

Irrigation and M&I
 Rev. R. O. Draft 10/20-2004
 Rev. SCCAO Draft 10/17-2004
 Rev. SCCAO Draft 03/19-2004
 Rev. SCCAO Draft 09/22-2003
 Rev. R. O. Draft 02/06-2002
 SCCAO Draft 11/16-2000
 Contract No.
 14-06-200-8238A-LTR1

-
 UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 CENTRAL VALLEY PROJECT, CALIFORNIA

LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
 AND PIXLEY IRRIGATION DISTRICT
 PROVIDING FOR PROJECT WATER SERVICE

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1-2
	Explanatory Recitals	2-5
1	Definitions.....	5-10
2	Term of Contract.....	10-13
3	Water to be Made Available and Delivered to the Contractor.....	13-18
4	Time for Delivery of Water	18-19
5	Point of Diversion and Responsibility for Distribution of Water	20-25
6	Measurement of Water Within the Contractor’s Service Area.....	25-26
7	Rates and Method of Payment for Water.....	27-33
8	Rates and Method of Payment for Conveyance and Other Services by DWR.....	33-35
9	Sales, Transfers, or Exchanges of Water	35-37
10	Application of Payments and Adjustments.....	37-38
11	Temporary Reductions--Return Flows	38-39
12	Constraints on the Availability of Water	40-41
13	Unavoidable Groundwater Percolation.....	41
14	Rules and Regulations.....	41
15	Water and Air Pollution Control.....	41
16	Quality of Water	42
17	Water Acquired by the Contractor Other Than From the United States.....	42-44
18	Opinions and Determinations	44

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
19	Coordination and Cooperation	44-46
20	Charges for Delinquent Payments	46
21	Equal Opportunity	46-47
22	General Obligation--Benefits Conditioned Upon Payment	48-49
23	Compliance With Civil Rights Laws and Regulations	49
24	Privacy Act Compliance	50
25	Contractor to Pay Certain Miscellaneous Costs.....	50-51
26	Water Conservation	51-52
27	Existing or Acquired Water or Water Rights.....	52
28	Operation and Maintenance by Operating Non-Federal Entity	53-54
29	Contingent on Appropriation or Allotment of Funds	54
30	Books, Records, and Reports	54-55
31	Assignment Limited--Successors and Assigns Obligated	55
32	Severability	55-56
33	Resolution of Disputes.....	56
34	Officials Not to Benefit.....	56
35	Changes in Contractor's Service Area.....	57
36	Federal Laws.....	57
37	Notices	58
38	Confirmation of Contract.....	58
	Signature Page	59

Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 CENTRAL VALLEY PROJECT, CALIFORNIA

5 LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
6 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
7 AND PIXLEY IRRIGATION DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE

9 THIS CONTRACT, made this _____ day of _____, 2005, in pursuance
10 generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary thereto,
11 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
12 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
13 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
14 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law and pursuant to the California Central Valley
16 Project Act [Part 3, Division 6 (commencing at Section 11100) of the California Water Code] and the
17 California Water Resources Development Bond Act [Chapter 8, Part 6, Division 6 (commencing at
18 Section 12930) of the California Water Code,] and all acts of the California legislature amendatory
19 thereto or supplementary thereof, among THE UNITED STATES OF AMERICA, hereinafter
20 referred to as the United States, the DEPARTMENT OF WATER RESOURCES OF THE STATE
21 OF CALIFORNIA, hereinafter referred to as DWR, and PIXLEY IRRIGATION DISTRICT,

22 hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,
23 existing, and acting pursuant to the laws thereof;

24 WITNESSETH, That:

25 EXPLANATORY RECITALS

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

32 [2nd] WHEREAS, the United States constructed the Central Valley Project, hereinafter
33 collectively referred to as the Project facilities, which will be used in part for the furnishing of water
34 to the Contractor pursuant to the terms of this Contract; and

35 [2.2] WHEREAS, as provided herein, Project Water may be made available to the
36 Contractor from the Sacramento-San Joaquin Delta and/or the Friant Division and delivered to the
37 Contractor through appropriate Federal, state and/or local facilities; and

