storage programs,  
298 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract  
299 conducted outside the Contractor's Service Area may be permitted upon written approval of the  
300 Contracting Officer, which approval will be based upon environmental documentation, Project Water  
301 rights, and Project operational concerns. The Contracting Officer will address such concerns in  
302 regulations, policies, or guidelines. **(UNDER NEGOTIATION)**

303 (e) The Contractor shall comply with requirements applicable to the Contractor in  
304 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
305 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are  
306 within the Contractor's legal authority to implement. The Existing Contract, which evidences in  
307 excess of \_\_ years of diversions for irrigation and/or M&I purposes of the quantities of water

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308 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an  
309 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other  
310 needed environmental review. Nothing herein shall be construed to prevent the Contractor from  
311 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any  
312 biological opinion or other environmental documentation referred to in this Article.

313 (f) Following the declaration of Water Made Available under Article 4 of this  
314 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
315 available to the Project, can be made available to the Contractor in addition to the Contract Total  
316 under this Article during the Year without adversely impacting other Project Contractors. At the  
317 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making  
318 such a determination. If the Contracting Officer determines that Project Water, or other water  
319 available to the Project, can be made available to the Contractor, the Contracting Officer will  
320 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
321 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of  
322 taking such water to determine the most equitable and efficient allocation of such water. If the  
323 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
324 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,

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325 and policies. Subject to existing long-term contractual commitments, water rights and operational  
326 constraints, long-term Project Contractors shall have a first right to acquire such water, including  
327 Project Water made available pursuant to Section 215 of the RRA

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

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

341 (i) Project Water furnished to the Contractor pursuant to this Contract may be

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342 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this  
343 Contract upon written approval by the Contracting Officer in accordance with the terms and  
344 conditions of such approval.

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

352 TIME FOR DELIVERY OF WATER

353 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall  
354 announce the Contracting Officer's expected declaration of the Water Made Available. Such  
355 declaration will be expressed in terms of both Water Made Available and the Recent Historic  
356 Average and will be updated monthly, and more frequently if necessary, based on then-current  
357 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made  
358 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the

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359 basis of the estimate, with relevant supporting information, upon the written request of the  
360 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer  
361 shall provide the Contractor with the updated Recent Historic Average.

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

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

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

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376 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

377 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
378 Contract shall be delivered to the Contractor at Project facilities and any additional point or points of  
379 delivery either on Project facilities or another location or locations mutually agreed to in writing by  
380 the Contracting Officer and the Contractor.

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

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

389 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
390 measured and recorded with equipment furnished, installed, operated, and maintained by the  
391 Contracting Officer either directly or indirectly through its written agreements(s) with the Operating  
392 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting

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393 Officer at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon  
394 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be  
395 investigated by the appropriate Operating Non-Federal Entity (ies) the accuracy of such  
396 measurements and shall take any necessary steps to adjust any errors appearing therein. For any  
397 period of time when accurate measurements have not been made, the Contracting Officer shall  
398 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to  
399 making a final determination of the quantity delivered for that period of time.

400 (e) Absent a separate contrary written agreement with the Contractor, neither the  
401 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,  
402 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this  
403 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.  
404 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on  
405 account of damage or claim of damage of any nature whatsoever for which there is legal  
406 responsibility, including property damage, personal injury, or death arising out of or connected with  
407 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such  
408 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the  
409 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating

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410 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)  
411 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,  
412 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of  
413 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a  
414 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal  
415 Entity(ies); or (v) failure of the United States, its officers, employees, agents and assigns, including  
416 the Operating Non-Federal Entity(ies), to provide drainage service.

417 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

418 6. (a) The Contractor has established a measuring program satisfactory to the  
419 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
420 purposes within the Contractor's Service Area is measured at each agricultural turnout and such  
421 water delivered for M&I purposes is measured at each M&I service connection. The water  
422 measuring devices or water measuring methods of comparable effectiveness must be acceptable to  
423 the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
424 maintaining and repairing all such measuring devices and implementing all such water measuring  
425 methods at no cost to the United States. The Contractor shall use the information obtained from such  
426 water measuring devices or water measuring methods to ensure its proper management of the water,

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427 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered  
428 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided  
429 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor  
430 from establishing and collecting any charges, assessments, or other revenues authorized by California  
431 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual  
432 report described in subdivision (c) of Article 26.

