

1 **Additions in bold are for DWR**

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

6 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
7 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,  
8 AND THE COUNTY OF FRESNO  
9 PROVIDING FOR PROJECT WATER SERVICE  
10 FROM CROSS VALLEY DIVISION

11 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2001, in pursuance  
12 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
13 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
16 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
17 hereinafter referred to as Federal Reclamation law **and pursuant to the California Central Valley**  
18 **Project Act [Part 3, Division 6 (commencing at Section 11100) of the California Water Code]**  
19 **and the California Water Resources Development Bond Act [Chapter 8, Part 6, Division 6**  
20 **(commencing at Section 12930) of the California Water Code,] and all acts of the California**  
21 **legislature amendatory thereto or supplementary thereof** between THE UNITED STATES OF  
22 AMERICA, hereinafter referred to as the United States, **THE DEPARTMENT OF WATER**  
23 **RESOURCES OF THE STATE OF CALIFORNIA, hereinafter referred to as DWR,** and THE  
24 COUNTY OF FRESNO, hereinafter referred to as the Contractor, a public agency of the State of

25 California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place  
26 of business in California;

27 WITNESSETH, That:

28 EXPLANATORY RECITALS

29 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
30 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,  
31 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,  
32 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of  
33 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River  
34 and their tributaries; and

35 [2<sup>nd</sup>] WHEREAS, the United States constructed the Central Valley Project, hereinafter  
36 collectively referred to as the Project facilities, which will be used in part for the furnishing of water  
37 to the Contractor pursuant to the terms of this Contract; and

38 [2.2] WHEREAS, as provided herein, Project Water may be made available to the  
39 Contractor from the Sacramento-San Joaquin Delta and/or the Friant Division and delivered to the  
40 Contractor through appropriate federal, state and/or local facilities; and

41 [2.3] **WHEREAS, DWR is engaged in the operation of the State Water Resources**  
42 **Development System pursuant to the laws of the State of California involving the development,**  
43 **transportation, and delivery of water supplies to public agencies throughout the State of**  
44 **California; and**

45 [2.4] **WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the**

46 **Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no**  
47 **cost to either the United States or DWR; and**

48 [2.5] WHEREAS, the Contractor has the right to use the Cross Valley Canal for conveyance  
49 of the Project Water furnished hereunder; and

50 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to  
51 California law for operation of the Project; and

52 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-  
53 200-8292A, as amended, which established terms for the delivery to the Contractor of Project Water  
54 from the Cross Valley Division from November 10, 1975, through February 29, 1996; and

55 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
56 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
57 interim renewal contract(s) identified as Contract No(s). 14-06-200-8292A-IR1, IR2, IR3, and IR4,  
58 the current of which is hereinafter referred to as the Existing Contract, which provided for the  
59 continued water service to the Contractor from December 1, 2000, through February 28, 2001; and

60 [5.2] WHEREAS, the Contractor proposes to enter into subcontracts for the furnishing of  
61 water made available to the Contractor under this Contract; and

62 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim  
63 and existing long-term Project Water service contracts following completion of appropriate  
64 environmental documentation, including a programmatic environmental impact statement (PEIS)  
65 pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and  
66 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project

67 Water; and

68 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
69 environmental review necessary to provide for long-term renewal of the Existing Contract; and

70 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
71 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the  
72 State of California, for water service from the Central Valley Project; and

73 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
74 its obligations under the Existing Contract; and

75 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
76 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
77 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor  
78 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project  
79 Water to be made available to it pursuant to this Contract; and

80 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by  
81 urban and agricultural areas within California for more than fifty (50) years, and is considered by the  
82 Contractor as an essential portion of its water supply; and

83 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
84 Contractor's, depend upon the continued availability of water, including water service from the  
85 Central Valley Project; and

86 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
87 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project

88 purposes; and

89 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
90 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of  
91 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to  
92 achieve a reasonable balance among competing demands for use of Project Water; and to comply  
93 with all applicable environmental statutes, all consistent with the legal obligations of the United  
94 States relative to the Central Valley Project; and

95 [14.1] WHEREAS, the United States and the Contractor acknowledge that the Base Supply  
96 as defined in this Contract is a more accurate reflection of the amount of water the Contractor may  
97 realistically expect in many water Years in light of present constraints, and that designation of Base  
98 Supply does not preclude delivery to the Contractor of the Supplemental Supply of Project Water as  
99 defined herein; and

100 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
101 relationship in order to achieve their mutual goals; and

102 [15.2] WHEREAS, the United States and the Contractor desire to contract with DWR  
103 for conveyance of Project Water through the facilities of the SWP as aforesaid under an  
104 arrangement wherein the United States will furnish the necessary power for pumping such  
105 water through DWR's Delta Pumping Plant and Dos Amigos Pumping Plant; and

106 [15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject  
107 to the availability of transportation capacity and payment of costs as herein provided; and

108 [16<sup>th</sup>] WHEREAS, the United States, DWR, and the Contractor are willing to enter into this

109 long-term renewal contract pursuant to Federal Reclamation law on the terms and conditions set forth  
110 below;

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

113 DEFINITIONS

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

116 (a) "Base Supply" shall mean that quantity of Project Water so designated in  
117 subdivision (a) of Article 3 of this Contract;

118 (a1) "Calendar Year" shall mean the period January 1 through December 31, both  
119 dates inclusive;

120 (b) "Charges" shall mean the payments required by Federal Reclamation law in  
121 addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
122 annually by the Contracting Officer pursuant to this Contract;

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

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

128 (e) "Contract Total" shall mean the total of Base Supply and Supplemental Supply  
129 of Project Water to which the Contractor is entitled under subdivision (a) of Article 3 of this

130 Contract;

131 (f) "Contractor's Service Area", or if applicable, "Subcontractor's Service Area"

132 (f2) "Cross Valley Canal" shall mean the water conveyance and related works

133 constructed by the Contractor and others to deliver water from the State Facilities, which canal

134 currently is operated by KCWA;

135 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title

136 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

137 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be

138 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96

139 Stat. 1263), as amended, hereinafter referred to as RRA;

140 (h2) **"Entitlement Water" shall mean the amount of SWP Water made**  
141 **available to a SWP Contractor during the respective year, as shown in Table A of their contract**  
142 **with DWR, or as it may be amended;**

143 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in

144 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal

145 Reclamation law;

146 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or

147 202(3) of the RRA, whichever is applicable;

148 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be

149 delivered in accordance with Section 204 of the RRA;

150 (l) "Irrigation Full Cost Water Rate" shall have the same meaning as "full cost" as

151 that term is used in paragraph (3) of Section 202 of the RRA;

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

155 (m2) "KCWA" shall mean the Kern County Water Agency;

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

158 (n2) **"Minimum OMP&R Costs" shall mean those OMP&R costs incurred by**  
159 **DWR irrespective of the amount of water delivered to the Contractor;**

160 (o) "Municipal and Industrial (M&I) Water" shall mean water made available from  
161 the Project other than Irrigation Water made available to the Contractor. M&I Water shall include  
162 water used for human use and purposes such as the watering of landscaping or pasture for animals  
163 (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in  
164 units of less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting  
165 Officer that the use of water delivered to any such landholding is a use described in subdivision (m)  
166 of this Article;

167 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined  
168 by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I  
169 facilities in service, including, O&M deficits funded, less payments, over such periods as may be  
170 required under Federal Reclamation law with interest accruing from the dates such costs were first  
171 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the

172 calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in  
173 Section 202 (3) (B) and (C) of the RRA;

174 (p2) **"OMP&R Costs" shall mean the costs incurred by DWR for operation,**  
175 **maintenance, power and replacement of all State Facilities used in conveying Project Water to**  
176 **the Contractor;**

177 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable  
178 care, control, operation, repair, replacement (other than Capital replacement), and maintenance of  
179 Project facilities;

180 (r) "Operating Non-Federal Entity" shall mean the , a Non-Federal entity which  
181 has the obligation to operate and maintain all or a portion of the Project facilities pursuant to an  
182 agreement with the United States, and which may have funding obligations with respect thereto;

183 (r2) **"Operations Manual" shall mean the manual setting forth detailed**  
184 **operations and management procedures prepared by DWR, the Contracting Officer and the**  
185 **Contractor;**

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

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

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

193 (v) "Rates" shall mean the payments determined annually by the Contracting  
194 Officer in accordance with the then current applicable water ratesetting policies for the Project, as  
195 described in subdivision (a) of Article 7 of this Contract;

