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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
PAJARO VALLEY WATER MANAGEMENT AGENCY  
WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 1  
AND SANTA CLARA VALLEY WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM DELTA DIVISION

THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2001, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and PAJARO VALLEY WATER MANAGEMENT AGENCY, WESTLANDS WATER DISTRICT DISTRIBUTION NO. 1, and SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred to as the Contractors, public agencies of the State of California, duly organized, existing, and acting

23 pursuant to the laws thereof, with its principal places of business in California;

24 WITNESSETH, That:

25 EXPLANATORY RECITALS

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

31 [2<sup>nd</sup>] WHEREAS, the United States constructed Delta Division Facilities, which will be used in  
32 part for the furnishing of water to the Contractors pursuant to the terms of this Contract; and

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

35 [4<sup>th</sup>] WHEREAS, Mercy Springs Water District (District) and the United States entered into  
36 Contract No.14-06-200-3365A which established terms for the delivery to the District of Project Water  
37 from the Delta Division Facilities from June 21, 1967 through February 28, 1995; and

38 [5<sup>th</sup>] WHEREAS, the District and the United States have pursuant to subsection 3404(c)(1) of  
39 the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s)  
40 identified as Contract No(s).14-06-200-3365A-IR1, and 14-06-200-3365A-IR2 to provide for continued

41 water service to the District from March 1, 1995 through February 28, 2000.

42 [5.1] WHEREAS, during the term of Contract No. 14-06-200-3365A-IR2 and following the  
43 approval of the United States, the District assigned to the Contractors on May 14, 1999, the right, title and  
44 interest in that portion of Contract No. 14-06-200-3365A-IR2 consisting of Six-Thousand-Two-Hundred-  
45 Sixty (6,260) acre-feet of Central Valley Project Water and any rights to renew that partial interest in  
46 Contract No. 14-06-200-3365A-IR2; and

47 [5.2] WHEREAS, concurrent with the above assignment the Contractors entered into a separate  
48 agreement stating the terms and conditions by which the Contractors would share the assigned Central  
49 Valley Project Water supply; and

50 [5.3] WHEREAS, the District and the Contractors and the United States have subsequent to the  
51 assignment entered into sequential interim renewal contracts identified as Contracts No. 24-06-200-3365A-  
52 IR3-A and 14-06-200-3365A-IR4-A with the District, and Contracts No. 14-06-200-3365A-IR3-B and  
53 No 14-06-200-3365B-IR4-B, the latter of which is hereinafter referred to as the Existing Contract, with the  
54 Contractors, respectively, to provide for continued delivery of Project Water consistent with the partial  
55 assignment;

56 [6<sup>th</sup>] WHEREAS, Section 3404(c)  
57 of the CVPIA provides for long-term renewal of interim and existing long-term Project Water service  
58 contracts following completion of appropriate environmental documentation, including a programmatic

59 environmental impact statement (PEIS) pursuant to the National Environmental Policy Act analyzing the  
60 direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of all existing  
61 contracts for Project Water; and

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

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

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

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

75 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban  
76 and agricultural areas within California for more than fifty (50) years, and is considered by the Contractors

77 as an essential portion of its water supply; and

78 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
79 Contractors, depend upon the continued availability of water, including water service from the Central Valley  
80 Project; and

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

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

90 [14.1] WHEREAS, the United States and the Contractors acknowledge that the Base Supply as  
91 defined in this Contract is a more accurate reflection of the amount of water the Contractors may realistically  
92 expect in many water years in light of present constraints and that designation of a Base Supply does not  
93 preclude delivery to the Contractors of the Supplemental Supply of Project Water as defined herein; and

94 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship

95 in order to achieve their mutual goals; and

96 [16<sup>th</sup>] WHEREAS, the United States and the Contractors are willing to enter into this long-term  
97 renewal contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

100 DEFINITIONS

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

103 (a) “Base Supply” shall mean that quantity of Project Water so designated in subdivision  
104 (a) of Article 3 of this Contract.

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

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

110 (c) “Condition of Shortage” shall mean a condition respecting the Project during any  
111 Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;

112 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized

113 representative acting pursuant to this Contract or applicable Reclamation law or regulation;

114 (e) "Contract Total" shall mean the total of Base Supply and Supplemental Supply of  
115 Project Water to which the Contractors is entitled under subdivision (a) of Article 3 of this Contract;

116 (f) "Contractors' Service Area" shall mean the area to which the Contractors are  
117 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto, which  
118 may be modified from time to time in accordance with Article 35 of this Contract without amendment of this  
119 Contract;

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

122 (g.1) "Delta Division Facilities" shall mean those existing and future facilities in and south  
123 of the Sacramento-San Joaquin Rivers Delta, including the Tracy Pumping Plant, used to divert, store and  
124 convey water to those Project Contractors entitled to receive water conveyed through the Delta-Mendota  
125 Canal;

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

129 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in Section  
130 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

131 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or  
132 202(3) of the RRA, whichever is applicable;

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

135 (l) "Irrigation Full Cost Water Rate" shall have the same meaning as "full cost" as that  
136 term is used in paragraph (3) of Section 202 of the RRA;

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

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

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

148 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined by

149 the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I facilities in  
150 service, including, O&M deficits funded, less payments, over such periods as may be required under  
151 Federal Reclamation law with interest accruing from the dates such costs were first incurred plus the  
152 applicable rate for the O&M of such Project facilities. Interest rates used in the calculation of the M&I Full  
153 Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (c) of the  
154 RRA;

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

158 (r) "Operating Non-Federal Entity" shall mean the San Luis & Delta-Mendota Water  
159 Authority, a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Delta  
160 Division Facilities pursuant to an agreement with the United States, and which may have funding obligations  
161 with respect thereto;

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

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

166 (u) "Project Water" shall mean all water that is developed, diverted, stored, or delivered

167 by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms  
168 and conditions of water rights acquired pursuant to California law;

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

172 (w) “Recent Historic Average” shall mean the most recent five (5) -year average of the  
173 final forecast of Water Made Available to the Contractors pursuant to this Contract or its preceding  
174 contract(s);

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

178 (x.1) “Supplemental Supply” shall mean that quantity of Project Water so designated in  
179 subdivision (a) of Article 3 of this Contract as that portion of the Contract Total that is in addition to and  
180 less reliable than the Base Supply;

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

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

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

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

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

193 TERM OF CONTRACT

194 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the  
195 event the Contractors wish to renew their Contract beyond February 28, 2026, the Contractors shall submit  
196 a request for renewal in writing to the Contracting Officer no later than two (2) years prior to the date this  
197 Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to  
198 the Contractors shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar  
199 as it pertains to the furnishing of M&I Water to the Contractors shall be governed by subdivision (c) of this  
200 Article.