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

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444 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days  
445 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by  
446 which the Contractor shall modify said measuring devices and/or measuring methods as required by  
447 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

454 (e) The Contractor shall inform the Contracting Officer and the Operating Non-  
455 Federal Entity on or before the (20<sup>th</sup>) calendar day of each month of the quantity of Irrigation Water  
456 and M&I Water taken during the preceding month.

457 RATES AND METHOD OF PAYMENT FOR WATER

458 7. (a) The Contractor shall pay the United States as provided in this Article for all  
459 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
460 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's

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461 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,  
462 modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal  
463 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
464 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or  
465 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.  
466 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of  
467 this Contract are set forth in Exhibit "B", as may be revised annually.

468 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and  
469 Tiered Pricing Components as follows:

470 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
471 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
472 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
473 the basis for such estimate. The Contractor shall be allowed not less than two months to review and  
474 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
475 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October  
476 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
477 notification shall revise Exhibit "B."

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

485                                   (c)     At the time the Contractor submits the initial schedule for the delivery of  
486     Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
487     shall make an advance payment to the United States equal to the total amount payable pursuant to the  
488     applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
489     delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
490     of the first month and before the end of each calendar month thereafter, the Contractor shall make an  
491     advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the  
492     Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
493     following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
494     for Water Delivered shall be made before the end of the following month; Provided, That any revised

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495 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
496 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
497 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
498 to the Contractor in advance of such payment. In any month in which the quantity of Water  
499 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid  
500 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and  
501 until an advance payment at the Rates then in effect for such additional Project Water is made. Final  
502 adjustment between the advance payments for the Water Scheduled and payments for the quantities  
503 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
504 but no later than April 30th of the following Year, or sixty days after the delivery of Project Water  
505 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the  
506 last day of February.

507 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
508 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
509 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
510 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
511 Pricing Component pursuant to subdivision (j) (2) of this Article. The payments shall be consistent

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512 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
513 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no  
514 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed  
515 a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.  
516 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of  
517 payments due to the United States for Charges for the next month. Any amount to be paid for past  
518 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20  
519 of this Contract.

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

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

528 (g) All revenues received by the United States from the Contractor relating to the

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529 delivery of Project Water or the delivery of non-Project water through Project facilities shall be  
530 allocated and applied in accordance with Federal Reclamation law and the associated rules or  
531 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

532 (h) The Contracting Officer shall keep its accounts pertaining to the administration  
533 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal  
534 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer  
535 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all  
536 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,  
537 and a summary of all water delivery information. The Contracting Officer and the Contractor shall  
538 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,  
539 reports, or information.

540 (i) The parties acknowledge and agree that the efficient administration of this  
541 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
542 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,  
543 and/or for making and allocating payments, other than those set forth in this Article may be in the  
544 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to  
545 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in

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546 effect without amending this Contract.

547 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed  
548 80 percent of the Contract Total, then before the end of the month following the month of delivery  
549 the Contractor shall make an additional payment to the United States equal to the applicable Tiered  
550 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of  
551 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal  
552 one-half of the difference between the Rate established under subdivision (a) of this Article and the  
553 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered  
554 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract  
555 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article  
556 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.  
557 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of  
558 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation  
559 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total  
560 Water Delivered.

561 (2) Subject to the Contracting Officer's written approval, the Contractor  
562 may request and receive an exemption from such Tiered Pricing Components for Project Water

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563 delivered to produce a crop which the Contracting Officer determines will provide significant and  
564 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;  
565 Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply  
566 only if such habitat values can be assured consistent with the purposes of the CVPIA through binding  
567 agreements executed with or approved by the Contracting Officer prior to use of such water.

568 (3) For purposes of determining the applicability of the Tiered Pricing  
569 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
570 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it  
571 include the additional water provided to the Contractor under the provisions of subdivision (f) of  
572 Article 3 of this Contract.

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

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580 change.

581 (l) Except as provided in subsections 3405(a) (1) (B) and 3405(f) of the CVPIA,  
582 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in  
583 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the  
584 changed costs if any, incurred by the Contracting Officer in the delivery of the transferred Project  
585 Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges  
586 because of inability to pay and is transferring Project Water to another entity whose Rates and  
587 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water  
588 shall not be adjusted to reflect the Contractor's inability to pay.

