

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

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

10 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2001, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
17 hereinafter referred to as the United States, and PATTERSON IRRIGATION DISTRICT, hereinafter  
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and  
19 acting pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley

23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,  
24 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,  
25 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of  
26 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River  
27 and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed Delta Division Facilities, which will be  
29 used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

30 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to  
31 California law for operation of the Project; and

32 [4<sup>th</sup>]WHEREAS, the Contractor has asserted claims that the construction and operation of the  
33 Central Valley Project has interfered with its rights in and to the use of the waters of the San Joaquin  
34 River; and

35 [4.1] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-  
36 200-3598A dated December 18, 1967, which established terms for the delivery to the Contractor of  
37 Project Water from the Delta Division Facilities from December 18, 1967 through February 28,  
38 1995; and

39 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
40 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
41 interim renewal contract(s) identified as Contract No(s). 14-06-200-3598A-IR1, 14-06-200-3598A-

42 IR2, 14-06-200-3598A-IR3, and 14-06-200-3598A-IR4, the current of which is hereinafter referred to  
43 as the Existing Contract, which provided for the continued water service to the Contractor from  
44 March 1, 1995 through February 28, 2001; and

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

51 [7<sup>th</sup>]WHEREAS, through Contract No. 14-06-200-3598A providing among other things 6,000  
52 acre-feet of Replacement Water, the parties reached a settlement with respect to any and all of the  
53 Contractor's claims that the construction and operation of the Central Valley Project has interfered  
54 with its rights in and to the use of the waters of the San Joaquin River; and

55 [7.1] WHEREAS, the United States has completed the PEIS and all other appropriate  
56 environmental review necessary to provide for long-term renewal of the Existing Contract; and

57 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
58 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the  
59 State of California, for water service from the Central Valley Project; and

60 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of

61 its obligations under the Existing Contract; and

62 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
63 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
64 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor  
65 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project  
66 Water to be made available to it pursuant to this Contract; and

67 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by  
68 urban and agricultural areas within California for more than fifty (50) years, and is considered by the  
69 Contractor as an essential portion of its water supply; and

70 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
71 Contractor's, depend upon the continued availability of water, including water service from the  
72 Central Valley Project; and

73 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
74 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project  
75 purposes; and

76 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
77 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of  
78 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to  
79 achieve a reasonable balance among competing demands for use of Project Water; and to comply

80 with all applicable environmental statutes, all consistent with the legal obligations of the United  
81 States relative to the Central Valley Project; and

82 [14.1] WHEREAS, the United States and the Contractor acknowledge that the Base Supply  
83 as defined in this Contract is a more accurate reflection of the amount of water the Contractor may  
84 realistically expect in many water years in light of present constraints and that designation of a Base  
85 Supply does not preclude delivery to the Contractor of the Supplemental Supply of Project Water as  
86 defined herein; and

87 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
88 relationship in order to achieve their mutual goals; and

89 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this long-  
90 term renewal contract pursuant to Federal Reclamation law on the terms and conditions set forth  
91 below;

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

94 DEFINITIONS

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

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

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

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

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

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

109 (e) "Contract Total" shall mean the total of Base Supply and Supplemental Supply  
110 of Project Water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract,  
111 but not including Replacement Water;

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

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

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

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

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

128 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or  
129 202(3) of the RRA, whichever is applicable;

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

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

134 (m) "Irrigation Water" shall mean water made available from the Project that is  
135 used primarily in the production of agricultural crops or livestock, including domestic use incidental  
136 thereto, and watering of livestock, other than Replacement Water;

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

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

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

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

**Delta Division**

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

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

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

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

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

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

173 (w.1) "Replacement Water" shall mean all water delivered to the Contractor without  
174 payment pursuant to this contract, and without application of federal reclamation law, including but

175 not limited to the acreage limitation provisions of the Reclamation Reform Act of 1982 (96 Stat.  
176 1263), as amended, under the authority of Section 14 of the Reclamation Project Act of 1939 (53 Stat.  
177 1187, 1197) as a permanent adjustment and settlement of the Contractor's asserted claims of rights to  
178 water in the San Joaquin River in fulfillment of such rights;