201 (b) (1) Under terms and conditions of a renewal contract that are mutually  
202 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of

203 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal  
204 and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractors,  
205 shall be renewed for a period of twenty-five (25) years.

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

219 (3) The terms and conditions of the renewal contract described in subdivision  
220 (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent with the parties'

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

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

238 (d) The Contracting Officer anticipates that by December 31, 2024, all

**Delta Division**

239 authorized project construction expected to occur will have occurred, and on that basis the Contracting  
240 Officer agrees by that date to allocate all costs that are properly assignable to the Contractors, and agrees  
241 further that, at any time after such allocation is made, and subject to satisfaction of the condition set out in  
242 this subdivision, this Contract shall, at the request of the  
243 Contractors, be converted to a contract under subsection (d) , Section 9 of the Reclamation Project Act of  
244 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable to the  
245 Contractors and the Contracting Officer. A condition for such conversion to occur shall be a determination  
246 by the Contracting Officer that, account being taken of the amount credited to return by the Contractors as  
247 provided for under Reclamation law, the remaining amount of construction costs assignable for ultimate  
248 return by the Contractors can probably be repaid to the United States within the term of a contract under  
249 said subsection (d). If the remaining amount of costs that are properly assignable to the Contractors cannot  
250 be determined by December 31, 2024, the Contracting Officer shall notify the Contractors, and provide the  
251 reason(s) why such a determination could not be made. Further, the Contracting Officer shall make such a  
252 determination as soon thereafter as possible so as to permit, upon request of the Contractors and satisfaction  
253 of the conditions set out above, conversion to a contract under said subsection (d). In the event such  
254 determination of costs has not been made at a time which allows conversion of this Contract during the term  
255 of this Contract or the Contractors have not requested conversion of this Contract within such term, the  
256 parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a

257 provision that carries forth in substantially identical terms the provisions of this subdivision. In the event the  
258 Contracting Officer is able to make a determination of the remaining amount of costs that are properly  
259 assignable to the Contractors before December 31, 2024, the Contracting Officer shall do so at the earliest  
260 time the Contracting Officer has such ability.

261 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE Contractors

262 3. (a) During each Year, consistent with all applicable State water rights, permits, and  
263 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the  
264 Contracting Officer shall make available for delivery to the Contractors 4,382 acre-feet designated as Base  
265 Supply and 1,878 acre-feet designated as Supplemental Supply for a Contract Total of 6,260 acre-feet for  
266 irrigation and M&I purposes. To reflect changes in reliability, the quantity of Base Supply and Supplemental  
267 Supply will be reassessed at least every five (5) years and may be adjusted upon mutual agreement of the  
268 parties. The quantity of Water Delivered to the Contractors in accordance with this subdivision shall be  
269 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

270 (b) Because the capacity of the Central Valley Project to deliver Project Water has  
271 been constrained in recent years and may be constrained in the future due to many factors including  
272 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractors  
273 actually receiving the full amount of the Contract Total set out in subdivision (a) of this Article in any given  
274 Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected that the

275 full amount of the Contract Total set forth in this Contract will not be available to the Contractors in many  
276 years. During the most recent five (5) years, the Recent Historic Average of Water Made Available to the  
277 Contractors was 5,258 acre-feet. Nothing in this subdivision shall affect the rights and obligations of the  
278 parties under any provision of this Contract.

279 (c) The Contractors shall utilize the Project Water in accordance with all applicable  
280 legal requirements.

281 (d) The Contractors shall make reasonable and beneficial use of all Project Water or  
282 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking  
283 programs, surface water storage programs, and other similar programs utilizing Project Water or other water  
284 furnished pursuant to this Contract conducted within the Contractors' Service Area which are consistent  
285 with applicable State law and result in use consistent with Reclamation law will be allowed; Provided, That  
286 any direct recharge program(s) is (are) described in the Contractors' Water Conservation Plan submitted  
287 pursuant to Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates  
288 sufficient lawful uses exist in the Contractors' Service Area so that using a long-term average, the quantity of  
289 Delivered Water is demonstrated to be reasonable for such uses and in compliance with Reclamation law.  
290 Groundwater recharge programs, groundwater banking programs, surface water storage programs, and  
291 other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted  
292 outside the Contractors' Service Area may be permitted upon written approval of the Contracting Officer,

293 which approval will be based upon environmental documentation, Project Water rights, and Project  
294 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or  
295 guidelines.

296 (e) The Contractors shall comply with requirements applicable to the Contractors in  
297 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
298 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the  
299 Contractors' legal authority to implement. The Contractors shall comply with the limitations or requirements  
300 imposed by environmental documentation applicable to the Contractors and within its legal authority to  
301 implement regarding specific activities, including conversion of Irrigation Water to M&I Water. Nothing  
302 herein shall be construed to prevent the Contractors from challenging or seeking judicial relief in a court of  
303 competent jurisdiction with respect to any biological opinion or other environmental documentation referred  
304 to in this Article.