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

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

202 (x2) **"State Facilities" shall mean that portion of the SWP (including DWR's**  
203 **portion of joint facilities), necessary to convey Project Water from the Sacramento-San Joaquin**  
204 **Delta (Delta) to the Cross Valley Canal;**

205 (x3) **"SWP" shall mean the California State Water Project;**

206 (x4) **"SWP Contractor" shall mean any entity contracting with DWR for a**  
207 **portion of the minimum project yield of the SWP;**

208 (x5) **"SWP Water" shall mean water made available through SWP operations**  
209 **including conservation, purchase, and diversion under water rights of DWR;**

210 (x6) "Subcontractor" shall mean an individual, group of individuals, organization,  
211 or entity in the County who contracts with the Contractor to use water made available to the  
212 Contractor under this Contract;

213 (x7) "Supplemental Supply" shall mean that quantity of Project Water so designated

214 in subdivision (a) of Article 3 of this Contract as that portion of the Contract Total that is in addition  
215 to and less reliable than the Base Supply;

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

218 (z2) **"Variable OM&R Costs" shall mean those costs incurred by DWR for**  
219 **operation, maintenance and replacement costs of State Facilities which are dependant upon and**  
220 **vary with the amount of water delivered; and**

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

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

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

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

231 TERM OF CONTRACT

232 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In  
233 the event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall  
234 submit a request for renewal in writing to the Contracting Officer no later than two (2) years prior to

235 the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of  
236 Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the  
237 renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall  
238 be governed by subdivision (c) of this Article.

239 (b) (1) Under terms and conditions of a renewal contract that are mutually  
240 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of  
241 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to  
242 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the  
243 Contractor, shall be renewed for a period of twenty-five (25) years.

244 (2) The conditions which must be met for this Contract to be renewed are:  
245 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting  
246 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria  
247 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an  
248 effective water conservation and efficiency program based on the Contractor's water conservation  
249 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all  
250 water measuring devices and implementing all water measurement methods as approved by the  
251 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and  
252 beneficially used the Project Water supplies made available to it and, based on projected demands, is  
253 reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of  
254 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying  
255 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal

256 ability to deliver Project Water.

257 (3) The terms and conditions of the renewal contract described in  
258 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent  
259 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and  
260 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the  
261 Contractor's need for continued delivery of Project Water; environmental conditions affected by  
262 implementation of the Contract to be renewed, and specifically changes in those conditions that  
263 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the  
264 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the  
265 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

266 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the  
267 Contractor, shall be renewed for a period of twenty five (25) years and thereafter shall be renewed for  
268 successive periods of up to forty (40) years each, which periods shall be consistent with the then-  
269 existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and  
270 consistent with Federal and State law. The present Reclamation-wide policy, dated March 20, 2000,  
271 provides that the term of such contracts shall be no more than twenty five (25) years each, subject to a  
272 variance to allow a longer term in appropriate circumstances. The Contractor shall be afforded the  
273 opportunity to comment to the Contracting Officer on the proposed adoption and application of any  
274 revised Reclamation-wide policy applicable to the delivery of Project M&I Water that would limit the  
275 term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less  
276 than twenty five (25) years.

277 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized  
278 project construction expected to occur will have occurred, and on that basis the Contracting Officer  
279 agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees  
280 further that, at any time after such allocation is made, and subject to satisfaction of the condition set  
281 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract  
282 under subsection (d) , Section 9 of the Reclamation Project Act of 1939, subject to applicable Federal  
283 law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting  
284 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer  
285 that, account being taken of the amount credited to return by the Contractor as provided for under  
286 Reclamation law, the remaining amount of construction costs assignable for ultimate return by the  
287 Contractor can probably be repaid to the United States within the term of a contract under said  
288 subsection (d). If the remaining amount of costs that are properly assignable to the Contractor cannot  
289 be determined by December 31, 2024, the Contracting Officer shall notify the Contractor, and provide  
290 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall  
291 make such a determination as soon thereafter as possible so as to permit, upon request of the  
292 Contractor and satisfaction of the condition set out above, conversion to a contract under said  
293 subsection (d). In the event such determination of costs has not been made at a time which allows  
294 conversion of this Contract during the term of this Contract or the Contractor has not requested  
295 conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal  
296 contract as described in subdivision (b) of this Article a provision that carries forth in substantially  
297 identical terms the provisions of this subdivision. In the event the Contracting Officer is able to make

298 a determination of the remaining amount of costs that are properly assignable to the Contractor before  
299 December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting Officer  
300 has such ability.

301 (e) DWR shall negotiate in good faith with the Contractor and the United States in  
302 the process described in this Article: Provided, That no such renewal contract shall obligate DWR to  
303 provide conveyance and/or storage beyond February 28, 2035 without further negotiations. The  
304 parties acknowledge that operation of State Facilities is not, and shall not be, subject to federal  
305 Reclamation law.

306 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

307 3. (a) During each Year, consistent with all applicable State water rights, permits,  
308 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
309 Contract, the Contracting Officer shall make available in the Delta for delivery to the Contractor  
310 3,716 acre-feet designated Base Supply and 1,592 acre-feet designated Supplemental Supply water  
311 for a Contract Total of 5,308 acre-feet of the Project Water for irrigation and M&I purposes. To  
312 reflect changes in reliability, the quantity of Base Supply and Supplemental Supply will be reassessed  
313 at least every five (5) years and may be adjusted upon mutual agreement of the parties. Cross Valley  
314 Division Contractors shall have a primary priority to pumping capacity made available by the SWP  
315 for CVP purposes up to the allocation made for CVP irrigation contractors south of the Delta.  
316 Allocations of water supply to Cross Valley Division Contractors and any additional pumping  
317 capacity made available by SWP for Cross Valley Division Contractors purposes shall be addressed  
318 in the Operations Manual. The quantity of Water Delivered to the Contractor in accordance with this

319 subdivision shall be scheduled, conveyed, and paid for pursuant to the provisions of this Contract,  
320 **attached exhibits and the Operations Manual (including any subsequent modifications thereto).**

321 (b) Because the capacity of the Central Valley Project to deliver Project Water has  
322 been constrained in recent years and may be constrained in the future due to many factors including  
323 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor  
324 actually receiving the full amount of the Contract Total set out in subdivision (a) of this Article in any  
325 given Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS  
326 projected that the full amount of the Contract Total set forth in this Contract will not be available to  
327 the Contractor in many years. During the most recent five (5) years, the Recent Historic Average of  
328 Water Made Available to the Contractor was 3,928 acre-feet. Nothing in this subdivision shall affect  
329 the rights and obligations of the parties under any provision of this Contract.

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

332 (d) The Contractor, or if applicable, Subcontractor shall make reasonable and  
333 beneficial use of all Project Water or other water furnished pursuant to this Contract. Groundwater  
334 recharge programs, groundwater banking programs, surface water storage programs, and other similar  
335 programs utilizing Project Water or other water furnished pursuant to this Contract conducted within  
336 the Contractor's Service Area, or if applicable, Subcontractor's Service Area which are consistent  
337 with applicable State law and result in use consistent with Reclamation law will be allowed;

338 Provided, That any direct recharge program(s) is (are) described in the Contractor's or  
339 Subcontractor's Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided,

340 further, That such Water Conservation Plan demonstrates sufficient lawful uses exist in the  
341 Contractor's Service Area, or if applicable, Subcontractor's Service Area so that using a long-term  
342 average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in  
343 compliance with Reclamation law. Groundwater recharge programs, groundwater banking programs,  
344 surface water storage programs, and other similar programs utilizing Project Water or other water  
345 furnished pursuant to this Contract conducted outside the Contractor's Service Area, or if applicable,  
346 Subcontractor's Service Area may be permitted upon written approval of the Contracting Officer,  
347 which approval will be based upon environmental documentation, Project Water rights, and Project  
348 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or  
349 guidelines.

350 (e) The Contractor shall comply with requirements applicable to the Contractor in  
351 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
352 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within  
353 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
354 requirements imposed by environmental documentation applicable to the Contractor and within its  
355 legal authority to implement regarding specific activities, including conversion of Irrigation Water to  
356 M&I Water. Nothing herein shall be construed to prevent the Contractor from challenging or seeking  
357 judicial relief in a court of competent jurisdiction with respect to any biological opinion or other  
358 environmental documentation referred to in this Article.