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

591 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not  
592 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the  
593 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the  
594 Contractor does not waive any legal rights or remedies that it may have with respect to such disputed  
595 issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor  
596 may challenge in the appropriate administrative or judicial forums: (1) the existence, ~~the~~

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597 computation, or imposition of any deficit charges accruing during the term of the Existing Contract  
598 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits;  
599 (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United  
600 States of payments made by the Contractor under its Existing Contract and any preceding interim  
601 renewal contracts, if applicable; and (5) the application of such payments in the Rates. The  
602 Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or  
603 judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for  
604 payments heretofore made, provided that the basis for such ruling is applicable to the Contractor.  
605 [Contractor Specific]

606 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

607 8. The Contractor and the Contracting Officer concur that, as of the effective date of this  
608 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability  
609 therefore.

610 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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631 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of  
632 the then existing five year period. All subsequent environmental documentation shall include an  
633 alternative to evaluate not less than the quantity of Project Water historically transferred within the  
634 same geographical area.

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

645 APPLICATION OF PAYMENTS AND ADJUSTMENTS

646 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
647 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of

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648 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000  
649 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at  
650 the option of the Contractor, may be credited against amounts to become due to the United States by  
651 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
652 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the  
653 Project Water supply provided for herein. All credits and refunds of overpayments shall be made  
654 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such  
655 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year  
656 in which the overpayment was made.

657 (b) All advances for miscellaneous costs incurred for work requested by the  
658 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when  
659 the work has been completed. If the advances exceed the actual costs incurred, the difference will be  
660 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will  
661 be billed for the additional costs pursuant to Article 25.

662 TEMPORARY REDUCTIONS--RETURN FLOWS

663 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
664 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or

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665 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make  
666 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this  
667 Contract.

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

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

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

685 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

696 **12 (c) and 12(d) (e) under negotiations**

697 UNAVOIDABLE GROUNDWATER PERCOLATION

698 13. To the extent applicable, the Contractor shall not be deemed to have delivered

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

702 RULES AND REGULATIONS

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

707  
708 WATER AND AIR POLLUTION CONTROL  
709

710 15. The Contractor, in carrying out this Contract, shall comply with all applicable water  
711 and air pollution laws and regulations of the United States and the State of California, and shall  
712 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

713

714 QUALITY OF WATER

715 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
716 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
717 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
718 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
719 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish

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720 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor  
721 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the  
722 Contractor pursuant to this Contract.

723 (b) The O&M of Project facilities shall be performed in such manner as is  
724 practicable to maintain the quality of raw water made available through such facilities at the highest  
725 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be  
726 responsible for compliance with all State and Federal water quality standards applicable to surface  
727 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor  
728 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

729 (c) The Contracting Officer shall notify the Contractor in writing when drainage  
730 service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the  
731 Contractor at rates established pursuant to the then-existing ratesetting policy for irrigation water;  
732 Provided, that such ratesetting policy shall be amended, modified, or superceded only through the  
733 process described in subdivision (c) of Article 7 of this Contract.

734 WATER ACQUIRED BY THE CONTRACTOR  
735 OTHER THAN FROM THE UNITED STATES

736 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other

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737 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may  
738 be simultaneously transported through the same distribution facilities of the Contractor subject to the  
739 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were  
740 constructed without funds made available pursuant to Federal Reclamation law, the provisions of  
741 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation  
742 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the  
743 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part  
744 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be  
745 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity  
746 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation  
747 Water and non-Project water are/were constructed with funds made available pursuant to Federal  
748 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal  
749 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43  
750 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the  
751 cost to the Federal Government, including interest, of storing or delivering non-Project water, which  
752 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid  
753 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.