305 (f) Following the declaration of Water Made Available under Article 4 of this Contract,  
306 the Contracting Officer will make a determination whether Project Water, or other water available to the  
307 Project, can be made available to the Contractors in addition to the Contract Total under this Article 3  
308 during the Year without adversely impacting other Project Contractors. At the request of the Contractors,  
309 the Contracting Officer will consult with the Contractors prior to making such a determination. If the  
310 Contracting Officer determines that Project Water, or other water available to the Project, can be made

311 available to the Contractors, the Contracting Officer will announce the availability of such water and shall so  
312 notify the Contractors as soon as practical. The Contracting Officer will thereafter meet with the  
313 Contractors and other Project Contractors capable of taking such water to determine the most equitable and  
314 efficient allocation of such water. If the Contractors request the delivery of any quantity of such water, the  
315 Contracting Officer shall make such water available to the Contractors in accordance with applicable  
316 statutes, regulations, guidelines, and policies.

317 (g) The Contractors may request permission to reschedule for use during the subsequent  
318 Year some or all of the Water Made Available to the Contractors during the current Year referred to as  
319 “carryover.” The Contractors may request permission to use during the current Year a quantity of Project  
320 Water which may be made available by the United States to the Contractors during the subsequent Year  
321 referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance  
322 with applicable statutes, regulations, guidelines, and policies.

323 (h) The Contractors’ rights pursuant to Federal Reclamation law and applicable State  
324 law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof  
325 and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof  
326 shall not be disturbed so long as the Contractors shall fulfill all of its obligations under this Contract and any  
327 renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose  
328 shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any

329 subsequent renewal contracts.

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

334 (j) The Contracting Officer shall make reasonable efforts to protect the water rights  
335 necessary for the Project and to provide the water available under this Contract. The Contracting Officer  
336 shall not object to participation by the Contractors, in the capacity and to the extent permitted by law, in  
337 administrative proceedings related to the Project Water rights; Provided, however, That the Contracting  
338 Officer retains the right to object to the substance of the Contractors' position in such a proceeding.

339 TIME FOR DELIVERY OF WATER

340 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall  
341 announce the Contracting Officer's expected declaration of the Water Made Available. The declaration will  
342 be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic  
343 conditions and a new declaration with changes, if any, to the Water Made Available will be made. The  
344 Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant  
345 supporting information, upon the written request of the Contractors. Concurrently with the declaration of the  
346 Water Made Available, the Contracting Officer shall provide the Contractors with the updated Recent

347 Historic Average. The declaration of Project operations will be expressed in terms of both Water Made  
348 Available and the Recent Historic Average.

349 (b) On or before each March 1 and at such other times as necessary, the Contractors  
350 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing  
351 the monthly quantities of Project Water to be delivered by the United States to the Contractors pursuant to  
352 this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable  
353 means to deliver Project Water according to the approved schedule for the Year commencing on such  
354 March 1.

355 (c) The Contractors shall not schedule Project Water in excess of the quantity of  
356 Project Water the Contractors intend to put to reasonable and beneficial use within the Contractors' Service  
357 Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

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

363 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

365 shall be delivered to the Contractors at a point or points and any additional point or points of delivery either  
366 on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer  
367 and the Contractors.

368 (b) The Contracting Officer, the Operating Non-Federal Entity, or other appropriate  
369 entity shall make all reasonable efforts to maintain sufficient flows and levels of water in the Delta-Mendota  
370 Canal to deliver Project Water to the Contractors at specific turnouts established pursuant to subdivision (a)  
371 of this Article.

372 (c) The Contractors shall deliver Irrigation Water in accordance with any applicable  
373 land classification provisions of Federal Reclamation law and the associated regulations. The Contractors  
374 shall not deliver Project Water to land outside the Contractors' Service Areas unless approved in advance  
375 by the Contracting Officer.

376 (d) All Water Delivered to the Contractors pursuant to this Contract shall be measured  
377 and recorded with equipment furnished, installed, operated, and maintained by the United States, the  
378 Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer (hereafter  
379 “other appropriate entity”) at the point or points of delivery established pursuant to subdivision (a) of this  
380 Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause  
381 to be investigated by the responsible Operating Non-Federal Entity, the accuracy of such measurements and  
382 shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate

383 measurements have not been made, the Contracting Officer shall consult with the Contractors and the  
384 responsible Operating Non-Federal Entity prior to making a final determination of the quantity delivered for  
385 that period of time.

386 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
387 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to  
388 the Contractors pursuant to this Contract beyond the delivery points specified in subdivision (a) of this  
389 Article. The Contractors shall indemnify the United States, its officers, employees, agents, and assigns on  
390 account of damage or claim of damage of any nature whatsoever for which there is legal responsibility,  
391 including property damage, personal injury, or death arising out of or connected with the control, carriage,  
392 handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any  
393 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,  
394 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of  
395 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any  
396 of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii)  
397 negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any  
398 responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities  
399 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That  
400 the Contractors are not the Operating Non-Federal Entity that owned or operated the malfunctioning

401 facility(ies) from which the damage claim arose.

402 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

403 6. (a) The Contractors have established a measuring program satisfactory to the  
404 Contracting Officer. The Contractors shall ensure that all surface water delivered for irrigation purposes  
405 within the Contractors' Service Areas is measured at each agricultural turnout and such water delivered for  
406 municipal and industrial purposes is measured at each municipal and industrial service connection. The water  
407 measuring devices or water measuring methods of comparable effectiveness must be acceptable to the  
408 Contracting Officer. The Contractors shall be responsible for installing, operating, and maintaining and  
409 repairing all such measuring devices and implementing all such water measuring methods at no cost to the  
410 United States. The Contractors shall use the information obtained from such water measuring devices or  
411 water measuring methods to ensure its proper management of the water, to bill water users for water  
412 delivered by the Contractors; and, if applicable, to record water delivered for municipal and industrial  
413 purposes by customer class as defined in the Contractors' water conservation plan provided for in Article  
414 26 of this Contract. Nothing herein contained, however, shall preclude the Contractors from establishing  
415 and collecting any charges, assessments, or other revenues authorized by California law. The Contractors  
416 shall include a summary of all its annual surface water deliveries in the annual report described in subdivision  
417 (c) of Article 26 of this Contract.