38 [2.3] WHEREAS, DWR is engaged in the operation of the State Water Resources
39 Development System pursuant to the laws of the State of California involving the development,
40 transportation, and delivery of water supplies to public agencies throughout the State of California;
41 and

42 [2.4] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the
43 Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost to
44 either the United States or DWR; and

45 [2.5] WHEREAS, the Contractor has the right to use the Cross Valley Canal for conveyance
46 of the Project Water furnished hereunder; and

47 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
48 to California law for operation of the Project; and

49 [4th] WHEREAS, the Contractor and the United States entered into Contract
50 No. 14-06-200-8238A, as amended, which established terms for the delivery to the Contractor of
51 Project Water via the Cross Valley Canal from November 12, 1975, through February 29, 1996; and

52 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
53 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
54 interim renewal contract(s) identified as Contract No(s). 14-06-200-8238A-IR1, -IR2, -IR3, -IR4,
55 -IR5, -IR6, -IR7, and -IR8, the current of which is hereinafter referred to as the Existing Contract,
56 which provided for the continued water service to the Contractor from March 1, 2004, through
57 February 28, 2005; and

58 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
59 Existing Contract following completion of appropriate environmental documentation, including a
60 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy
61 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and
62 the potential renewal of all existing contracts for Project Water; and

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

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

68 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
69 its obligations under the Existing Contract; and

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

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

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

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

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

89 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
90 relationship in order to achieve their mutual goals; and

91 [15.2] WHEREAS, the Contractor desires to contract with DWR for conveyance of Project
92 Water through the facilities of the State Water Project (SWP) as aforesaid under an arrangement
93 wherein the United States will furnish the necessary power for pumping such water through DWR's
94 Delta Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-existing CVP Project use
95 power policy; and

96 [15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject to
97 needs and obligations of the SWP and the availability of transportation capacity and payment of costs
98 as herein provided; and

99 [16th] WHEREAS, the United States, DWR, and the Contractor are willing to enter into this
100 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

103 DEFINITIONS

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

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

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

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

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

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

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

123 (f2) "Cross Valley Canal" shall mean the water conveyance and related works
124 constructed by the Contractor and others to deliver water from the State Facilities, which canal
125 currently is operated by KCWA;

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

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

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

134 (j) "Full Cost Rate" shall mean an annual water rate as determined by the
135 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
136 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits

137 funded, less payments, over such periods as may be required under Federal Reclamation law, or
138 applicable contract provisions. Interest will accrue on both the construction expenditures and funded
139 O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in
140 the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
141 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
142 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
143 the RRA;

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

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

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

151 (m2) “KCWA” shall mean the Kern County Water Agency;

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

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

160 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
161 delivery of M&I Water;

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

165 (r) “Operating Non-Federal Entity” shall mean either the San Luis &
166 Delta-Mendota Water Authority or the Friant Water Authority, their successors or assigns, non-
167 Federal entities which have the obligation to operate and maintain all or a portion of the Project
168 facilities pursuant to agreements with the United States, and which may have funding obligations
169 with respect thereto;

170 (r2) “Operations Manual” shall mean the manual setting forth detailed operations
171 and management procedures prepared by DWR, the Contracting Officer and the Contractor;

172 (s) “Project” shall mean the Central Valley Project owned by the United States
173 and managed by the Department of the Interior, Bureau of Reclamation;

174 (t) “Project Contractors” shall mean all parties who have water service contracts
175 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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

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

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

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

188 (x2) “State Facilities” shall mean that portion of the SWP (including DWR's portion
189 of joint facilities), necessary to convey Project Water from the Sacramento-San Joaquin Delta (Delta)
190 to Reach 16A of the California Aqueduct;

191 (x3) “SWP” shall mean the California State Water Project;

192 (x4) “SWP Contractor” shall mean those entities with a long-term water supply
193 contract for water deliveries of SWP water on the date this Contract is executed;

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

196 (y2) “Transportation Minimum OMP&R Costs” and “Transportation Variable
197 OMP&R Costs” shall mean those costs as defined in the long-term SWP contracts and as annually
198 described in DWR Bulletin 132;

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

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

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

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

209 TERM OF CONTRACT

210 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030. In
211 the event the Contractor wishes to renew this Contract beyond February 28, 2030, the Contractor
212 shall submit a request for renewal in writing to the Contracting Officer no later than two years prior
213 to the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing
214 of Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the
215 renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall
216 be governed by subdivision (c) of this Article. The term of this Contract and its renewal insofar as it
217 pertains to conveyance of water in SWP Facilities shall be governed by subdivision (e) of this Article.