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

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

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

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

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

192 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor  
193 for which times and quantities for delivery have been established by the Contractor and Contracting

194 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

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

197 TERM OF CONTRACT

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

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

210 (2) The conditions which must be met for this Contract to be renewed are:  
211 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting  
212 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria

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

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

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

243 (d) The Contracting Officer anticipates that by December 31, 2024, all  
244 authorized project construction expected to occur will have occurred, and on that basis the  
245 Contracting Officer agrees by that date to allocate all costs that are properly assignable to the  
246 Contractor, and agrees further that, at any time after such allocation is made, and subject to  
247 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the  
248 Contractor, be converted to a contract under subsection (d) , Section 9 of the Reclamation Project Act  
249 of 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable  
250 to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a

251 determination by the Contracting Officer that, account being taken of the amount credited to return by  
252 the Contractor as provided for under Reclamation law, the remaining amount of construction costs  
253 assignable for ultimate return by the Contractor can probably be repaid to the United States within the  
254 term of a contract under said subsection (d). If the remaining amount of costs that are properly  
255 assignable to the Contractor cannot be determined by December 31, 2024, the Contracting Officer  
256 shall notify the Contractor, and provide the reason(s) why such a determination could not be made.  
257 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as  
258 to permit, upon request of the Contractor and satisfaction of the conditions set out above, conversion  
259 to a contract under said subsection (d). In the event such determination of costs has not been made at  
260 a time which allows conversion of this Contract during the term of this Contract or the Contractor has  
261 not requested conversion of this Contract within such term, the parties shall incorporate in any  
262 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries  
263 forth in substantially identical terms the provisions of this subdivision. In the event the Contracting  
264 Officer is able to make a determination of the remaining amount of costs that are properly assignable  
265 to the Contractor before December 31, 2024, the Contracting Officer shall do so at the earliest time  
266 the Contracting Officer has such ability.

267 (e) In the event that this contract terminates, the rights of the Contractor to thereafter  
268 divert and use water from the San Joaquin River, and to assert its claim(s) against the United States  
269 for the alleged interference of the Central Valley Project with the Contractor's ability to exercise its

270 alleged rights to divert water from the San Joaquin River, shall exist as if this contract had not been  
271 entered into. In recognition of the compromise settlement of controversy as to the rights of the  
272 Contractor to divert and use water from the San Joaquin River, and the yield of such rights during the  
273 term hereof , this contract places a limit on the total supply to be diverted annually by the Contractor  
274 during the contract term and segregates it into Replacement Water and Project Water. This  
275 recognition shall not jeopardize the rights or position of either party with respect to its water rights or  
276 the yield thereof at any time after this contract terminates.

277 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

278 3. (a) During each Year, consistent with all applicable State water rights, permits,  
279 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
280 Contract, the Contracting Officer shall make available for delivery to the Contractor 11,550 acre-feet  
281 designated as Base Supply and 4,950 acre-feet designated as Supplemental Supply for a Contract  
282 Total of 16,500 acre-feet for irrigation and M&I purposes. To reflect changes in reliability, the  
283 quantity of Base Supply and Supplemental Supply will be reassessed at least every five (5) years and  
284 may be adjusted upon mutual agreement of the parties. The quantity of Water Delivered to the  
285 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the  
286 provisions of Articles 4 and 7 of this Contract.

287 (b) Because the capacity of the Central Valley Project to deliver Project Water has  
288 been constrained in recent years and may be constrained in the future due to many factors including

289 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor  
290 actually receiving the full amount of the Contract Total set out in subdivision (a) of this Article in any  
291 given Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS  
292 projected that the full amount of the Contract Total set forth in this Contract will not be available to  
293 the Contractor in many years. During the most recent five (5) years, the Recent Historic Average of  
294 Water Made Available to the Contractor was 13,860 acre-feet. Nothing in this subdivision shall  
295 affect the rights and obligations of the parties under any provision of this Contract.