418 (b) To the extent the information has not otherwise been provided, upon execution of

419 this Contract, the Contractors shall provide to the Contracting Officer a written report describing the  
420 measurement devices or water measuring methods being used or to be used to implement subdivision (a) of  
421 this Article and identifying the agricultural turnouts and the municipal and industrial service connections or  
422 alternative measurement programs approved by the Contracting Officer, at which such measurement devices  
423 or water measuring methods are being used, and, if applicable, identifying the locations at which such  
424 devices and/or methods are not yet being used including a time schedule for implementation at such  
425 locations. The Contracting Officer shall advise the Contractors in writing within sixty (60) days as to the  
426 adequacy of, and necessary modifications, if any, of the measuring devices or water measuring methods  
427 identified in the Contractors' reports and if the Contracting Officer does not respond in such time, they shall  
428 be deemed adequate. If the Contracting Officer notifies the Contractors that the measuring devices or  
429 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's response,  
430 negotiate in good faith the earliest practicable date by which the Contractors shall modify said measuring  
431 devices and/or measuring methods as required by the Contracting Officer to ensure compliance with  
432 subdivision (a) of this Article.

433 (c) All new surface water delivery systems installed within the Contractors' Service  
434 Areas after the effective date of this Contract shall also comply with the measurement provisions described  
435 in subdivision (a) of this Article.

436 (d) The Contractors shall inform the Contracting Officer and the State of California in

437 writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractors’  
438 Service Areas during the previous Year.

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

442 RATES AND METHOD OF PAYMENT FOR WATER

443 7. (a) The Contractors shall pay the United States as provided in this Article for all  
444 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i)  
445 the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s then-existing  
446 ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superseded only  
447 through a public notice and comment procedure; (ii) applicable Reclamation law and associated rules and  
448 regulations, or policies; and (iii) other applicable provisions of this Contract. Payment shall be made by cash  
449 transaction, wire, or any other mechanism as may be agreed to in writing by the Contractors and the  
450 Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractors upon  
451 execution of this Contract are set forth in Exhibit “B”, as may be revised annually.

452 (b) The Contracting Officer shall notify the Contractors of the Rates, Charges, and  
453 Tiered Pricing Components as follows:

454 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide

455 the Contractors an estimate of the Charges for Project Water that will be applied to the period October 1,  
456 of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such  
457 estimate. The Contractors shall be allowed not less than two (2) months to review and comment on such  
458 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the  
459 Contractors in writing of the Charges to be in effect during the period October 1 of the current Calendar  
460 Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B."

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

468 (c) At the time the Contractors' submit the initial schedule for the delivery of Project  
469 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractors shall make an  
470 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)  
471 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this  
472 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before

473 the end of each calendar month thereafter, the Contractors shall make an advance payment to the United  
474 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered  
475 pursuant to this Contract during the second month immediately following. Adjustments between advance  
476 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the  
477 end of the following month; Provided, That any revised schedule submitted by the Contractors pursuant to  
478 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during  
479 any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure  
480 that Project Water is not delivered to the Contractors in advance of such payment. In any month in which  
481 the quantity of Water Delivered to the Contractors pursuant to this Contract equals the quantity of Water  
482 Scheduled and paid for by the Contractors, no additional Project Water shall be delivered to the  
483 Contractors unless and until an advance payment at the Rates then in effect for such additional Project  
484 Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for  
485 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as  
486 practicable but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project  
487 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last  
488 day of February.

489 (d) The Contractors shall also make a payment in addition to the Rate(s) in subdivision  
490 © of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing

491 Component then in effect, before the end of the month following the month of delivery; Provided, That the  
492 Contractors may be granted an exception from the Tiered Pricing Component pursuant to subdivision (j)(2)  
493 of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water  
494 Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-  
495 Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water  
496 delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing  
497 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made  
498 through the adjustment of payments due to the United States for Charges for the next month. Any amount to  
499 be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to  
500 Article 20 of this Contract.

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

506 (f) Payments to be made by the Contractors to the United States under this Contract  
507 may be paid from any revenues available to the Contractors.

508 (g) All revenues received by the United States from the Contractors relating to the

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

512 (h) The Contracting Officer shall keep its accounts pertaining to the administration of the  
513 financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so  
514 as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon  
515 request of the Contractors, provide to the Contractors a detailed accounting of all Project and Contractors  
516 expense allocations, the disposition of all Project and Contractors revenues, and a summary of all water  
517 delivery information. The Contracting Officer and the Contractors shall enter into good faith negotiations to  
518 resolve any discrepancies or disputes relating to accountings, reports, or information.

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

525 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed  
526 eighty (80%) percent of the Contract Total, then before the end of the month following the month of delivery

527 the Contractors shall make an additional payment to the United States equal to the applicable Tiered Pricing  
528 Component. The Tiered Pricing Component for the amount of Water Delivered in excess of eighty (80%)  
529 percent of the Contract Total, but less than or equal to ninety (90%) percent of the Contract Total, shall  
530 equal the one-half of the difference between the Rate established under subdivision (a) of this Article and the  
531 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing  
532 Component for the amount of Water Delivered which exceeds ninety (90%) percent of the Contract Total  
533 shall equal the difference between (i) the Rate established under subdivision (a) of this Article and the  
534 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

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

542 (3) For purposes of determining the applicability of the Tiered Pricing  
543 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractors  
544 transfers to others but shall not include Project Water transferred and delivered to the Contractors.

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

552                   (l)     Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the  
553 Rates for Project Water transferred by the Contractors shall be the Contractors' Rates adjusted upward or  
554 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the  
555 transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If the  
556 Contractors are receiving lower Rates and Charges because of inability to pay and is transferring Project  
557 Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and  
558 Charges for transferred Project Water shall be the Contractors' Rates and Charges unadjusted for ability to  
559 pay.