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

223 (2) The conditions which must be met for this Contract to be renewed are:
224 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
225 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
226 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an

227 effective water conservation and efficiency program based on the Contractor's water conservation
228 plan as required by Article 26 of this Contract; (iii) the Contractor is maintaining all water measuring
229 devices and implementing all water measurement methods as approved by the Contracting Officer
230 pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the
231 Project Water supplies made available to it and, based on projected demands, is reasonably
232 anticipated and expects to fully utilize for reasonable and beneficial use the quantity of Project Water
233 to be made available to it pursuant to such renewal; (v) the Contractor is complying with all terms
234 and conditions of this Contract; and (vi) the Contractor has the physical and legal ability to deliver
235 Project Water.

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

245 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
246 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be
247 consistent with then-existing Reclamation-wide policy, under terms and conditions mutually
248 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
249 the opportunity to comment to the Contracting Officer on the proposed adoption and application of

250 any revised policy applicable to the delivery of M&I Water that would limit the term of any
251 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
252 years.

253 (d) The Contracting Officer shall make a determination ten years after the date of
254 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
255 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
256 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956
257 (70 Stat. 483). The Contracting Officer shall also make a determination ten years after the date of
258 execution of this Contract and every five years thereafter during the term of the Contract of whether a
259 conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
260 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
261 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
262 (70 Stat 483). The Contracting Officer anticipates that during the term of this Contract, all authorized
263 Project construction expected to occur will have occurred, and on that basis the Contracting Officer
264 agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and
265 agrees further that, at any time after such allocation is made, and subject to satisfaction of the
266 conditions set out in this subdivision, this Contract shall, at the request of the Contractor, be
267 converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation
268 Project Act of 1939, subject to applicable Federal law and under stated terms and conditions mutually
269 agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur
270 shall be a determination by the Contracting Officer that, account being taken of the amount credited
271 to return by the Contractor as provided for under Federal Reclamation law, the remaining amount of
272 construction costs assignable for ultimate return by the Contractor can probably be repaid to the

273 United States within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable.
274 If the remaining amount of costs that are properly assignable to the Contractor cannot be determined
275 during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the
276 reason(s) why such a determination could not be made. Further, the Contracting Officer shall make
277 such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and
278 satisfaction of the conditions set out above, conversion to a contract under subsection 9(d) or 9(c)(1),
279 whichever is applicable. In the event such determination of costs has not been made at a time which
280 allows conversion of this Contract during the term of this Contract or the Contractor has not
281 requested conversion of this Contract within such term, the parties shall incorporate in any
282 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries
283 forth in substantially identical terms the provisions of this subdivision.

284 (e) DWR's agreement to convey water under this Contract shall be effective until
285 February 28, 2030. Thereafter, DWR and the Contractor may renew the agreement to convey for
286 additional periods on terms mutually agreeable to the parties. The parties acknowledge that operation
287 of SWP, including the State Facilities, is not, and shall not be, subject to Federal Reclamation law.

288 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

289 3. (a) During each Year, consistent with all applicable State water rights, permits,
290 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
291 Contract, the Contracting Officer shall make available in the Delta for delivery to the Contractor
292 31,102 acre-feet of Project Water for irrigation and M&I purposes. Cross Valley Contractors shall
293 have a primary priority to pumping capacity made available by the SWP for CVP purposes up to the
294 allocation made for CVP irrigation contractors south of the Delta. Allocations of water supply to
295 Cross Valley Contractors and any additional pumping capacity made available by SWP for Cross

296 Valley Contractors' purposes shall be addressed in the Operations Manual. Water Delivered to the
297 Contractor in accordance with this subdivision shall be scheduled, and paid for pursuant to the
298 provisions of Articles 4 and 7 of this Contract, attached exhibits, and the Operations Manual
299 (including any subsequent modifications thereto).