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

298 (d) The Contractor shall make reasonable and beneficial use of all Project Water or  
299 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater  
300 banking programs, surface water storage programs, and other similar programs utilizing Project  
301 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
302 Area which are consistent with applicable State law and result in use consistent with Reclamation law  
303 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's  
304 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That  
305 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service  
306 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be  
307 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,

308 groundwater banking programs, surface water storage programs, and other similar programs utilizing  
309 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's  
310 Service Area may be permitted upon written approval of the Contracting Officer, which approval will  
311 be based upon environmental documentation, Project Water rights, and Project operational concerns.  
312 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

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

322 (f) Following the declaration of Water Made Available under Article 4 of this  
323 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
324 available to the Project, can be made available to the Contractor in addition to the Contract Total  
325 under this Article 3 during the Year without adversely impacting other Project Contractors. At the  
326 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making

327 such a determination. If the Contracting Officer determines that Project Water, or other water  
328 available to the Project, can be made available to the Contractor, the Contracting Officer will  
329 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
330 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of  
331 taking such water to determine the most equitable and efficient allocation of such water. If the  
332 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
333 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,  
334 and policies.

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

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

346 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of  
347 this Contract or applicable provisions of any subsequent renewal contracts.

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

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

358 (k) In addition to other Project Water, each year the Contracting Officer shall  
359 furnish from the Delta Division Facilities, free of charge to the Contractor (including free from  
360 obligation to pay Rates and Charges hereinafter provided for), and in accordance with the schedule  
361 submitted pursuant to Article 4 hereof, six thousand (6,000) acre-feet of Replacement Water. For  
362 purposes of this Contract, the Replacement Water shall be considered to be the first six thousand  
363 (6,000) acre-feet furnished in each Year. Nothing in this contract is intended to affect the  
364 Contractor's right to continue to divert water from the San Joaquin River pursuant to state law.

365 Nothing herein shall be deemed to be an assignment of any water right of the Contractor.

366 TIME FOR DELIVERY OF WATER

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

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

383 (c) The Contractor shall not schedule Project Water in excess of the quantity of

384 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's  
385 Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

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

391 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

400 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable  
401 land classification provisions of Federal Reclamation law and the associated regulations. The  
402 Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless

403 approved in advance by the Contracting Officer.

404 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
405 measured and recorded with equipment furnished, installed, operated, and maintained by the United  
406 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting  
407 Officer (hereafter “other appropriate entity”) at the point or points of delivery established pursuant to  
408 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting  
409 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,  
410 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing  
411 therein. For any period of time when accurate measurements have not been made, the Contracting  
412 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to  
413 making a final determination of the quantity delivered for that period of time.

414 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
415 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water  
416 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in  
417 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,  
418 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever  
419 for which there is legal responsibility, including property damage, personal injury, or death arising out  
420 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project  
421 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or

422 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including  
423 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any  
424 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,  
425 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the  
426 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible  
427 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities  
428 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,  
429 That the Contractor is not the Operating Non-Federal Entity that owned or operated the  
430 malfunctioning facility(ies) from which the damage claim arose.

431 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

432 6. (a) The Contractor has established a measuring program satisfactory to the  
433 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
434 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water  
435 delivered for municipal and industrial purposes is measured at each municipal and industrial service  
436 connection. The water measuring devices or water measuring methods of comparable effectiveness  
437 must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing,  
438 operating, and maintaining and repairing all such measuring devices and implementing all such water  
439 measuring methods at no cost to the United States. The Contractor shall use the information obtained  
440 from such water measuring devices or water measuring methods to ensure its proper management of

441 the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water  
442 delivered for municipal and industrial purposes by customer class as defined in the Contractor's water  
443 conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however,  
444 shall preclude the Contractor from establishing and collecting any charges, assessments, or other  
445 revenues authorized by California law. The Contractor shall include a summary of all its annual  
446 surface water deliveries in the annual report described in subdivision (c) of Article 26 of this  
447 Contract.

448 (b) To the extent the information has not otherwise been provided, upon execution  
449 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
450 measurement devices or water measuring methods being used or to be used to implement subdivision  
451 (a) of this Article and identifying the agricultural turnouts and the municipal and industrial service  
452 connections or alternative measurement programs approved by the Contracting Officer, at which such  
453 measurement devices or water measuring methods are being used, and, if applicable, identifying the  
454 locations at which such devices and/or methods are not yet being used including a time schedule for  
455 implementation at such locations. The Contracting Officer shall advise the Contractor in writing  
456 within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring  
457 devices or water measuring methods identified in the Contractor's report and if the Contracting  
458 Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer  
459 notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within

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

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

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

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

473 RATES AND METHOD OF PAYMENT FOR WATER

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

479 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.  
480 Payment shall be made by cash transaction, wire, or any other mechanism as may be agreed to in  
481 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing  
482 Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B",  
483 as may be revised annually.