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

562                   NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS



581 including, but not limited to, the National Environmental Policy Act and the Endangered Species Act  
582 analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether  
583 such transfers comply with applicable law. Following the completion of the environmental documentation,  
584 such transfers addressed in such documentation shall be conducted with advance notice to the Contracting  
585 Officer, but shall not require prior written approval by the Contracting Officer. Such environmental  
586 documentation and the Contracting Officer's compliance determination shall be reviewed every five (5)  
587 years and updated, as necessary, prior to the expiration of the then existing five (5) -year period. All  
588 subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of  
589 Project Water historically transferred within the same geographical area.

590 (c) For a water transfer to qualify under subdivision (b) of this Article, such water  
591 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I  
592 use, groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage, or  
593 fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife  
594 refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur  
595 between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new  
596 construction or modifications to facilities and be between existing Project Contractors and/or the  
597 Contractors and the United States, Department of the Interior; and (v) comply with all applicable Federal,  
598 State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust

599 Assets, as defined under Federal law.

600 APPLICATION OF PAYMENTS AND ADJUSTMENTS

601 10. (a) The amount of any overpayment by the Contractors of the Contractors' O&M,  
602 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the  
603 Contractors arising out of this Contract then due and payable. Overpayments of more than One Thousand  
604 Dollars (\$1,000) shall be refunded at the Contractors' request. In lieu of a refund, any amount of such  
605 overpayment at the option of the Contractors, may be credited against amounts to become due to the United  
606 States by the Contractors. With respect to overpayment, such refund or adjustment shall constitute the sole  
607 remedy of the Contractors or anyone having or claiming to have the right to the use of any of the Project  
608 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
609 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in  
610 response to the notice to the Contractors that it has finalized the accounts for the Year in which the  
611 overpayment was made.

612 (b) All advances for miscellaneous costs incurred for work requested by the  
613 Contractors pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the  
614 work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded  
615 to the Contractors. If the actual costs exceed the Contractors' advances, the Contractors will be billed for  
616 the additional costs pursuant to Article 25 of this Contract.



635 seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the  
636 Contractors' Service Areas by the Contractors or those claiming by, through, or under the Contractors.

637 CONSTRAINTS ON THE AVAILABILITY OF WATER

638 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means  
639 to guard against a Condition of Shortage in the quantity of water to be made available to the Contractors  
640 pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage  
641 appears probable, the Contracting Officer will notify the Contractors of said determination as soon as  
642 practicable.

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

648 (c) In any Year in which there may occur a Condition of Shortage for any of the reasons  
649 specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation Water among the  
650 Contractors and others entitled to receive Irrigation Water from the Delta-Mendota Canal as follows:

651 (1) A determination shall be made of the total quantity of Irrigation Water  
652 scheduled to be delivered during the respective Year under all contracts then in force for the delivery of

653 Irrigation Water from the Delta Division Facilities, the quantity so determined being therein referred to as the  
654 contractual commitments for Irrigation Water from such facilities.

655 (2) The total quantity of Irrigation Water scheduled to be delivered to the  
656 Contractors from the Delta Division Facilities during the respective Year under subdivision (a) of Article 3 of  
657 this Contract shall be divided by the contractual commitments for Irrigation Water, the quotient thus obtained  
658 therein referred to as the Contractors' contractual entitlement for Irrigation Water from such facilities.

659 (3) The supply of Irrigation Water determined by the Contracting Officer to be  
660 available from the Delta Division Facilities shall be multiplied by the Contractors' contractual entitlement for  
661 Irrigation Water and the result shall be the quantity of Irrigation Water required to be delivered by the  
662 Contracting Officer to the Contractors for the respective Year from such facilities.

663 UNAVOIDABLE GROUNDWATER PERCOLATION

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

668 RULES AND REGULATIONS

669 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to  
670 this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act  
671 of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations

672 promulgated by the Secretary of the Interior under Federal Reclamation law.

673 WATER AND AIR POLLUTION CONTROL

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

677 QUALITY OF WATER

678 16. (a) Project facilities used to deliver Project Water to the Contractors pursuant to this  
679 Contract shall be operated and maintained to enable the United States to deliver Project Water to the  
680 Contractors in accordance with the water quality standards specified in subsection 2(b) of the Act of August  
681 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or  
682 other existing Federal laws. The United States is under no obligation to construct or furnish water treatment  
683 facilities to maintain or to improve the quality of Water Delivered to the Contractors pursuant to this  
684 Contract. The United States does not warrant the quality of Water Delivered to the Contractors pursuant to  
685 this Contract.

686 (b) The Operation and Maintenance of Project facilities shall be performed in such  
687 manner as is practicable to maintain the quality of raw water made available through such facilities at the  
688 highest level reasonably attainable as determined by the Contracting Officer. The Contractors shall be  
689 responsible for compliance with all State and Federal water quality standards applicable to surface and  
690 subsurface agricultural drainage discharges generated through the use of Federal or Contractors' facilities or

691 Project Water provided by the Contractors within the Contractors' Service Areas.

692 WATER ACQUIRED BY THE CONTRACTORS  
693 OTHER THAN FROM THE UNITED STATES

694 17. (a) Water or water rights now owned or hereafter acquired by the Contractors other  
695 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be  
696 simultaneously transported through the same distribution facilities of the Contractors subject to the following:  
697 (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without  
698 funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will  
699 be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to  
700 receive Irrigation Water must be established through the certification requirements as specified in the  
701 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands  
702 within the Contractors' Service Areas can be established and the quantity of Irrigation Water to be utilized is  
703 less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for  
704 commingling Irrigation Water and non-project water are/were constructed with funds made available  
705 pursuant to Federal Reclamation law, the non-project water will be subject to the acreage limitation  
706 provisions of Federal Reclamation law, unless the Contractors pay to the United States the incremental fee  
707 described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate  
708 annually the cost to the Federal Government, including interest of storing or delivering non-project water,

709 which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid  
710 distribution system costs divided by the total irrigable acreage within the Contractors' Service Areas. The  
711 incremental fee per acre is the mathematical result of such quotient times the interest rate determined using  
712 Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to  
713 each acre of excess or full cost land within the Contractors' Service Areas that receive non-project water  
714 through Federally financed or constructed facilities. The incremental fee calculation methodology will  
715 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide rule,  
716 regulation or policy adopted after the Contractors have been afforded the opportunity to review and  
717 comment on the proposed rule, regulation or policy. If such rule, regulation or policy is adopted it shall  
718 supersede this provision.