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

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

767 (1) The Contractor may introduce non-Project water into Project facilities  
768 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,  
769 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
770 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, **and the Project**

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771 **use power policy, if such Project use power policy is applicable**, each as amended, modified or  
772 superceded from time to time. ~~In addition, if electrical power is required to pump non-Project water~~  
773 ~~through the facilities, the Contractor shall be responsible for obtaining the necessary power and~~  
774 ~~paying the necessary charges therefore.~~

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

780 (3) Neither the United States nor the Operating Non-Federal Entity(ies) shall be responsible for  
781 control, care or distribution of the non-Project water before it is introduced into or after it is delivered  
782 from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the  
783 United States and the Operating Non-Federal Entity(ies), and their respective officers, agents, and  
784 employees, from any claim for damage to persons or property, direct or indirect, resulting from the  
785 ~~Contractor's or~~ act(s) of the Contractor, its officers', ~~employees', agents' or assigns', act of,~~  
786 employees, agents, or assigns, in (i) extracting or diverting non-Project water from any source, or (ii)  
787 diverting such non-Project water into Project facilities.

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

791 (5) After Project purposes are met, as determined by the Contracting  
792 Officer, the United States and the Project Contractors shall share priority to utilize the remaining  
793 capacity of the facilities declared to be available by the Contracting Officer for conveyance and  
794 transportation of non-Project water prior to any such remaining capacity being made available to  
795 non-Project contractors. **Other Project Contractors shall have a second priority to any**  
796 **remaining capacity of Delta Division Facilities declared to be available by the Contracting**  
797 **Officer for conveyance and transportation of non-Project water prior to any such remaining**  
798 **capacity being made available to non-Project Contractors.**

799 OPINIONS AND DETERMINATIONS

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

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805 unreasonable opinion or determination. Each opinion or determination by either party shall be  
806 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to  
807 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or  
808 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

814 COORDINATION AND COOPERATION

815 19. (a) In order to further their mutual goals and objectives, the Contracting Officer  
816 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
817 affected Project Contractors, in order to improve the operation and management of the Project. The  
818 communication, coordination, and cooperation regarding operations and management shall include,  
819 but not be limited to, any action which will or may materially affect the quantity or quality of Project  
820 Water supply, the allocation of Project Water supply, and Project financial matters including, but not  
821 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder

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822 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making  
823 authority for all actions, opinions, and determinations to be made by the respective party.

824 (b) Within 120 days following the effective date of this Contract, the Contractor,  
825 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested  
826 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be  
827 amended as necessary separate and apart from this Contract. The goal of this process shall be to  
828 provide, to the extent practicable, the means of mutual communication and interaction regarding  
829 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

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

851 CHARGES FOR DELINQUENT PAYMENTS

852 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
853 on delinquent installments or payments. When a payment is not received by the due date, the  
854 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
855 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to  
856 cover additional costs of billing and processing the delinquent payment. When a payment is  
857 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per  
858 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay

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859 any fees incurred for debt collection services associated with a delinquent payment.

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

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

868 EQUAL OPPORTUNITY

869  
870 21. During the performance of this Contract, the Contractor agrees as follows:

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

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

883 (c) The Contractor will send to each labor union or representative of workers with  
884 which it has a collective bargaining agreement or other contract or understanding, a notice, to be  
885 provided by the Contracting Officer, advising the said labor union or workers' representative of the

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886 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and  
887 shall post copies of the notice in conspicuous places available to employees and applicants for  
888 employment.

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

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

897  
898 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
899 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
900 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible  
901 for further Government contracts in accordance with procedures authorized in said amended  
902 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said  
903 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided  
904 by law.

905  
906 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
907 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
908 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
909 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
910 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
911 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That  
912 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor  
913 or vendor as a result of such direction, the Contractor may request the United States to enter into such  
914 litigation to protect the interests of the United States.

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915 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

920 (b) The payment of charges becoming due hereunder is a condition precedent to  
921 receiving benefits under this Contract. The United States shall not make water available to the  
922 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
923 the advance payment of water rates due the United States. The Contractor shall not furnish water  
924 made available pursuant to this Contract for lands or parties which are in arrears in the advance  
925 payment of water rates levied or established by the Contractor.

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

928 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

929  
930 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42  
931 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
932 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as  
933 well as with their respective implementing regulations and guidelines imposed by the U.S.  
934 Department of the Interior and/or Bureau of Reclamation.

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

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

948 PRIVACY ACT COMPLIANCE

949 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
950 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
951 maintaining Landholder acreage certification and reporting records, required to be submitted to the  
952 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96  
953 Stat. 1266), and pursuant to 43 CFR 426.18.