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

486 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
487 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
488 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
489 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review  
490 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
491 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October  
492 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
493 notification shall revise Exhibit "B."

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

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

501 (c) At the time the Contractor submits the initial schedule for the delivery of  
502 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
503 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
504 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
505 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the  
506 end of the first month and before the end of each calendar month thereafter, the Contractor shall make  
507 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
508 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
509 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
510 for Water Delivered shall be made before the end of the following month; Provided, That any revised  
511 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
512 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
513 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
514 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered  
515 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the  
516 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an

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

523 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
524 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
525 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
526 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
527 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
528 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
529 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating  
530 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for  
531 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.  
532 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of  
533 payments due to the United States for Charges for the next month. Any amount to be paid for past  
534 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20  
535 of this Contract.

**Delta Division**

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

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

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

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

555 reports, or information.

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

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

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

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

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

592                                   (l)     Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,

593 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted  
594 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water  
595 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If  
596 the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring  
597 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the  
598 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges  
599 unadjusted for ability to pay.

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

602 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

603 8. The Contractor and the Contracting Officer concur that, as of the effective date of this  
604 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall  
605 have no further liability therefor.

606  
607 SALES, TRANSFERS, OR EXCHANGES OF WATER

608 9. (a) The right to receive Project Water provided for in this Contract may be sold,  
609 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if  
610 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable  
611 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this

612 Contract may take place without the prior written approval of the Contracting Officer, except as  
613 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be  
614 approved absent compliance with appropriate environmental documentation including but not limited  
615 to the National Environmental Policy Act and the Endangered Species Act. Such environmental  
616 documentation should include, as appropriate, an analysis of groundwater impacts and economic and  
617 social effects, including environmental justice, of the proposed water transfers on both the transferor  
618 and transferee.

619 (b) In order to facilitate efficient water management by means of water transfers of  
620 the type historically carried out among Project Contractors located within the same geographical area  
621 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
622 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental  
623 documentation including, but not limited to, the National Environmental Policy Act and the  
624 Endangered Species Act analyzing annual transfers within such geographical areas and the  
625 Contracting Officer shall determine whether such transfers comply with applicable law. Following  
626 the completion of the environmental documentation, such transfers addressed in such documentation  
627 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written  
628 approval by the Contracting Officer. Such environmental documentation and the Contracting  
629 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,  
630 prior to the expiration of the then existing five (5) -year period. All subsequent environmental

631 documentation shall include an alternative to evaluate not less than the quantity of Project Water  
632 historically transferred within the same geographical area.

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

643 APPLICATION OF PAYMENTS AND ADJUSTMENTS

644 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
645 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
646 the Contractor arising out of this Contract then due and payable. Overpayments of more than One  
647 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any  
648 amount of such overpayment at the option of the Contractor, may be credited against amounts to  
649 become due to the United States by the Contractor. With respect to overpayment, such refund or

650 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have  
651 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of  
652 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as  
653 to how to credit or refund such overpayment in response to the notice to the Contractor that it has  
654 finalized the accounts for the Year in which the overpayment was made.

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

660 TEMPORARY REDUCTIONS--RETURN FLOWS

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

666 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
667 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the  
668 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project

669 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
670 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice  
671 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case  
672 no notice need be given; Provided, That the United States shall use its best efforts to avoid any  
673 discontinuance or reduction in such service. Upon resumption of service after such reduction or  
674 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the  
675 quantity of Project Water which would have been delivered hereunder in the absence of such  
676 discontinuance or reduction.

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

683 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

688 as soon as practicable.

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

694  
695 (c) In any Year in which there may occur a Condition of Shortage for any of the  
696 reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation  
697 Water among the Contractor and others entitled to receive Irrigation Water from the Delta-Mendota  
698 Canal as follows:

699 (1) A determination shall be made of the total quantity of Irrigation Water  
700 scheduled to be delivered during the respective Year under all contracts then in force for the delivery  
701 of Irrigation Water from the Delta Division Facilities, the quantity so determined being therein  
702 referred to as the contractual commitments for Irrigation Water from such facilities.