359 (f) Following the declaration of Water Made Available under Article 4 of this  
360 Contact, the Contracting Officer will make a determination whether Project Water, or other water

361 available to the Project, can be made available to the Contractor in addition to the Contract Total  
362 under Article 3 of this Contract during the Year without adversely impacting other Project  
363 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
364 Contractor prior to making such a determination. If the Contracting Officer determines that Project  
365 Water, or other water available to the Project, can be made available to the Contractor, the  
366 Contracting Officer will announce the availability of such water and shall so notify the Contractor as  
367 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project  
368 Contractors capable of taking such water to determine the most equitable and efficient allocation of  
369 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting  
370 Officer shall make such water available to the Contractor in accordance with applicable statutes,  
371 regulations, guidelines, and policies. If the Contracting Officer determines that there is an unusually  
372 large water supply not otherwise storable for Project purposes or infrequent and otherwise unmanaged  
373 flood flows of short duration from the Friant Division, then Friant Division Project Water may be  
374 made available to the Contractor as Section 215 Water if the Contractor enters into a temporary  
375 contract, not to exceed one (1) year, with the United States for the delivery of such water or, as  
376 otherwise provided for in Federal Reclamation law and associated regulations: Provided, That such  
377 water shall be first made available to the original twenty-eight (28) long-term Friant Division  
378 contractors. Water in addition to the quantities provided for in this contract made available to the  
379 Contractor by the Contracting Officer shall be scheduled, conveyed and/or stored by DWR only to the  
380 extent that DWR has provided separate approval to do so.

381 (g) The Contractor may request permission to reschedule for use during the

382 subsequent Year some or all of the Water Made Available to the Contractor during the current Year  
383 referred to as “carryover.” The Contractor may request permission to use during the current Year a  
384 quantity of Project Water which may be made available by the United States to the Contractor during  
385 the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit  
386 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

398 (j) The Contracting Officer shall make reasonable efforts to protect the water  
399 rights necessary for the Project and to provide the water available under this Contract. The  
400 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
401 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,  
402 however, That the Contracting Officer retains the right to object to the substance of the Contractor’s

403 position in such a proceeding.

404 **(k) Conveyance and/or storage of Project Water by DWR shall be subject to**  
405 **capacity available in State Facilities in excess of capacity determined by DWR to be needed for**  
406 **all SWP operations or any services to long-term SWP Contractors. Conveyance and/or storage**  
407 **for the Contractor may be curtailed prior or subsequent to approval of the Contractor's**  
408 **schedule under Article 4 of this Contract, in the event it interferes with the delivery of water to**  
409 **SWP Contractors or other SWP operations necessary to meet long-term obligations of the**  
410 **SWP, including delivery of water to SWP storage or reregulation of stored water for delivery to**  
411 **SWP Contractors.**

412 **(l) If in any Year after DWR and the Contracting Officer have approved a**  
413 **schedule or any revision thereof submitted in accordance within subdivision (a) and (b) of**  
414 **Article 4 of this Contract, and if the Contracting Officer and/or DWR are unable to make**  
415 **water available in the quantities and at the times requested in the schedule and the Contractor**  
416 **does not elect to receive and does not receive such water at other times during such Year, then**  
417 **the Contractor shall be entitled to an adjustments for overpayment as provided in subdivision**  
418 **(c) of Article 7, Subdivision (d) of Article 8.1, and Article 10 of this Contract.**

419 TIME FOR DELIVERY OF WATER

420 **(4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall**  
421 **announce the Contracting Officer's expected declaration of the Water Made Available. The**  
422 **declaration will be updated monthly, and more frequently if necessary, based on then-current**  
423 **operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made**

424 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the  
425 basis of the estimate, with relevant supporting information, upon the written request of the  
426 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer  
427 shall provide the Contractor with the updated Recent Historic Average. The declaration of Project  
428 operations will be expressed in terms of both Water Made Available and the Recent Historic  
429 Average.

430 (b) On or before each March 1 and at such other times as necessary, the  
431 Contractor, **after approval of KCWA on behalf of the Contractor, shall submit to DWR and** the  
432 Contracting Officer a written schedule, satisfactory to the Contracting Officer **and consistent with**  
433 **the criteria specified in the Operations Manual. The written schedule shall** show the monthly  
434 quantities of Project Water to be delivered by the United States to the Contractor pursuant to this  
435 Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable  
436 means to deliver Project Water according to the approved schedule for the Year commencing on such  
437 March 1.

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

442 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
443 Contract, the United States **and DWR** shall deliver Project Water to the Contractor in accordance  
444 with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any

445 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time  
446 prior to the date(s) on which the requested change(s) is/are to be implemented.

447 (e) **Scheduling and delivery of Project Water to the Contractor shall be in**  
448 **accordance with detailed procedures set forth in the Operations Manual as it may be amended**  
449 **from time to time.**

450 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

451 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
452 Contract shall be delivered to the Contractor at a point or points of delivery either on Project **and/or**  
453 **State** facilities or another location or locations mutually agreed to in writing by the Contracting  
454 Officer, **DWR**, and the Contractor. **The parties acknowledge that Project Water to be furnished**  
455 **to the Contractor pursuant to this Contract shall be conveyed by DWR and delivered to the**  
456 **Contractor by direct delivery via the Cross Valley Canal and/or by exchange arrangements**  
457 **involving Arvin-Edison Water Storage District or others. The parties further acknowledge**  
458 **that such exchange arrangements are not transfers subject to Section 3405(a) of CVPIA.**  
459 **Notwithstanding Article 9 of this Contract, such exchange arrangements, other than the**  
460 **previously approved exchange arrangements with Arvin-Edison Water Storage District, shall**  
461 **be submitted to the Contracting Officer for approval in accordance with the same criteria**  
462 **historically applied by the Contracting Officer or with the then existing Project-wide criteria.**  
463 **DWR shall have no obligation to make such exchange arrangements or be responsible for water**  
464 **transported in facilities that are not a part of the SWP.**

465 (b) Omitted.

466                   **(b2) When Project Water is made available by the Contracting Officer at**  
467 **Clifton Court Forebay, DWR shall provide to the Contractor, subject to the availability of**  
468 **capacity as determined by DWR, conveyance from the Delta and storage in DWR's share of**  
469 **storage at San Luis Reservoir, if necessary, of such Project Water consistent with the following**  
470 **provisions and the Operations Manual;**

471                   **(1) The Contracting Officer shall deliver or cause to be delivered into**  
472 **the DWR's Clifton Court Forebay, Project Water in such quantities and of such quality as shall**  
473 **be sufficient to perform the Contracting Officer's and DWR's obligation to furnish water to the**  
474 **Contractor as set forth in this contract. Such deliveries into Clifton Court Forebay shall be**  
475 **made at such times and rates of flow as the Contracting Officer and DWR shall agree.**

476                   **(2) DWR, in accordance with an approved Project Water delivery**  
477 **schedule, shall convey the amount of water delivered into DWR's Clifton Court Forebay by the**  
478 **Contracting Officer directly: (i) to the Cross Valley Canal turnout in Reach 12E of the**  
479 **California Aqueduct or to other points of diversion mutually agreed to in writing by DWR and**  
480 **the Contractor, or (ii) to DWR or federal share of storage in San Luis Reservoir for later**  
481 **release and delivery to the Contractor or (iii) to replace water delivered to the Contractor from**  
482 **DWR's share of San Luis Reservoir prior to DWR receiving Project Water from the**  
483 **Contracting Officer, to the extent DWR determines that capacity (and water in the event of an**  
484 **exchange) is available for such conveyance, storage, or exchange (if any). Such deliveries of**  
485 **Project Water shall be required to be made in a manner which will not increase the cost of or**  
486 **adversely affect SWP operations and the quantity or quality of water deliveries to SWP**

487 **Contractors.**

488 **(3) If DWR delivers water to the Contractor from DWR's share of**  
489 **storage in San Luis Reservoir prior to the Contracting Officer providing Project Water at**  
490 **DWR's Clifton Court Forebay, the United States shall return a like amount of water to DWR**  
491 **pursuant to the procedures set forth in the Operations Manual.**

492 **(4) The total amount of Project Water delivered at Clifton Court**  
493 **Forebay to DWR by the Contracting Officer shall include water to compensate DWR for water**  
494 **conveyance and storage losses incurred in the delivery of Project Water to the Contractor. The**  
495 **amount of such conveyance and storage losses will be determined pursuant to procedures set**  
496 **forth in the Operations Manual.**

497 **(5) Project Water received by DWR at Clifton Court Forebay for**  
498 **conveyance and/or storage for delivery to the Contractor will be commingled with waters of**  
499 **DWR which are pumped through facilities of the California Aqueduct and with other waters of**  
500 **both the United States and DWR in the joint use facilities of the San Luis Unit.**

501 **(6) Priorities for use of DWR's share of storage at San Luis Reservoir**  
502 **for storage of Project Water shall be subject to all DWR obligations to the SWP operations and**  
503 **SWP Contractors and to the criteria specified in the Operations Manual.**