719 (b) Water or water rights now owned or hereafter acquired by the Contractors, other  
720 than from the United States or adverse to the Project or its contractors (i.e. non-project water), may be  
721 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate  
722 environmental documentation, with the approval of the Contracting Officer and the execution of any contract  
723 determined by the Contracting Officer to be necessary, consistent with the following provisions:

724 (1) The Contractors may introduce non-project water into Project facilities and  
725 deliver said water to lands within the Contractors' Service Areas, including Ineligible Lands, subject to  
726 payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate

727 as determined by the CVP Ratesetting Policy and the RRA, each as amended, modified or superceded from  
728 time to time. In addition, if electrical power is required to pump non-project water through the facilities, the  
729 Contractors shall be responsible for obtaining the necessary power and paying the necessary charges  
730 therefore.

731 (2) Delivery of such non-project water in and through Project facilities shall only  
732 be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by the  
733 Contracting Officer; (ii) reduce the quantity or quality of water available to other Project water service  
734 contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project water  
735 service contractors; or (iv) interfere with the physical maintenance of the Project facilities.

736 (3) Neither the United States nor the Operating Non-Federal Entity shall be  
737 responsible for control, care or distribution of the non-project water before it is introduced into or after it is  
738 delivered from the Project facilities. The Contractors hereby releases and agrees to defend and indemnify  
739 the United States and the Operating Non-Federal Entity, and their respective officers, agents, and  
740 employees, from any claim for damage to persons or property, direct or indirect, resulting from Contractors'  
741 diversion or extraction of non-project water from any source.

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

745                   (5)     After Project purposes are met, as determined by the Contracting Officer,  
746 the United States and the Contractors shall share priority to utilize the remaining capacity of the facilities  
747 declared to be available by the Contracting Officer for conveyance and transportation of non-project water  
748 prior to any such remaining capacity being made available to non-Project contractors.

749   OPINIONS AND DETERMINATIONS

750                   18.     (a)     Where the terms of this Contract provide for actions to be based upon the opinion  
751 or determination of either party to this Contract, said terms shall not be construed as permitting such action  
752 to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties,  
753 notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and  
754 appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each  
755 opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of  
756 Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable  
757 under federal law to any opinion or determination implementing a specific provision of federal law embodied  
758 in statute or regulation.

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

763 COORDINATION AND COOPERATION

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

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

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

781                   (1)     The Contracting Officer will, at the request of the Contractors, assist in the  
782 development of integrated resource management plans for the Contractors. Further, the Contracting Officer  
783 will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water  
784 quality, and reliability.

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

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

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

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

795                   (d)     Without limiting the contractual obligations of the Contracting Officer hereunder,  
796 nothing in this Contract shall be construed to limit or constrain the Contracting Officer's ability to  
797 communicate, coordinate, and cooperate with the Contractors or other interested stakeholders or to make  
798 decisions in a timely fashion as needed to protect health, safety, physical integrity of structures or facilities, or

799 the Contracting Officer's ability to comply with applicable laws.

800 CHARGES FOR DELINQUENT PAYMENTS

801 20. (a) The Contractors shall be subject to interest, administrative and penalty charges on  
802 delinquent installments or payments. When a payment is not received by the due date, the Contractors shall  
803 pay an interest charge for each day the payment is delinquent beyond the due date. When a payment  
804 becomes sixty (60) days delinquent, the Contractors shall pay an administrative charge to cover additional  
805 costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or  
806 more, the Contractors shall pay an additional penalty charge of six (6%) percent per year for each day the  
807 payment is delinquent beyond the due date. Further, the Contractors shall pay any fees incurred for debt  
808 collection services associated with a delinquent payment.

809 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the  
810 Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate  
811 of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of  
812 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed  
813 for the duration of the delinquent period.

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

817 EQUAL OPPORTUNITY

818 21. During the performance of this Contract, the Contractors agree as follows:

819 (a) The Contractors will not discriminate against any employee or applicant for  
820 employment because of race, color, religion, sex, or national origin. The Contractors will take affirmative  
821 action to ensure that applicants are employed, and that employees are treated during employment, without  
822 regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to,  
823 the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or  
824 termination, rates of payment or other forms of compensation; and selection for training, including  
825 apprenticeship. The Contractors agree to post in conspicuous places, available to employees and applicants  
826 for employment, notices to be provided by the Contracting Officer setting forth the provisions of this

827 nondiscrimination clause.

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

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

836 (d) The Contractors will comply with all provisions of Executive Order  
837 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the  
838 Secretary of Labor.

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

843 (f) In the event of the Contractors' noncompliance with the nondiscrimination clauses of  
844 this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated,  
845 or suspended, in whole or in part, and the Contractors may be declared ineligible for further Government  
846 contracts in accordance with procedures authorized in said amended Executive Order, and such other  
847 sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation,  
848 or order of the Secretary of Labor, or as otherwise provided by law.

849 (g) The Contractors will include the provisions of paragraphs (a) through (g) in every  
850 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor  
851 issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding  
852 upon each subcontractor or vendor. The Contractors will take such action with respect to any subcontract  
853 or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions,  
854 including sanctions for noncompliance: Provided, however, That in the event the Contractors becomes  
855 involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the

856 Contractors may request the United States to enter into such litigation to protect the interests of the United  
857 States.

858 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

859 22. (a) The obligation of the Contractors to pay the United States as provided in this  
860 Contract is a general obligation of the Contractors notwithstanding the manner in which the obligation may  
861 be distributed among the Contractors' water users and notwithstanding the default of individual water users  
862 in their obligations to the Contractors.