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

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

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

967 (e) The Contractor shall forward promptly to the System Manager each proposed

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968 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
969 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
970 information and records necessary to prepare an appropriate response to the requester. These  
971 requirements do not apply to individuals seeking access to their own certification and reporting forms  
972 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy  
973 Act as a basis for the request.

974 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

975 25. In addition to all other payments to be made by the Contractor pursuant to this  
976 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
977 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of  
978 direct cost incurred by the United States for work requested by the Contractor associated with this  
979 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
980 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
981 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
982 administration.

983 WATER CONSERVATION

984 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
985 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
986 implementing an effective water conservation and efficiency program based on the Contractor's water

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987 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
988 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
989 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
990 economically feasible water conservation measures, and time schedules for meeting those objectives.  
991 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
992 continued implementation of such water conservation program. In the event the Contractor's water  
993 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
994 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
995 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
996 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
997 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
998 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
999 program in accordance with the time schedules therein.

1000 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1001 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
1002 the Best Management Practices identified by the time frames issued by the California Urban Water  
1003 Conservation Council for such M&I Water unless any such practice is determined by the Contracting

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1004 Officer to be inappropriate for the Contractor.

1005 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1006 its implementation of the water conservation plan on the reporting dates specified in the then existing  
1007 conservation and efficiency criteria established under Federal law.

1008 (d) At five year intervals, the Contractor shall revise its water conservation plan to  
1009 reflect the then current conservation and efficiency criteria for evaluating water conservation plans  
1010 established under Federal law and submit such revised water management plan to the Contracting  
1011 Officer for review and evaluation. The Contracting Officer will then determine if the water  
1012 conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1013 evaluating water conservation plans established under Federal law.

1014 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1015 be described in the Contractor's water conservation plan.

1016 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1017 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
1018 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter  
1019 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
1020 water shall not be considered Project Water under this Contract. In addition, this Contract shall not

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1021 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
1022 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1023 Reclamation law.

1024  
1025 OPERATION AND MAINTENANCE BY SAN LUIS DELTA-MENDOTA WATER  
1026 AUTHORITY  
1027

1028 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1029 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis  
1030 Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-  
1031 X0354) between the United States and Operating Non-Federal Entity San Luis Delta-Mendota Water  
1032 Authority. That separate agreement shall not interfere with or affect the rights or obligations of the  
1033 Contractor or the United States hereunder.

1034 (b) The Contracting Officer has previously notified the Contractor in writing that  
1035 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to  
1036 Operating Non-Federal Entity San Luis Delta-Mendota Water Authority, and therefore, the  
1037 Contractor shall pay directly to Operating Non-Federal Entity San Luis Delta-Mendota Water  
1038 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of  
1039 the separate agreement between the United States and Operating Non-Federal Entity San Luis Delta-

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1040 Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or  
1041 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal  
1042 Entity San Luis Delta-Mendota Water Authority, or such successor determines, sets, or establishes  
1043 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-  
1044 Federal Entity San Luis Delta-Mendota Water Authority, or such successor. Such direct payments to  
1045 Operating Non-Federal Entity San Luis Delta-Mendota Water Authority, or such successor shall not  
1046 relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of  
1047 the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-  
1048 Federal Entity collects payments on behalf of the United States in accordance with subdivision (a) of  
1049 this Article.

1050 (c) For so long as the O&M of any portion of the Project facilities serving the  
1051 Contractor is performed by Operating Non-Federal Entity San Luis Delta-Mendota Water Authority,  
1052 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for  
1053 Water Delivered under this Contract representing the cost associated with the activity being  
1054 performed by Operating Non-Federal Entity San Luis Delta-Mendota Water Authority, or its  
1055 successor.

1056 (d) In the event the O&M of the Project facilities operated and maintained by

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1057 Operating Non-Federal Entity San Luis Delta-Mendota Water Authority, is re-assumed by the United  
1058 States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in  
1059 writing, and present to the Contractor a revised Exhibit “B” which shall include the portion of the  
1060 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs  
1061 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,  
1062 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1063 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit “B” directly to the United  
1064 States in compliance with Article 7 of this Contract.