504 **(7) Subject to the necessary arrangements, the Contracting Officer**  
505 **shall transmit or cause to be transmitted, by exchange or otherwise, such quantities of power as**  
506 **shall be required by DWR to pump through its Delta Pumping Plant and its share of Dos**  
507 **Amigos Pumping Plant, the quantities of Project Water transported into Clifton Court**

508 **Forebay pursuant to (1) of this subdivision.**

509 **(8) DWR shall furnish the Contracting Officer with such information**  
510 **as the Contracting Officer and DWR agree is needed regarding the timing and quantities of**  
511 **power required by DWR to pump Project Water. Such information shall be exchanged**  
512 **between the Contracting Officer and DWR in accordance with provisions set forth in the**  
513 **Operations Manual.**

514 **(9) The Contracting Officer and DWR may, under terms and**  
515 **conditions satisfactory to both, and in accordance with applicable law, exchange water and/or**  
516 **power necessary for delivery of Project Water to the Contractor under terms of this contract.**  
517 **Such exchange shall be in accordance with the provisions set forth in the Operations Manual.**

518 (b3) To the extent that Friant Division Project Water exceeds Friant Division  
519 Contract demand and other Project purposes, as determined by the Contracting Officer, and if the  
520 Contractor so requests, the Contracting Officer, subject to subdivision (d) of Article 3 of this  
521 Contract, shall make Project Water provided for in subdivision (a) of Article 3 of this Contract  
522 available from such Friant Division supplies.

523 (b4) Project Water may be provided by the Contracting Officer to the Contractor, at  
524 the Contractor's request, through federal Delta diversion and conveyance facilities and/or stored in the  
525 federal share of storage at San Luis Reservoir for reregulation for later delivery to the Contractor to  
526 the extent such diversion, conveyance and/or storage does not diminish the ability of the Project to  
527 deliver Project Water to users in the Delta Division, San Luis Unit and San Felipe Division service  
528 areas or to meet other legal obligations of the Project.

529 (c) The Contractor, or if applicable, Subcontractor shall deliver Irrigation Water in  
530 accordance with any applicable land classification provisions of Federal Reclamation law and the  
531 associated regulations. The Contractor, or if applicable, Subcontractor shall not deliver Project Water  
532 to land outside the Contractor's Service Area, or if applicable, Subcontractor's Service Area unless  
533 approved in advance by the Contracting Officer.

534 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
535 measured and recorded with equipment furnished, installed, operated, and maintained by the United  
536 States, **DWR**, the Operating Non-Federal Entity or other appropriate entity as designated by the  
537 Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery established  
538 pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the  
539 Contracting Officer **or DWR** shall investigate, or cause to be investigated by the responsible  
540 Operating Non-Federal Entity, the accuracy of such measurements and shall take any necessary steps  
541 to adjust any errors appearing therein. For any period of time when accurate measurements have not  
542 been made, the Contracting Officer shall consult with the Contractor and the responsible Operating  
543 Non-Federal Entity prior to making a final determination of the quantity delivered for that period of  
544 time.

545 (e) Neither the Contracting Officer, **nor DWR**, nor any Operating Non-Federal  
546 Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
547 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in  
548 subdivision (a) of this Article. The Contractor shall indemnify the United States, **DWR, and their**  
549 officers, employees, agents, and assigns on account of damage or claim of damage of any nature

550 whatsoever for which there is legal responsibility, including property damage, personal injury, or  
551 death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of  
552 such Project Water beyond such delivery points, except for any damage or claim arising out of: (i)  
553 acts or omissions of the Contracting Officer, **DWR**, or any of **their** officers, employees, agents, or  
554 assigns, including any responsible Operating Non-Federal Entity, with the intent of creating the  
555 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer, **DWR**,  
556 or any of **their** officers, employees, agents, or assigns, including any responsible Operating Non-  
557 Federal Entity; (iii) negligence of the Contracting Officer, **DWR**, or any of **their** officers, employees,  
558 agents, or assigns including any responsible Operating Non-Federal Entity; or (iv) damage or claims  
559 resulting from a malfunction of facilities owned and/or operated by the United States, **DWR**, or  
560 responsible Operating Non-Federal Entity; Provided, That the Contractor is not the Operating Non-  
561 Federal Entity that owned or operated the malfunctioning facility(ies) from which the damage claim  
562 arose. **In the event any such claim or liability, referenced in this Article or otherwise arising**  
563 **from this Agreement, is made against DWR, its officers or its employees, the Contractor agrees**  
564 **to defend, indemnify and hold each of them harmless from such claim to the extent such claim**  
565 **does not arise from an error or omission of DWR related to the control, carriage, handling, use,**  
566 **disposal, or distribution of Project Water made available to the Contractor by the Contracting**  
567 **Officer.**

568 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

569 6. (a) The Contractor has established a measurement program satisfactory to the  
570 Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Service

571 Area, or if applicable, Subcontractor's Service Area is measured at each agricultural turnout and such  
572 water delivered for municipal and industrial purposes is measured at each municipal and industrial  
573 service connection. The water measuring devices or water measuring methods of comparable  
574 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for  
575 installing, operating, and maintaining and repairing all such measuring devices and implementing all  
576 such water measuring methods at no cost to the United States. The Contractor shall use the  
577 information obtained from such water measuring devices or water measuring methods to ensure its  
578 proper management of the water, to bill water users for water delivered by the Contractor; and, if  
579 applicable, to record water delivered for municipal and industrial purposes by customer class as  
580 defined in the Contractor's water conservation plan provided for in Article 26 of this Contract.  
581 Nothing herein contained, however, shall preclude the Contractor from establishing and collecting  
582 any charges, assessments, or other revenues authorized by California law. The Contractor shall  
583 include a summary of all its annual surface water deliveries in the annual report described in  
584 subdivision (c) of Article 26.

585 (b) To the extent the information has not otherwise been provided, upon execution  
586 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
587 measurement devices or water measuring methods being used or to be used to implement subdivision  
588 (a) of this Article and identifying the agricultural turnouts and the municipal and industrial service  
589 connections or alternative measurement programs approved by the Contracting Officer, at which such  
590 measurement devices or water measuring methods are being used, and, if applicable, identifying the  
591 locations at which such devices and/or methods are not yet being used including a time schedule for

592 implementation at such locations. The Contracting Officer shall advise the Contractor in writing  
593 within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring  
594 devices or water measuring methods identified in the Contractor's report and if the Contracting  
595 Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer  
596 notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within  
597 sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest  
598 practicable date by which the Contractor shall modify said measuring devices and/or measuring  
599 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this  
600 Article.

601 (c) All new surface water delivery systems installed within the Contractor's  
602 Service Area, or if applicable, Subcontractor's Service Area after the effective date of this Contract  
603 shall also comply with the measurement provisions described in subdivision (a) of this Article.

604 (d) The Contractor shall inform the Contracting Officer and the State of California  
605 in writing by April 30 of each Year of the monthly volume of surface water delivered within the  
606 Contractor's Service Area, or if applicable, Subcontractor's Service Area during the previous Year.

607 (e) The Contractor shall inform the Contracting Officer, **DWR**, and the Operating  
608 Non-Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of  
609 Irrigation and M&I Water taken during the preceding month.

610 RATES AND METHOD OF PAYMENT FOR WATER TO THE UNITED STATES

611 7. (a) The Contractor shall pay the United States as provided in this Article for all  
612 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance

613 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s  
614 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified,  
615 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law  
616 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.  
617 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in  
618 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing  
619 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit “B”,  
620 as may be revised annually.

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

623 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
624 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
625 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
626 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review  
627 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
628 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October  
629 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
630 notification shall revise Exhibit “B.”

631 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
632 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project  
633 Water for the following Year and the computations and cost allocations upon which those Rates are

634 based. The Contractor shall be allowed not less than two (2) months to review and comment on such  
635 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer  
636 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for  
637 the upcoming Year, and such notification shall revise Exhibit "B".

638 (c) At the time the Contractor submits the initial schedule for the delivery of  
639 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
640 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
641 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
642 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the  
643 end of the first month and before the end of each calendar month thereafter, the Contractor shall make  
644 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
645 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
646 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
647 for Water Delivered shall be made within thirty (30) Days following written confirmation of the  
648 quantity of Delivered Water furnished; Provided, That any revised schedule submitted by the  
649 Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered  
650 pursuant to this Contract during any month shall be accompanied with appropriate advance payment,  
651 at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of  
652 such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to  
653 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional  
654 Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates

655 then in effect for such additional Project Water is made. Final adjustment between the advance  
656 payments for the Water Scheduled and payments for the quantities of Water Delivered during each  
657 Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the  
658 following Year, or sixty (60) days after the delivery of Project Water carried over under subdivision  
659 (f) of Article 3 of this Contract if such water is not delivered by the last day of February.