703 (2) The total quantity of Irrigation Water scheduled to be delivered to the  
704 Contractor from the Delta Division Facilities during the respective Year under subdivision (a) of  
705 Article 3 of this Contract shall be divided by the contractual commitments for Irrigation Water, the  
706 quotient thus obtained therein referred to as the Contractor's contractual entitlement for Irrigation

707 Water from such facilities.

708 (3) The supply of Irrigation Water determined by the Contracting Officer to  
709 be available from the Delta Division Facilities shall be multiplied by the Contractor's contractual  
710 entitlement for Irrigation Water and the result shall be the quantity of Irrigation Water required to be  
711 delivered by the Contracting Officer to the Contractor for the respective Year from such facilities.

712 (d) Notwithstanding any other provision of this contract, Replacement Water will  
713 bear shortages and be reduced during times of reduced water supplies based on  
714 the same percentage of reduction of supplies implemented by the Second  
715 Amended Contract for Exchange of Waters, dated February 14, 1968, between  
716 the United States and the Central California Irrigation District, Columbia Canal  
717 Company, San Luis Canal Company and Firebaugh Canal Company, Contract  
718 No. 11r-1144.

719 UNAVOIDABLE GROUNDWATER PERCOLATION

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

724 RULES AND REGULATIONS

725 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities  
726 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the

727 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the  
728 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

729 WATER AND AIR POLLUTION CONTROL

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

733 QUALITY OF WATER

734 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
735 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
736 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
737 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
738 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish  
739 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor  
740 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the  
741 Contractor pursuant to this Contract.

742 (b) The Operation and Maintenance of Project facilities shall be performed in such  
743 manner as is practicable to maintain the quality of raw water made available through such facilities at  
744 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall  
745 be responsible for compliance with all State and Federal water quality standards applicable to surface  
746 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor  
747 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

748  
749

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

750           17.   (a)    Water or water rights now owned or hereafter acquired by the Contractor other  
751 than from the United States, Replacement Water and Irrigation Water furnished pursuant to the terms  
752 of this Contract may be simultaneously transported through the same distribution facilities of the  
753 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and  
754 non-project water were constructed without funds made available pursuant to Federal Reclamation  
755 law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands  
756 which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be  
757 established through the certification requirements as specified in the Acreage Limitation Rules and  
758 Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's  
759 Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal  
760 to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for  
761 commingling Irrigation Water and non-project water are/were constructed with funds made available  
762 pursuant to Federal Reclamation law, the non-project water will be subject to the acreage limitation  
763 provisions of Federal Reclamation law, unless the Contractor pays to the United States the  
764 incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting  
765 Officer will calculate annually the cost to the Federal Government, including interest of storing or  
766 delivering non-project water, which for purposes of this Contract shall be determined as follows: The  
767 quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the

768 Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient  
769 times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat.  
770 1263). Such incremental fee will be charged to each acre of excess or full cost land within the  
771 Contractor's Service Area that receives non-project water through Federally financed or constructed  
772 facilities. The incremental fee calculation methodology will continue during the term of this Contract  
773 absent the promulgation of a contrary Reclamation-wide rule, regulation or policy adopted after the  
774 Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation  
775 or policy. If such rule, regulation or policy is adopted it shall supersede this provision.

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

782 (1) The Contractor may introduce non-project water into Project facilities  
783 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,  
784 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
785 appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended,  
786 modified or superceded from time to time. In addition, if electrical power is required to pump non-

787 project water through the facilities, the Contractor shall be responsible for obtaining the necessary  
788 power and paying the necessary charges therefor.

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

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

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

804 (5) After Project purposes are met, as determined by the Contracting  
805 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of

806 the facilities declared to be available by the Contracting Officer for conveyance and transportation of  
807 non-project water prior to any such remaining capacity being made available to non-Project  
808 contractors.