1065 OPERATION AND MAINTENANCE BY DEPARTMENT OF WATER RESOURCES

1066  
1067 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1068 responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1069 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-  
1070 200-9755) between the United States and Operating Non-Federal Entity Department of Water  
1071 Resources. This separate agreement shall not interfere with or affect the rights or obligations of the  
1072 Contractor or the United States hereunder.

1073 (b) The Contracting Officer has previously notified the Contractor in writing that  
1074 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to

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1075 Operating Non-Federal Entity Department of Water Resources Authority, and the Contractor shall  
1076 pay directly to Operating Non-Federal Entity San Luis Delta-Mendota Water Authority, or to any  
1077 successor approved by the Contracting Officer under the terms and conditions of the separate  
1078 agreement between the United States and Operating Non-Federal Entity San Luis Delta-Mendota  
1079 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or  
1080 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal  
1081 Entity Department of Water Resources, or such successor determines, sets, or establishes for the  
1082 O&M of the portion of the Project facilities operated and maintained by Operating Non-Federal  
1083 Entity Department of Water Resources, or such successor. Such direct payments to Operating Non-  
1084 Federal Entity San Luis Delta-Mendota Water Authority, or such successor shall not relieve the  
1085 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project  
1086 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal  
1087 Entity collects payments on behalf of the United States in accordance with the separate agreement  
1088 identified in subdivision (a) of Article 28 of this Contract.

1089 (c) For so long as the O&M of any portion of the Project facilities serving the  
1090 Contractor is performed by Operating Non-Federal Entity Department of Water Resources, or any  
1091 successor thereto, the Contracting Officer shall adjust those components of the Rates for Water

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1092 Delivered under this Contract representing the cost associated with the activity being performed by  
1093 Operating Non-Federal Entity Department of Water Resources, or its successor.

1094 (d) In the event the O&M of the Project facilities operated and maintained by  
1095 Operating Non-Federal Entity Department of Water Resources, is re-assumed by the United States  
1096 during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and  
1097 present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates, Charges,  
1098 and Tiered Pricing Component(s) to be paid by the Contractor for Project Water under this Contract  
1099 representing the O&M costs of the portion of such Project facilities which have been re-assumed.  
1100 The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to  
1101 the contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised  
1102 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1103 OPERATION AND MAINTENANCE BY WESTLANDS WATER DISTRICT

1104 **The following article is Contractor specific- Cities of Huron and Coalinga, and DFG)**

1105  
1106 28.2 (a) The O&M of a portion of the Project facilities which serve the  
1107 Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred  
1108 to the Westlands Water District, an Operating Non-Federal Entity by a separate agreement (Regional  
1109 Office Draft 4/10-1981, as modified by the Barcellos Judgment) between the United States and

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1110 Operating Non-Federal Entity Westlands Water District. This separate agreement shall not interfere  
1111 with or affect the rights or obligations of the Contractor or the United States hereunder.

1112 (b) The Contracting Officer has previously notified the Contractor in writing that  
1113 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to  
1114 Operating Non-Federal Entity Westlands Water District. Therefore, the Contractor has entered into a  
1115 separate agreement with Operating Non-Federal Entity Westlands Water District providing the terms  
1116 and conditions pursuant to which Operating Non-Federal Entity Westlands Water District will deliver  
1117 Project Water to the Contractor through the portion of the Project facilities operated and maintained  
1118 by Operating Non-Federal Entity Westlands Water District, including the amount(s) the Contractor is  
1119 to pay Operating Non-Federal Entity Westlands Water District for that service. The Contractor shall  
1120 pay directly to Operating Non-Federal Entity Westlands Water District, or to any successor approved  
1121 by the Contracting Officer, all rates, charges, or assessments of any kind, including any assessment  
1122 for reserve funds, described in the separate agreement referred to above or any amendatory or  
1123 replacement agreement approved by the Contracting Officer, which Operating Non-Federal Entity  
1124 Westlands Water District and or such successor determines, sets, or establishes for the O&M of the  
1125 portion of the Project facilities operated and maintained by Operating Non-Federal Entity Westlands  
1126 Water District, or such successor. Such direct payments to Operating Non-Federal Entity Westlands

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1127 Water District, or such successor shall not relieve the Contractor of its obligation to pay directly to  
1128 the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing  
1129 Components referred to in this Contract.