660 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
661 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
662 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
663 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
664 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
665 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
666 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating  
667 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for  
668 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.  
669 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of  
670 payments due to the United States for Charges for the next month. Any amount to be paid for past  
671 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20  
672 of this Contract.

673 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or  
674 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
675 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;

676 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall  
677 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision  
678 (a) of this Article.

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

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

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

693 (i) The parties acknowledge and agree that the efficient administration of this  
694 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
695 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or  
696 for making and allocating payments, other than those set forth in this Article may be in the mutual

697 best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify  
698 the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect  
699 without amending this Contract.

700 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed  
701 eighty (80%) percent of the Contract Total, then before the end of the month following the month of  
702 delivery the Contractor shall make an additional payment to the United States equal to the applicable  
703 Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in  
704 excess of eighty (80%) percent of the Contract Total, but less than or equal to ninety (90%) percent of  
705 the Contract Total, shall equal the one-half of the difference between the Rate established under  
706 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
707 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which  
708 exceeds ninety (90%) percent of the Contract Total shall equal the difference between (i) the Rate  
709 established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I  
710 Full Cost Water Rate, whichever is applicable.

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

718                   (3)     For purposes of determining the applicability of the Tiered Pricing  
719     Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
720     transfers to others but shall not include Project Water transferred and delivered to the Contractor.

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

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

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

739 (n) The Contractor and the Contracting Officer concur that, as of the effective date  
740 of this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
741 shall have no further liability therefor.

742 **RATES AND METHOD OF PAYMENT FOR CONVEYANCE**  
743 **AND OTHER SERVICES BY DWR**

744 **8. (a) To the extent Project Water is conveyed through State Facilities, payment**  
745 **of the costs of conveyance of water through the State Facilities shall be made by the Contractor**  
746 **directly to DWR. The charges and interest rates applicable upon execution of this interim**  
747 **renewal contract are set forth in Exhibit "C" of this Contract. DWR shall invoice the**  
748 **Contractor monthly for all conveyance charges owing for the previous month. Payment by the**  
749 **Contractor to DWR shall be due thirty (30) days after the date of the invoice. Any payment not**  
750 **received within thirty (30) days after the date of the invoice shall be considered delinquent.**  
751 **Delinquent charges shall be calculated in accordance with Exhibit "C" of this contract:**  
752 **Provided, That no interest shall be charged to or be paid by the Contractor unless such**  
753 **delinquency continues for more than thirty (30) days in total.**

754 **(b) DWR shall notify the Contractor of revision to the charges as follows:**  
755 **Prior to October 1, of each Calendar Year, DWR shall notify the Contractor in writing of the**  
756 **charges to be in effect during the following Calendar Year, and such notification shall revise**  
757 **"C" of this Contract At the same time DWR shall provide to the Contractor a copy of the then**  
758 **most recent version of Appendix B of DWR Bulletin 132, which is the basis for calculating the**  
759 **charges to the Contractor to be in effect during that Calendar Year.**

760 **(c) DWR shall determine the charge per acre-foot for conveyance of water**

761 **through the SWP each Calendar Year to revise Exhibit "C" of this Contract as follows:**

762 **(1) When DWR provides conveyance directly from the Delta or from**  
763 **the federal share of storage at San Luis Reservoir, the unit conveyance charge shall equal the**  
764 **sum of the following, as determined by DWR: (i) The equivalent unit transportation capital and**  
765 **Minimum OMP&R Costs for Reaches 1 through 12E, excluding Reach 3A, of the California**  
766 **Aqueduct; (ii) The portion of the Delta Water Rate for Reaches 1, 2A, 2B and 3 of the**  
767 **California Aqueduct; (iii) The replacement component of the transportation Variable OM&R**  
768 **Costs for the Harvey O. Banks Delta Pumping Plant and DWR's share of the Dos Amigos**  
769 **Pumping Plant; (iv) A charge to offset direct fish losses associated with pumping at the Banks**  
770 **Pumping Plant, pursuant to the December 30, 1986, agreement between the California**  
771 **Department of Fish and Game and DWR; and (v) The incremental costs, if any, caused by the**  
772 **conveyance and delivery of Project Water to the Contractor which, unless included in the**  
773 **increased charges to the Contractor, would result in increased charges to the SWP Contractors**  
774 **or increased costs to DWR.**

775 **(2) When DWR provides conveyance from the States' share of storage**  
776 **in San Luis Reservoir, the unit charge shall equal the sum of the following as determined by**  
777 **DWR: (i) The San Luis Facilities portion of the Delta Water Rate; (ii) The net unit energy cost**  
778 **to replace water in San Luis Reservoir; and (iii) The sum of all unit charges provided under**  
779 **subdivision (c)(1) of this Article.**

780 **(d) Should DWR deliver Project Water to San Luis Reservoir on behalf of the**  
781 **Contractor and it is later determined by DWR that capacity to store such Project Water in**

782 **DWR's share of San Luis Reservoir is no longer available because of need for such storage to**  
783 **meet SWP operations and obligations to SWP Contractors and the Contractor cannot take**  
784 **delivery of such Project Water, DWR shall relieve the Contractor of its obligations to pay DWR**  
785 **for all such Project Water so transported, stored, and no longer available to the Contractor.**  
786 **DWR shall reimburse the Contractor for payments which have previously been made to DWR**  
787 **for any such conveyed and stored supply, less the administrative charge described in**  
788 **subdivision (f) of this Article.**

789 (e) **If the Contractor is unable, fails or refuses to accept delivery of Project**  
790 **Water made available by DWR in accordance with this Contract, such inability, failure or**  
791 **refusal shall not relieve the Contractor of its obligation to pay DWR all associated costs.**

792 (f) **The Contractor shall pay DWR a monthly administrative charge specified**  
793 **in Exhibit "C" of this Contract for each month in which DWR conveys Project Water to the**  
794 **Contractor and for each month in which DWR invoices the Contractor for delinquent charges.**

795 SALES, TRANSFERS, OR EXCHANGES OF WATER

796 9. (a) **The right to receive Project Water provided for in this Contract may be sold,**  
797 **transferred, or exchanged to others for reasonable and beneficial uses within the State of California if**  
798 **such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable**  
799 **guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this**  
800 **Contract may take place without the prior written approval of the Contracting Officer, except as**  
801 **provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be**  
802 **approved absent compliance with appropriate environmental documentation including but not limited**

803 to the National Environmental Policy Act and the Endangered Species Act. Such environmental  
804 documentation should include, as appropriate, an analysis of groundwater impacts and economic and  
805 social effects, including environmental justice, of the proposed water transfers on both the transferor  
806 and transferee. **No sale, transfer or exchange of the right to Project Water under this Contract  
807 may take place without the prior written approval of the Contracting Officer and of DWR, if  
808 SWP Facilities are used to convey such water.**

809 (b) In order to facilitate efficient water management by means of water transfers of  
810 the type historically carried out among Project Contractors located within the same geographical area  
811 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
812 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental  
813 documentation including, but not limited to, the National Environmental Policy Act and the  
814 Endangered Species Act analyzing annual transfers within such geographical areas and the  
815 Contracting Officer shall determine whether such transfers comply with applicable law. Following  
816 the completion of the environmental documentation, such transfers addressed in such documentation  
817 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written  
818 approval by the Contracting Officer. Such environmental documentation and the Contracting  
819 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,  
820 prior to the expiration of the then existing five (5) -year period. All subsequent environmental  
821 documentation shall include an alternative to evaluate not less than the quantity of Project Water  
822 historically transferred within the same geographical area.

823 (c) For a water transfer to qualify under subdivision (b) of this Article, such water

824 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
825 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface water  
826 storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established  
827 cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a  
828 single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through  
829 existing facilities with no new construction or modifications to facilities and be between existing  
830 Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v)  
831 comply with all applicable Federal, State, and local or tribal laws and requirements imposed for  
832 protection of the environment and Indian Trust Assets, as defined under Federal law.