809 OPINIONS AND DETERMINATIONS

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

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

824 COORDINATION AND COOPERATION

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

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

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

843                           (1)    The Contracting Officer will, at the request of the Contractor, assist in

844 the development of integrated resource management plans for the Contractor. Further, the  
845 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to  
846 improve water supply, water quality, and reliability.

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

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

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

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

857 (d) Without limiting the contractual obligations of the Contracting Officer  
858 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's  
859 ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders  
860 or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of  
861 structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

862 CHARGES FOR DELINQUENT PAYMENTS



**Delta Division**

894 which it has a collective bargaining agreement or other contract or understanding, a notice, to be  
895 provided by the Contracting Officer, advising the said labor union or workers' representative of the  
896 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and  
897 shall post copies of the notice in conspicuous places available to employees and applicants for  
898 employment.

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

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

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

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

923 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

924 22. (a) The obligation of the Contractor to pay the United States as provided in this  
925 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation

926 may be distributed among the Contractor's water users and notwithstanding the default of individual  
927 water users in their obligations to the Contractor.

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

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

936 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

955 PRIVACY ACT COMPLIANCE

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

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

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

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

974 (e) The Contractor shall forward promptly to the System Manager each proposed  
975 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
976 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
977 information and records necessary to prepare an appropriate response to the requester. These  
978 requirements do not apply to individuals seeking access to their own certification and reporting forms  
979 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy  
980 Act as a basis for the request.

981 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

982 25. In addition to all other payments to be made by the Contractor pursuant to this  
983 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill

984 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
985 of direct cost incurred by the United States for work requested by the Contractor associated with this  
986 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
987 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
988 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
989 administration.

990 WATER CONSERVATION

991 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
992 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
993 implementing an effective water conservation and efficiency program based on the Contractor's water  
994 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
995 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
996 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
997 economically feasible water conservation measures, and time schedules for meeting those objectives.  
998 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
999 continued implementation of such water conservation program. In the event the Contractor's water  
1000 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
1001 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
1002 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the

1003 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
1004 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
1005 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
1006 program in accordance with the time schedules therein.

1007 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1008 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor  
1009 shall implement the Best Management Practices identified by the time frames issued by the California  
1010 Urban Water Conservation Council for such M&I Water unless any such practice is determined by  
1011 the Contracting Officer to be inappropriate for the Contractor.

1012 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1013 its implementation of the water conservation plan on the reporting dates specified in the then existing  
1014 conservation and efficiency criteria established under Federal law.

1015 (d) At five (5) -year intervals, the Contractor shall revise its water conservation  
1016 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1017 plans established under Federal law and submit such revised water management plan to the  
1018 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1019 water conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1020 evaluating water conservation plans established under Federal law.

1021 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall

1022 be described in the Contractor's water conservation plan.

1023 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1024 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
1025 Contract shall not be applicable to or affect non-project water, Replacement Water, or water rights  
1026 now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's  
1027 Service Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1028 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or any  
1029 water user within the Contractor's Service Area acquires or has available under any other contract  
1030 pursuant to Federal Reclamation law.

1031 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1032 28. (a) The Operation and Maintenance of a portion of the Project facilities which  
1033 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and  
1034 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement  
1035 between the United States and the Operating Non-Federal Entity. That separate agreement shall not  
1036 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1037 (b) The Contracting Officer has previously notified the Contractor in writing that  
1038 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1039 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1040 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under

1041 the terms and conditions of the separate agreement between the United States and the Operating Non-  
1042 Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any  
1043 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such  
1044 successor determines, sets, or establishes for the Operation and Maintenance of the portion of the  
1045 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor.  
1046 Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the  
1047 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project  
1048 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal  
1049 Entity collects payments on behalf of the United States in accordance with the separate agreement  
1050 identified in subdivision (a) of this Article.

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

1056 (d) In the event the Operation and Maintenance of the Project facilities operated  
1057 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the  
1058 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to  
1059 the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the

1060 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of  
1061 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in  
1062 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1063 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United  
1064 States in compliance with Article 7 of this Contract.

1065 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1066 29. The expenditure or advance of any money or the performance of any obligation of the  
1067 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1068 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1069 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1070 or allotted.