863 (b) The payment of charges becoming due hereunder is a condition precedent to  
864 receiving benefits under this Contract. The United States shall not make water available to the Contractors  
865 through Project facilities during any period in which the Contractors may be in arrears in the advance  
866 payment of water rates due the United States. The Contractors shall not furnish water made available  
867 pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates  
868 levied or established by the Contractors.

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

871 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

877 (b) These statutes require that no person in the United States shall, on the grounds of  
878 race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or  
879 be otherwise subjected to discrimination under any program or activity receiving financial assistance from the  
880 Bureau of Reclamation. By executing this Contract, the Contractors agree to immediately take any  
881 measures necessary to implement this obligation, including permitting officials of the United States to inspect

882 premises, programs, and documents.

883 (c) The Contractors make this agreement in consideration of and for the purpose of  
884 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
885 assistance extended after the date hereof to the Contractors by the Bureau of Reclamation, including  
886 installment payments after such date on account of arrangements for Federal financial assistance which were  
887 approved before such date. The Contractors recognize and agree that such Federal assistance will be  
888 extended in reliance on the representations and agreements made in this Article, and that the United States  
889 reserves the right to seek judicial enforcement thereof.

890 PRIVACY ACT COMPLIANCE

891 24. (a) The Contractors shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
892 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
893 maintaining Landholder acreage certification and reporting records, required to be submitted to the  
894 Contractors for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.  
895 1266), and pursuant to 43 CFR 426.18.

896 (b) With respect to the application and administration of the criminal penalty provisions  
897 of the Act (5 U.S.C. 552a(i)), the Contractors and the Contractors' employees responsible for maintaining  
898 the certification and reporting records referenced in (a) above are considered to be employees of the  
899 Department of the Interior. See 5 U.S.C. 552a(m).

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

905 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
906 Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to  
907 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The are authorized to grant requests  
908 by individuals for access to their own records.

909 (e) The Contractors shall forward promptly to the System Manager each proposed

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

915 CONTRACTORS TO PAY CERTAIN MISCELLANEOUS COSTS

916 25. In addition to all other payments to be made by the Contractors pursuant to this Contract,  
917 the Contractors shall pay to the United States, within sixty (60) days after receipt of a bill and detailed  
918 statement submitted by the Contracting Officer to the Contractors for such specific items of direct cost  
919 incurred by the United States for work requested by the Contractors associated with this Contract plus  
920 indirect costs in accordance with applicable Bureau of Reclamation policies and procedures. All such  
921 amounts referred to in this Article shall not exceed the amount agreed to in writing in advance by the  
922 Contractors. This Article shall not apply to costs for routine contract administration.

923 WATER CONSERVATION

924 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
925 constructed or Federally financed facilities pursuant to this Contract, the Contractors shall be implementing  
926 an effective water conservation and efficiency program based on the Contractors' water conservation plans  
927 that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for  
928 evaluating water conservation plans established under Federal law. The water conservation and efficiency  
929 program shall contain definite water conservation objectives, appropriate economically feasible water

930 conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery  
931 pursuant to this Contract shall be contingent upon the Contractors' continued implementation of such water  
932 conservation program. In the event the Contractors' water conservation plans or any revised water  
933 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
934 determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting  
935 Officer determines are beyond the control of the Contractors, water deliveries shall be made under this  
936 Contract so long as the Contractors diligently work with the Contracting Officer to obtain such determination  
937 at the earliest practicable date, and thereafter the Contractors immediately begins implementing its water  
938 conservation and efficiency program in accordance with the time schedules therein.

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

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

947 (d) At five (5) -year intervals, the Contractors shall revise its water conservation plan to

948 reflect the then current conservation and efficiency criteria for evaluating water conservation plans  
949 established under Federal law and submit such revised water management plan to the Contracting Officer for  
950 review and evaluation. The Contracting Officer will then determine if the water conservation plan meets  
951 Reclamation's then current conservation and efficiency criteria for evaluating water conservation plan  
952 established under Federal law.

953 (e) If the Contractors are engaged in direct groundwater recharge, such activity shall be  
954 described in the Contractors' water conservation plans.

955 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

956 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract  
957 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by  
958 the Contractors or any user of such water within the Contractors' Service Areas. Any such water shall not  
959 be considered Project Water under this Contract. In addition, this Contract shall not be construed as  
960 limiting or curtailing any rights which the Contractors or any water user within the Contractors' Service Areas  
961 acquires or has available under any other contract pursuant to Federal Reclamation law.

962 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

963 28. (a) The Operation and Maintenance of a portion of the Project facilities which serve the  
964 Contractors, and responsibility for funding a portion of the costs of such Operation and Maintenance, have  
965 been transferred to the Operating Non-Federal Entity by separate agreement between the United States and

966 the Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or  
967 obligations of the Contractors or the United States hereunder.

968 (b) The Contracting Officer has previously notified the Contractors in writing that the  
969 Operation and Maintenance of a portion of the Project facilities which serve the Contractors have been  
970 transferred to the Operating Non-Federal Entity, and therefore, the Contractors shall pay directly to the  
971 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms  
972 and conditions of the separate agreement between the United States and the Operating Non-Federal Entity  
973 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any  
974 assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets,  
975 or establishes for the Operation and Maintenance of the portion of the Project facilities operated and  
976 maintained by the Operating Non-Federal Entity or such successor. Such direct payments to the Operating  
977 Non-Federal Entity or such successor shall not relieve the Contractors of their obligation to pay directly to  
978 the United States the Contractors' share of the Project Rates, Charges, and Tiered Pricing Components  
979 except to the extent the Operating Non-Federal Entity collects payments on behalf of the United States in  
980 accordance with the separate agreement identified in subdivision (a) of this Article.

981 (c) For so long as the Operation and Maintenance of any portion of the Project facilities  
982 serving the Contractors is performed by the Operating Non-Federal Entity, or any successor thereto, the  
983 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract

984 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or its  
985 successor.