1130 (c) For so long as the O&M of any portion of the Project facilities serving the  
1131 Contractor is performed by Operating Non-Federal Entity Westlands Water District, or any successor  
1132 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under  
1133 this Contract representing the cost associated with the activity being performed by Operating Non-  
1134 Federal Entity Westlands Water District, or its successor.

1135 (d) In the event the O&M of the Project facilities operated and maintained by  
1136 Operating Non-Federal Entity Westlands Water District, is re-assumed by the United States during  
1137 the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and  
1138 present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates, Charges,  
1139 and Tiered Pricing Component(s) to be paid by the Contractor for Project Water under this Contract  
1140 representing the O&M costs of the portion of such Project facilities which have been re-assumed.  
1141 The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to  
1142 the contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised  
1143 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

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**PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER**  
**OF OPERATION AND MAINTENANCE CONTRACTOR**

**28.3 CONTRACTOR SPECIFIC**

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**CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

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

**BOOKS, RECORDS, AND REPORTS**

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

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

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1170 to provide the requested books, records, or information.

1171 (c) At such time as the Contractor provides information to the Contracting Officer  
1172 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1173 Operating Non-Federal Entity.

1174 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1175 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1176 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1177 therein shall be valid until approved in writing by the Contracting Officer.

1178 (b) The assignment of any right or interest in this Contract by either party shall not  
1179 interfere with the rights or obligations of the other party to this Contract absent the written  
1180 concurrence of said other party.

1181 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1182 of any proposed assignment.

1183 SEVERABILITY

1184 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1185 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1186 association or other form of organization whose primary function is to represent parties to Project  
1187 contracts, brings an action in a court of competent jurisdiction challenging the legality or

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1188 enforceability of a provision included in this Contract and said person, entity, association, or  
1189 organization obtains a final court decision holding that such provision is legally invalid or  
1190 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1191 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1192 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1193 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
1194 specified above may be extended by mutual agreement of the parties. Pending the completion of the  
1195 actions designated above, to the extent it can do so without violating any applicable provisions of  
1196 law, the United States shall continue to make the quantities of Project Water specified in this  
1197 Contract available to the Contractor pursuant to the provisions of this Contract which were not found  
1198 to be legally invalid or unenforceable in the final court decision.

1199 RESOLUTION OF DISPUTES

1200 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1201 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1202 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1203 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1204 notice of the intent to take such action; Provided, That such notice shall not be required where a

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1205 delay in commencing an action would prejudice the interests of the party that intends to file suit.  
1206 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1207 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1208 waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

1209 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1210 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1211 manner as other water users or landowners.

CHANGES IN CONTRACTOR'S SERVICE AREA

1213 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1214 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1215 except upon the Contracting Officer's written consent.  
1216

1217 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1218 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1219 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1220 timely completion of the process. Such process will analyze whether the proposed change is likely  
1221 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of  
1222 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-

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1223 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1224 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with  
1225 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting  
1226 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

FEDERAL LAWS

1227 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1228 validity or application in connection with the performance of the terms and conditions of this  
1229 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1230 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1231 regulation to the implementing provision of the Contract is granted by a court of competent  
1232 jurisdiction.

NOTICES

1234 37. Any notice, demand, or request authorized or required by this Contract shall be  
1235 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1236 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on  
1237 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of  
1238 the \_\_\_\_\_ The designation of the addressee or the address may  
1239 be changed by notice given in the same manner as provided in this Article for other notices.

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CONFIRMATION OF CONTRACT

1245 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1246 decree of a court of competent jurisdiction of the State of California, confirming the execution of this  
1247 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the

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1248 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1249 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

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1250 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1251 year first above written.

1252 THE UNITED STATES OF AMERICA  
1253 By: \_\_\_\_\_  
1254 Regional Director, Mid-Pacific Region  
1255 Bureau of Reclamation

1256 \_\_\_\_\_ WATER DISTRICT

1257 By: \_\_\_\_\_  
1258 President of the Board of Directors

1259 Attest:

1260 By: \_\_\_\_\_  
1261 Secretary of the Board of Directors

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EXHIBIT A

[Map or Description of Service Area]

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EXHIBIT B

[Initial Rates and Charges]