1071 BOOKS, RECORDS, AND REPORTS

1072 30. (a) The Contractor shall establish and maintain accounts and other books and  
1073 records pertaining to administration of the terms and conditions of this Contract, including: the  
1074 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1075 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1076 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1077 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1078 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1079 during office hours to examine and make copies of the other party's books and records relating to  
1080 matters covered by this Contract.

1081 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1082 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1083 such books, records, or information are reasonably related to the administration or performance of  
1084 this Contract. Any such request shall allow the Contractor a reasonable period of time within which

1085 to provide the requested books, records, or information.

1086 (c) At such time as the Contractor provides information to the Contracting Officer

1087 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the

1088 Operating Non-Federal Entity.

1089 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1090 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1091 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1092 therein shall be valid until approved in writing by the Contracting Officer.

1093 (b) The assignment of any right or interest in this Contract by either party shall not

1094 interfere with the rights or obligations of the other party to this Contract absent the written

1095 concurrence of said other party.

1096 (c) The Contracting Officer shall not unreasonably condition or withhold approval

1097 of any proposed assignment.

1098 SEVERABILITY

1099 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor

1100 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an

1101 association or other form of organization whose primary function is to represent parties to Project

1102 contracts, brings an action in a court of competent jurisdiction challenging the legality or

1103 enforceability of a provision included in this Contract and said person, entity, association, or

1104 organization obtains a final court decision holding that such provision is legally invalid or

1105 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1106 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final  
1107 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1108 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time  
1109 periods specified above may be extended by mutual agreement of the parties. Pending the completion  
1110 of the actions designated above, to the extent it can do so without violating any applicable provisions  
1111 of law, the United States shall continue to make the quantities of Project Water specified in this  
1112 Contract available to the Contractor pursuant to the provisions of this Contract which were not found  
1113 to be legally invalid or unenforceable in the final court decision.

1114 RESOLUTION OF DISPUTES

1115 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1116 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1117 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1118 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written  
1119 notice of the intent to take such action; Provided, That such notice shall not be required where a delay  
1120 in commencing an action would prejudice the interests of the party that intends to file suit. During  
1121 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1122 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive  
1123 or abridge any right or remedy that the Contractor or the United States may have.

1124

OFFICIALS NOT TO BENEFIT

1125           34.    No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1126 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1127 manner as other water users or landowners.

1128

CHANGES IN CONTRACTOR'S SERVICE AREA

1129           35.    (a)    While this Contract is in effect, no change may be made in the Contractor's  
1130 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or  
1131 otherwise, except upon the Contracting Officer's written consent.

1132                   (b)    Within thirty (30) days of receipt of a request for such a change, the  
1133 Contracting Officer will notify the Contractor of any additional information required by the  
1134 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1135 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1136 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1137 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1138 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and  
1139 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the  
1140 Contracting Officer shall comply with the National Environmental Policy Act and the Endangered  
1141 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in  
1142 this process, and such costs will be paid in accordance with Article 25 of this Contract.

1143

FEDERAL LAWS

1144           36.    By entering into this Contract, the Contractor does not waive its rights to contest the

1145 validity or application in connection with the performance of the terms and conditions of this  
1146 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1147 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1148 regulation to the implementing provision of the Contract is granted by a court of competent  
1149 jurisdiction.

1150 NOTICES

1151 37. Any notice, demand, or request authorized or required by this Contract shall be  
1152 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1153 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 97321, and on  
1154 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of  
1155 the Patterson Irrigation District, PO Box 685, Patterson, California 95363. The designation of the  
1156 addressee or the address may be changed by notice given in the same manner as provided in this  
1157 Article for other notices.

1158 CONFIRMATION OF CONTRACT

1159 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1160 decree of a court of competent jurisdiction of the State of California, confirming the execution of this  
1161 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1162 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1163 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1164 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1165 year first above written.

THE UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Regional Director, Mid-Pacific Region

R.O. Draft 11/01-2000  
CVP-Wide Form 11-05  
**Delta Division**  
R.O. Delta Division 11/17-2000  
Contract No.14-06-200-3598A- LTR1

Bureau of Reclamation

PATTERSON IRRIGATION DISTRICT

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

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.14-06-200-3598A- LTR1

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.14-06-200-3598A- LTR1

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

(J:\www\cvpia\3404c\exhibits\dmc\patterson.wpd)