833 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

850 (c) **In the event that the Contractor contests the accuracy of any statement**  
851 **submitted to it by DWR pursuant to this Contract it shall give DWR notice thereof at least ten**  
852 **(10) days prior to the day upon which payment of the stated amount is due. To the extent that**  
853 **DWR finds that the Contractor's contentions regarding the statement are correct, it shall revise**  
854 **the statement accordingly, and the Contractor shall make payment of the revised amounts on**  
855 **or before the due date. To the extent that DWR does not find the Contractor's contentions to**  
856 **be correct, or where time is not available for review of such contentions for correctness prior to**  
857 **due date, the Contractor shall make payment of the stated amounts on or before the due date,**  
858 **but may make the contested part of such payment under protest and seek to recover the**  
859 **amount thereof from DWR.**

860 (d) **If in any year, by reason of errors in computation or other causes, there is**  
861 **an overpayment or underpayment to DWR by the Contractor of its charges provided for**  
862 **herein, the amount of such overpayment or underpayment shall be credited or debited, as the**  
863 **case may be, to the Contractor's account for the next succeeding Year and DWR shall notify**  
864 **the Contractor thereof in writing.**

865 TEMPORARY REDUCTIONS--RETURN FLOWS

866           11.   (a)    Subject to: (i) the authorized purposes and priorities of the Project **and State**  
867 **Facilities** and the requirements of Federal law and (ii) the obligations of the United States **and DWR**  
868 under existing contracts, or renewals thereof, providing for water deliveries from the Project **and**  
869 **State Facilities**, the Contracting Officer **and DWR** shall make all reasonable efforts to optimize  
870 Project Water deliveries to the Contractor as provided in this Contract.

871           (b)    The Contracting Officer, **DWR**, or Operating Non-Federal Entity may  
872 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein  
873 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of  
874 the Project **or State Facilities** or any part thereof necessary for the delivery of Project Water to the  
875 Contractor, but so far as feasible the Contracting Officer, **DWR**, or Operating Non-Federal Entity will  
876 give the Contractor due notice in advance of such temporary discontinuance or reduction, except in  
877 case of emergency, in which case no notice need be given; Provided, That the United States **and**  
878 **DWR** shall use its best efforts to avoid any discontinuance or reduction in such service. Upon  
879 resumption of service after such reduction or discontinuance, and if requested by the Contractor, the  
880 United States **and DWR** will, if possible, deliver the quantity of Project Water which would have  
881 been delivered hereunder in the absence of such discontinuance or reduction.

882           (c)    The United States reserves the right to all seepage and return flow water  
883 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the  
884 Contractor's Service Area, or if applicable, Subcontractor's Service Area; Provided, That this shall  
885 not be construed as claiming for the United States any right as seepage or return flow being put to  
886 reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area, or if

887 applicable, Subcontractor's Service Area by the Contractor or those claiming by, through, or under  
888 the Contractor. For purposes of this subdivision (c), groundwater recharge, groundwater banking and  
889 all similar groundwater activities will be deemed to be underground storage.

890 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

901 (c) **DWR shall make all reasonable efforts consistent with sound fiscal**  
902 **policies, and proper operating procedures to maintain the necessary facilities and to deliver**  
903 **Project Water to the Contractor in accordance with the provisions of this contract in such a**  
904 **manner and at such times as such Project Water is scheduled by the Contractor; Provided,**  
905 **That such Project Water has been furnished to DWR by the Contracting Officer; And**  
906 **Provided, further, That in no event shall any liability accrue against DWR or any of its officers,**  
907 **agents or employees for damage, direct or indirect for failure to deliver Project Water to the**

908 **Contractor on account of errors in operation, drought, or any other cause beyond the control of**  
909 **DWR. Inasmuch as DWR is providing only conveyance and storage services under this**  
910 **agreement, it bears no responsibility for the availability of Project Water for such conveyance.**

911 **(d) If any of the parties to this Contract are precluded in whole or in part**  
912 **from delivering, conveying or receiving Project Water as a result of uncontrollable forces, all**  
913 **parties shall be relieved from the obligation to the extent they are reasonably unable to**  
914 **complete the obligation due to the uncontrollable force. Uncontrollable force shall include, but**  
915 **is not limited to, earthquakes, fires, tornados, floods and other natural disasters. Each party**  
916 **shall be responsible for payment of any costs incurred on its behalf by the other party(ies)**  
917 **before the occurrence of the uncontrollable force.**

918 UNAVOIDABLE GROUNDWATER PERCOLATION

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

923 RULES AND REGULATIONS

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

928 WATER AND AIR POLLUTION CONTROL

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

QUALITY OF WATER

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933

16. (a) Project **and State** Facilities used to deliver Project Water to the Contractor

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pursuant to this Contract shall be operated and maintained to enable the United States **and DWR** to

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deliver Project Water to the Contractor in accordance with the water quality standards specified in

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subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of

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October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States **and DWR** is

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under no obligation to construct or furnish water treatment facilities to maintain or to improve the

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quality of Water Delivered to the Contractor pursuant to this Contract. The United States **and DWR**

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does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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(b) The Operation and Maintenance of Project facilities shall be performed in such

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manner as is practicable to maintain the quality of raw water made available through such facilities at

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the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall

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be responsible for compliance with all State and Federal water quality standards applicable to surface

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and subsurface agricultural drainage discharges generated through the use of Federal or Contractor

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facilities or Project Water provided by the Contractor within the Contractor's Service Area, or if

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applicable, Subcontractor's Service Area.

948

WATER ACQUIRED BY THE CONTRACTOR

949

OTHER THAN FROM THE UNITED STATES

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

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applicable, Subcontractor other than from the United States and Irrigation Water furnished pursuant

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to the terms of this Contract may be simultaneously transported through the same distribution

953 facilities of the Contractor, or if applicable, Subcontractor subject to the following: (i) if the facilities  
954 utilized for commingling Irrigation Water and non-project water were constructed without funds  
955 made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will  
956 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of  
957 land to receive Irrigation Water must be established through the certification requirements as  
958 specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water  
959 requirements of Eligible Lands within the Contractor's Service Area, or if applicable, Subcontractor's  
960 Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal  
961 to the quantity necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer  
962 concur that, as of the effective date of this Contract, the Contractor has a distribution system that was  
963 constructed without the use of federally finance funds. The use of this distribution system is not  
964 subject to the provisions of this subdivision of this Article. **Prior written approval from DWR**  
965 **must be obtained by the Contractor prior to conveyance of such water in State Facilities.**

966 (b) **Omitted.**

967 OPINIONS AND DETERMINATIONS

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

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

977 (b) The Contracting Officer **and DWR** shall have the right to make determinations  
978 necessary to administer this Contract that are consistent with the provisions of this Contract, the laws  
979 of the United States and of the State of California, and the rules and regulations promulgated by the  
980 Secretary of the Interior **and DWR**. Such determinations shall be made in consultation with the  
981 Contractor to the extent reasonably practicable.

982 COORDINATION AND COOPERATION

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

992 (b) Within one-hundred twenty (120) days following the effective date of this  
993 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange  
994 to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide

995 process, which may be amended as necessary separate and apart from this Contract. The goal of this  
996 process shall be to provide, to the extent practicable, the means of mutual communication and  
997 interaction regarding significant decisions concerning Project operation and management on a real-  
998 time basis.

999 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract,  
1000 it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

1001 (1) The Contracting Officer will, at the request of the Contractor, assist in  
1002 the development of integrated resource management plans for the Contractor. Further, the  
1003 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to  
1004 improve water supply, water quality, and reliability.

1005 (2) The Secretary will, as appropriate, pursue program and project  
1006 implementation and authorization in coordination with Project Contractors to improve the water  
1007 supply, water quality, and reliability of the Project for all Project purposes.

1008 (3) The Secretary will coordinate with Project Contractors and the State of  
1009 California to seek improved water resource management.

1010 (4) The Secretary will coordinate actions of agencies within the  
1011 Department of the Interior that may impact the availability of water for Project purposes.

1012 (5) The Contracting Officer shall periodically, but not less than annually,  
1013 hold division level meetings to discuss Project operations, division level water management activities,  
1014 and other issues as appropriate.

1015 (d) Without limiting the contractual obligations of the Contracting Officer

1016 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's  
1017 ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders  
1018 or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of  
1019 structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

1020 CHARGES FOR DELINQUENT PAYMENTS

1021 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
1022 on delinquent installments or payments. When a payment is not received by the due date, the  
1023 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
1024 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
1025 charge to cover additional costs of billing and processing the delinquent payment. When a payment is  
1026 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)  
1027 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor  
1028 shall pay any fees incurred for debt collection services associated with a delinquent payment.

1029 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
1030 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
1031 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation  
1032 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
1033 date and remain fixed for the duration of the delinquent period.

1034 (c) When a partial payment on a delinquent account is received, the amount  
1035 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1036 accrued interest, and finally to the overdue payment.