986 (d) In the event the Operation and Maintenance of the Project facilities operated and  
987 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
988 Contract, the Contracting Officer shall so notify the Contractors, in writing, and present to the Contractors a  
989 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractors for Project  
990 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project  
991 facilities which have been re-assumed. The Contractors shall, thereafter, in the absence of written  
992 notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing  
993 Component(s) specified in the revised Exhibit "B" directly to the United States in compliance with Article 7  
994 of this Contract.

995 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

1000 BOOKS, RECORDS, AND REPORTS

1001 30. (a) The Contractors shall establish and maintain accounts and other books and records  
1002 pertaining to administration of the terms and conditions of this Contract, including: the Contractors' financial  
1003 transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use  
1004 (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting

1005 Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such  
1006 date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations,  
1007 each party to this Contract shall have the right during office hours to examine and make copies of the other  
1008 party's books and records relating to matters covered by this Contract.

1009 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records,  
1010 or other information shall be requested from the Contractors by the Contracting Officer unless such books,  
1011 records, or information are reasonably related to the administration or performance of this Contract. Any  
1012 such request shall allow the Contractors a reasonable period of time within which to provide the requested  
1013 books, records, or information.

1014 (c) At such time as the Contractors provide information to the Contracting Officer  
1015 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating  
1016 Non-Federal Entity.

1017 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1018 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of  
1019 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid  
1020 until approved in writing by the Contracting Officer.

1021 (b) The assignment of any right or interest in this Contract by either party shall not  
1022 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of  
1023 said other party.

1024 (c) The Contracting Officer shall not unreasonably condition or withhold approval of any

1025 proposed assignment.

1026 SEVERABILITY

1027 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a  
1028 person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or  
1029 other form of organization whose primary function is to represent parties to Project contracts, brings an  
1030 action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in  
1031 this Contract and said person, entity, association, or organization obtains a final court decision holding that  
1032 such provision is legally invalid or unenforceable and the Contractors have not intervened in that lawsuit in  
1033 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days  
1034 of the date of such final court decision identify by mutual agreement the provisions in this Contract which  
1035 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).  
1036 The time periods specified above may be extended by mutual agreement of the parties. Pending the  
1037 completion of the actions designated above, to the extent it can do so without violating any applicable  
1038 provisions of law, the United States shall continue to make the quantities of Project Water specified in this  
1039 Contract available to the Contractors pursuant to the provisions of this Contract which were not found to be  
1040 legally invalid or unenforceable in the final court decision.

1041 RESOLUTION OF DISPUTES

1042 33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights

1043 and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to  
1044 the Contractors commencing any legal action, or the Contracting Officer referring any matter to Department  
1045 of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such  
1046 action; Provided, That such notice shall not be required where a delay in commencing an action would  
1047 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the  
1048 Contractors and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except  
1049 as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1050 Contractors or the United States may have.

1051 OFFICIALS NOT TO BENEFIT

1052 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1053 Contractors shall benefit from this Contract other than as a water user or landowner in the same manner as  
1054 other water users or landowners.

1055 CHANGES IN CONTRACTORS' SERVICE AREAS

1056 35. (a) While this Contract is in effect, no change may be made in the Contractors' Service  
1057 Areas or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1058 except upon the Contracting Officer's written consent.

1059 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting  
1060 Officer will notify the Contractors of any additional information required by the Contracting Officer for  
1061 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely  
1062 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in

1063 the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractors to  
1064 pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for  
1065 which the Contractors are responsible; and (iii) have an impact on any Project Water rights applications,  
1066 permits, or licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy  
1067 Act and the Endangered Species Act. The Contractors will be responsible for all costs incurred by the  
1068 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this  
1069 Contract.

1070 FEDERAL LAWS

1071 36. (a) By entering into this Contract, the Contractors do not waive their rights to contest  
1072 the validity or application in connection with the performance of the terms and conditions of this Contract of  
1073 any Federal law or regulation; Provided, That the Contractors agree to comply with the terms and conditions  
1074 of this Contract unless and until relief from application of such Federal law or regulation to the implementing  
1075 provision of the Contract is granted by a court of competent jurisdiction.

1076 (b) Notwithstanding the provisions of subdivision (a) of the Article, as to the delivery of  
1077 water to the Santa Clara Valley Water District under this Contract, with respect to acreage limitations set  
1078 forth under Reclamation law, Act of October 12, 1982 (96 Stat. 1263), shall not applicable as defined by  
1079 the Act of August 27, 1967 (81 Stat. 173).

1080

NOTICES

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1088

37. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractors, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 97321, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of the Pajaro Valley Water Management Agency, 36 Brennan Street, Watsonville CA 95076; Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose CA 95118-3686 and/or Westlands Water District Distribution District No. 1, PO Box 6065, Fresno CA 93703-6065. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

1089

CONFIRMATION OF CONTRACT

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1091  
1092  
1093  
1094

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

1095  
1096

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

THE UNITED STATES OF AMERICA

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

PAJARO VALLEY WATER MANAGEMENT AGENCY

R.O. Draft 11/01-2000

CVP-Wide Form 11-05

**Delta Division**

R.O. Delta Division 11/17-2000

Contract No. 14-06-200-3365A-LTR1-B

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

Attest:

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

WESTLANDS WATER DISTRICT DISTRIBUTION No. 1

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

Attest:

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

SANTA CLARA VALLEY WATER DISTRICT

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

R.O. Draft 11/01-2000  
CVP-Wide Form 11-05  
**Delta Division**  
R.O. Delta Division 11/17-2000  
Contract No. 14-06-200-3365A-LTR1-B

Attest:

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

R.O. Draft 11/01-2000  
CVP-Wide Form 11-05  
**Delta Division**  
R.O. Delta Division 11/17-2000  
Contract No. 14-06-200-3365A-LTR1-B

EXHIBIT A

[Map or Description of Service Area]

R.O. Draft 11/01-2000  
CVP-Wide Form 11-05  
**Delta Division**  
R.O. Delta Division 11/17-2000  
Contract No. 14-06-200-3365A-LTR1-B

EXHIBIT B  
[Initial Rates and Charges]

(C:\TEMP\PVWMA.WPD)