1037 EQUAL OPPORTUNITY

1038 21. During the performance of this Contract, the Contractor agrees as follows:

1039 (a) The Contractor will not discriminate against any employee or applicant for  
1040 employment because of race, color, religion, sex, or national origin. The Contractor will take  
1041 affirmative action to ensure that applicants are employed, and that employees are treated during  
1042 employment, without regard to their race, color, religion, sex, or national origin. Such action shall  
1043 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;  
1044 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of  
1045 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in  
1046 conspicuous places, available to employees and applicants for employment, notices to be provided by  
1047 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1048 (b) The Contractor will, in all solicitations or advertisements for employees placed  
1049 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for  
1050 employment without discrimination because of race, color, religion, sex, or national origin.

1051 (c) The Contractor will send to each labor union or representative of workers with  
1052 which it has a collective bargaining agreement or other contract or understanding, a notice, to be  
1053 provided by the Contracting Officer, advising the said labor union or workers' representative of the  
1054 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and  
1055 shall post copies of the notice in conspicuous places available to employees and applicants for  
1056 employment.

1057 (d) The Contractor will comply with all provisions of Executive Order  
1058 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of  
1059 the Secretary of Labor.

1060 (e) The Contractor will furnish all information and reports required by said  
1061 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
1062 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer  
1063 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,  
1064 regulations, and orders.

1065 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
1066 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
1067 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible  
1068 for further Government contracts in accordance with procedures authorized in said amended  
1069 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said  
1070 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided  
1071 by law.

1072 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
1073 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1074 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
1075 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
1076 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
1077 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That  
1078 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor  
1079 or vendor as a result of such direction, the Contractor may request the United States to enter into such  
1080 litigation to protect the interests of the United States.

1081 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1082 22. (a) The obligation of the Contractor to pay the United States **and DWR** as

1083 provided in this Contract is a general obligation of the Contractor notwithstanding the manner in  
1084 which the obligation may be distributed among the Contractor's water users and notwithstanding the  
1085 default of individual water users in their obligations to the Contractor.

1086 (b) The payment of charges becoming due hereunder is a condition precedent to  
1087 receiving benefits under this Contract. The United States **and DWR** shall not make water available  
1088 to the Contractor through **CVP or SWP** facilities during any period in which the Contractor may be  
1089 in arrears in the advance payment of water rates due the United States. The Contractor shall not  
1090 furnish water made available pursuant to this Contract for lands or parties which are in arrears in the  
1091 advance payment of water rates levied or established by the Contractor.

1092 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
1093 obligation to require advance payment for water rates which it levies.

1094 (d) **If in any year the Contractor fails or is unable to raise sufficient funds by**  
1095 **other means, the governing body of the Contractor shall levy upon all property within the**  
1096 **Contractor's boundary not exempt from taxation, a special assessment sufficient to provide for**  
1097 **all payments due the United States and DWR under this Contract.**

1098 (e) **Assessments levied by the governing body of the Contractor pursuant to**  
1099 **subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor**  
1100 **charged with the duty of enforcing and collecting assessments levied by the Contractor.**

1101 (f) **All money collected by way of special assessments under this Article for**  
1102 **payments due DWR shall be kept in a separate fund by the treasurer or other officer of the**  
1103 **Contractor charged with the safekeeping and disbursement of funds of the Contractor, and,**  
1104 **upon the written demand of DWR, the treasurer or other officer shall pay over to DWR all**  
1105 **money in his possession or control then due DWR under this contract, which money shall be**  
1106 **applied by DWR to the satisfaction of the amount due under this Contract.**

1107 (g) **In the event of failure, neglect, or refusal of any officer of the Contractor**

1108 **to levy any assessment necessary to provide payment by the Contractor under this Contract, to**  
1109 **enforce or to collect the assessment, or to pay over to the United States or DWR any money**  
1110 **then due collected on the assessment, either or both DWR and the United States may take such**  
1111 **action in a court of competent jurisdiction as they deem necessary to compel the performance in**  
1112 **their proper sequence of all such duties. Action taken pursuant hereto shall not deprive DWR**  
1113 **or United States or limit any remedy provided by this Contract or by law for the recovery of**  
1114 **money due or which may become due under this Contract.**

1115 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1116 23. (a) The Contractor, or if applicable, Subcontractor shall comply with Title VI of  
1117 the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L.  
1118 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other  
1119 applicable civil rights laws, as well as with their respective implementing regulations and guidelines  
1120 imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

1121 (b) These statutes require that no person in the United States shall, on the grounds  
1122 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the  
1123 benefits of, or be otherwise subjected to discrimination under any program or activity receiving  
1124 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor  
1125 agrees to immediately take any measures necessary to implement this obligation, including permitting  
1126 officials of the United States to inspect premises, programs, and documents.

1127 (c) The Contractor makes this agreement in consideration of and for the purpose of  
1128 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
1129 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
1130 installment payments after such date on account of arrangements for Federal financial assistance  
1131 which were approved before such date. The Contractor recognizes and agrees that such Federal  
1132 assistance will be extended in reliance on the representations and agreements made in this Article,  
1133 and that the United States reserves the right to seek judicial enforcement thereof.

1134 PRIVACY ACT COMPLIANCE

1135 24. (a) The Contractor, or if applicable, Subcontractor shall comply with the Privacy  
1136 Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under  
1137 the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records,

1138 required to be submitted to the Contractor, or if applicable, Subcontractor for compliance with  
1139 Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43  
1140 CFR 426.18.

1141 (b) With respect to the application and administration of the criminal penalty  
1142 provisions of the Act (5 U.S.C. 552a(i)), the Contractor, or if applicable, Subcontractor and their  
1143 employees responsible for maintaining the certification and reporting records referenced in (a) above  
1144 are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1145 (c) The Contracting Officer or a designated representative shall provide the  
1146 Contractor, or if applicable, Subcontractor with current copies of the Interior Department Privacy Act  
1147 regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice  
1148 (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and  
1149 disclosure of information contained in the Landholder's certification and reporting records.

1150 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1151 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
1152 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor, or  
1153 if applicable, Subcontractor is authorized to grant requests by individuals for access to their own  
1154 records.

1155 (e) The Contractor, or if applicable, Subcontractor shall forward promptly to the  
1156 System Manager each proposed denial of access under 43 CFR 2.64; and each request for amendment  
1157 of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the  
1158 System Manager with information and records necessary to prepare an appropriate response to the  
1159 requester. These requirements do not apply to individuals seeking access to their own certification  
1160 and reporting forms filed with the Contractor, or if applicable, Subcontractor pursuant to 43 CFR  
1161 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

1162 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1163 25. In addition to all other payments to be made by the Contractor pursuant to this  
1164 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill  
1165 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1166 of direct cost incurred by the United States for work requested by the Contractor associated with this  
1167 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1168 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in

1169 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1170 administration.

1171 WATER CONSERVATION

1172 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1173 constructed or Federally financed facilities pursuant to this Contract, the Contractor, or if applicable,  
1174 Subcontractor shall be implementing an effective water conservation and efficiency program based on  
1175 the Contractor's, or if applicable, Subcontractor's water conservation plan that has been determined  
1176 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water  
1177 conservation plans established under Federal law. The water conservation and efficiency program  
1178 shall contain definite water conservation objectives, appropriate economically feasible water  
1179 conservation measures, and time schedules for meeting those objectives. Continued Project Water  
1180 delivery pursuant to this Contract shall be contingent upon the Contractor's, or if applicable,  
1181 Subcontractor's continued implementation of such water conservation program. In the event the  
1182 Contractor's, or if applicable, Subcontractor's water conservation plan or any revised water  
1183 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet  
1184 been determined by the Contracting Officer to meet such criteria, due to circumstances which the  
1185 Contracting Officer determines are beyond the control of the Contractor, or if applicable,  
1186 Subcontractor, water deliveries shall be made under this Contract so long as the Contractor, or if  
1187 applicable, Subcontractor diligently works with the Contracting Officer to obtain such determination  
1188 at the earliest practicable date, and thereafter the Contractor, or if applicable, Subcontractor  
1189 immediately begins implementing its water conservation and efficiency program in accordance with

1190 the time schedules therein.

1191 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1192 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor, or  
1193 if applicable, Subcontractor shall implement the Best Management Practices identified by the time  
1194 frames issued by the California Urban Water Conservation Council for such M&I Water unless any  
1195 such practice is determined by the Contracting Officer to be inappropriate for the Contractor, or if  
1196 applicable, Subcontractor.

1197 (c) The Contractor, or if applicable, Subcontractor shall submit to the Contracting  
1198 Officer a report on the status of its implementation of the water conservation plan on the reporting  
1199 dates specified in the then existing conservation and efficiency criteria established under Federal law.

1200 (d) At five (5) -year intervals, the Contractor, or if applicable, Subcontractor shall  
1201 revise its water conservation plan to reflect the then current conservation and efficiency criteria for  
1202 evaluating water conservation plans established under Federal law and submit such revised water  
1203 management plan to the Contracting Officer for review and evaluation. The Contracting Officer will  
1204 then determine if the water conservation plan meets Reclamation's then current conservation and  
1205 efficiency criteria for evaluating water conservation plans established under Federal law.

1206 (e) If the Contractor, or if applicable, Subcontractor is engaged in direct  
1207 groundwater recharge, such activity shall be described in the Contractor's, or if applicable,  
1208 Subcontractor's water conservation plan.

1209 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1210 27. Except as specifically provided in Article 17 of this Contract, the provisions of this

1211 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter  
1212 acquired by the Contractor, or if applicable, Subcontractor or any user of such water within the  
1213 Contractor's Service Area, or if applicable, Subcontractor's Service Area. Any such water shall not  
1214 be considered Project Water under this Contract. In addition, this Contract shall not be construed as  
1215 limiting or curtailing any rights which the Contractor, or if applicable, Subcontractor or any water  
1216 user within the Contractor's Service Area, or if applicable, Subcontractor's Service Area acquires or  
1217 has available under any other contract pursuant to Federal Reclamation law.

1218 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1219 28. (a) The Operation and Maintenance of a portion of the Project facilities which  
1220 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and  
1221 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement  
1222 between the United States and the Operating Non-Federal Entity. That separate agreement shall not  
1223 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1224 (b) The Contracting Officer has previously notified the Contractor in writing that  
1225 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1226 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1227 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under  
1228 the terms and conditions of the separate agreement between the United States and the Operating Non-  
1229 Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any  
1230 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such  
1231 successor determines, sets, or establishes for the Operation and Maintenance of the portion of the

1232 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor.  
1233 Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the  
1234 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project  
1235 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal  
1236 Entity collects payments on behalf of the United States in accordance with the separate agreement  
1237 identified in subdivision (a) of this Article.

1238 (c) For so long as the Operation and Maintenance of any portion of the Project  
1239 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor  
1240 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under  
1241 this Contract representing the cost associated with the activity being performed by the Operating Non-  
1242 Federal Entity or its successor.

1243 (d) In the event the Operation and Maintenance of the Project facilities operated  
1244 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the  
1245 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to  
1246 the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1247 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of  
1248 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in  
1249 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1250 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United  
1251 States in compliance with Article 7 of this Contract.

1252 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS



1281 interfere with the rights or obligations of the other parties to this Contract absent the written  
1282 concurrence of said other parties.

1283 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1284 of any proposed assignment.

1285 (d) **No assignment or transfer of any rights to use State Facilities authorized**  
1286 **by this Contract shall be valid without advance written approval by DWR.**

1287 SEVERABILITY

1288 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1289 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1290 association or other form of organization whose primary function is to represent parties to Project  
1291 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1292 enforceability of a provision included in this Contract and said person, entity, association, or  
1293 organization obtains a final court decision holding that such provision is legally invalid or  
1294 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1295 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final  
1296 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1297 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time  
1298 periods specified above may be extended by mutual agreement of the parties. Pending the completion  
1299 of the actions designated above, to the extent it can do so without violating any applicable provisions  
1300 of law, the United States shall continue to make the quantities of Project Water specified in this  
1301 Contract available to the Contractor pursuant to the provisions of this Contract which were not found

1302 to be legally invalid or unenforceable in the final court decision.

1303 RESOLUTION OF DISPUTES

1304 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1305 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1306 dispute. Prior to the Contractor, or if applicable, Subcontractor commencing any legal action, or the  
1307 Contracting Officer referring any matter to Department of Justice, the party shall provide to the other  
1308 party thirty (30) days' written notice of the intent to take such action; Provided, That such notice shall  
1309 not be required where a delay in commencing an action would prejudice the interests of the party that  
1310 intends to file suit. During the thirty (30) -day notice period, the Contractor, or if applicable,  
1311 Subcontractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute.  
1312 Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy  
1313 that the Contractor, or if applicable, Subcontractor or the United States may have.

1314 OFFICIALS NOT TO BENEFIT

1315 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1316 Contractor, or if applicable, Subcontractor shall benefit from this Contract other than as a water user  
1317 or landowner in the same manner as other water users or landowners.

1318 CHANGES IN CONTRACTOR'S OR SUBCONTRACTOR'S SERVICE AREA

1319 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1320 Service Area, or if applicable, Subcontractor's Service Area or boundaries, by inclusion or exclusion  
1321 of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's  
1322 written consent.

1323 (b) Within thirty (30) days of receipt of a request for such a change, the  
1324 Contracting Officer will notify the Contractor, or if applicable, Subcontractor of any additional  
1325 information required by the Contracting Officer for processing said request, and both parties will

1326 meet to establish a mutually agreeable schedule for timely completion of the process. Such process  
1327 will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to  
1328 the terms of this Contract; (ii) impair the ability of the Contractor, or if applicable, Subcontractor to  
1329 pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities  
1330 for which the Contractor, or if applicable, Subcontractor is responsible; and (iii) have an impact on  
1331 any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall  
1332 comply with the National Environmental Policy Act and the Endangered Species Act. The  
1333 Contractor, or if applicable, Subcontractor will be responsible for all costs incurred by the  
1334 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this  
1335 Contract.

1336 FEDERAL LAWS

1337 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1338 validity or application in connection with the performance of the terms and conditions of this  
1339 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1340 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1341 regulation to the implementing provision of the Contract is granted by a court of competent  
1342 jurisdiction.

1343 NOTICES

1344 37. Any notice, demand, or request authorized or required by this Contract shall be  
1345 deemed to have been given; mailed, postage prepaid; or delivered to the Area Manager, South-Central  
1346 California Area Office, 1243 "N" Street, Fresno, California 93721; **to the Chief, State Projects**  
1347 **Analysis Office, Department of Water Resources, P.O. Box 942836, Sacramento, California**  
1348 **94236-0001**; and to the Board of Supervisors of the County of Fresno, 2220 Tulare Street, Fresno,  
1349 California 93721. The designation of the addressee or the address may be changed by notice given in

1350 the same manner as provided in this Article for other notices.

1351 CONFIRMATION OF CONTRACT

1352 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1353 decree of a court of competent jurisdiction of the State of California, confirming the execution of this  
1354 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1355 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1356 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1357 SUBCONTRACTS--SALE OF WATER

1358 39. The Contractor may enter into subcontracts with third parties for the wholesale  
1359 distribution to such third parties of Project Water furnished pursuant to this contract within the  
1360 Contractor's boundaries. Each such subcontract shall be subject to the obligations and limitations  
1361 imposed, and to the rights granted, by this Contract and shall so provide. The terms and conditions of  
1362 each subcontract, not previously approved, shall be approved by the Contracting Officer prior to the  
1363 execution of such subcontract. Approval shall be limited to approval of the Subcontractor's service  
1364 area and a determination that the subcontract is consistent with the provisions of this Contract.  
1365 Nothing contained herein or in any subcontract shall be deemed in any way to release the Contractor  
1366 from its primary liability to the United States hereunder with respect to each and all of the obligations  
1367 undertaken by the Contractor in this Contract.

1368 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1369 year first above written.

THE UNITED STATES OF AMERICA

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

Approved as to Legal Form and Sufficiency:

THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA

By: \_\_\_\_\_  
Chief Counsel,  
Department of Water Resources

By: \_\_\_\_\_  
Director,  
Department of Water Resources

(SEAL)

THE COUNTY OF FRESNO

Attest:

By: \_\_\_\_\_  
Chairman, Board of Supervisors

By: \_\_\_\_\_  
Clerk, Board of Supervisors

By: \_\_\_\_\_  
Director, Public Works & Development  
Services Department

Approved as to Accounting Form:

Approved as to Legal Form:

By: \_\_\_\_\_  
Auditor-Controller/Treasurer/Tax Collector

By: \_\_\_\_\_  
County Counsel

BUDGET UNIT NO. \_\_\_\_\_

ACCOUNT NO.: \_\_\_\_\_

Contract No.14-06-200-8292A-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No.14-06-200-8292A-LTR1

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

(J:\www\cvpia\3404c\exhibits\crossvalley\tulaco.WPD)