300 (b) Because the capacity of the Project to deliver Project Water has been
301 constrained in recent years and may be constrained in the future due to many factors including
302 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
303 actually receiving the full amount of Project Water set out in subdivision (a) of this Article in any
304 given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that
305 the Contract Total set forth in this Contract will not be available to the Contractor in many years.
306 During the most recent five years, the Recent Historic Average of water made available to the
307 Contractor was 20,465 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and
308 obligations of the parties under any provision of this Contract.

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

311 (d) The Contractor shall make reasonable and beneficial use of all water furnished
312 pursuant to this Contract. Groundwater recharge programs (direct, indirect or in lieu), groundwater
313 banking programs, surface water storage programs, and other similar programs utilizing Project
314 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
315 Area which are consistent with applicable State law and result in use consistent with Federal
316 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in
317 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
318 further, That such water conservation plan demonstrates sufficient lawful uses exist in the

319 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is
320 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.
321 Groundwater recharge programs, groundwater banking programs, surface water storage programs,
322 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract
323 conducted outside the Contractor's Service Area may be permitted upon written approval of the
324 Contracting Officer, which approval will be based upon environmental documentation, Project Water
325 rights, and Project operational concerns. The Contracting Officer will address such concerns in
326 regulations, policies, or guidelines.

327 (e) The Contractor shall comply with requirements applicable to the Contractor in
328 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
329 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
330 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
331 excess of 29 years of diversions for irrigation and/or M&I purposes of the quantities of water
332 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
333 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other
334 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
335 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
336 biological opinion or other environmental documentation referred to in this Article.

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

342 Contractor prior to making such a determination. If the Contracting Officer determines that Project
343 Water, or other water available to the Project, can be made available to the Contractor, the
344 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
345 soon as practicable. The Contracting Officer will thereafter meet with the Contractor and other
346 Project Contractors capable of taking such water to determine the most equitable and efficient
347 allocation of such water. If the Contractor requests the delivery of any quantity of such water, the
348 Contracting Officer shall make such water available to the Contractor in accordance with applicable
349 statutes, regulations, guidelines, and policies. If the Contracting Officer determines that there is an
350 unusually large water supply not otherwise storable for Project purposes or infrequent and otherwise
351 unmanaged flood flows of short duration from the Friant Division, then Friant Division Project Water
352 may be made available to the Contractor as Section 215 Water if the Contractor enters into a
353 temporary contract, not to exceed one year, with the United States for the delivery of such water or,
354 as otherwise provided for in Federal Reclamation law and associated regulations: Provided, That
355 such water shall be first made available to the original 28 long-term Friant Division contractors.
356 Water in addition to the quantities provided for in this Contract made available to the Contractor by
357 the Contracting Officer shall be scheduled, conveyed and/or stored by DWR only to the extent that
358 DWR has provided separate approval to do so.

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

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

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

376 (j) The Contracting Officer shall make reasonable efforts to protect the water
377 rights necessary for the Project and to provide the water available under this Contract. The
378 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
379 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
380 That the Contracting Officer retains the right to object to the substance of the Contractor’s position in
381 such a proceeding; Provided further, That in such proceedings the Contracting Officer shall recognize
382 the Contractor has a legal right under the terms of this Contract to use Project Water.

383 (k) Conveyance and/or storage of Project Water by DWR shall be subject to
384 capacity available in State Facilities in excess of capacity determined by DWR in its sole discretion
385 to be needed for all SWP operations. For purposes of determining the available capacity under this
386 Contract, the deliveries of Project Water to the Contractor shall not be considered a “service to
387 long-term SWP Contractors,” notwithstanding any arrangement the Contractor may have with a SWP

388 Contractor. Conveyance and/or storage for the Contractor may be curtailed prior or subsequent to
389 approval of the Contractor's schedule under Article 4 of this Contract, in the event DWR determines
390 it will interfere with the delivery of water to SWP Contractors or other SWP operations necessary to
391 meet long-term obligations of the SWP, including delivery of water to SWP storage or reregulation of
392 stored water for delivery to SWP Contractors.

393 (l) If in any Year after DWR and the Contracting Officer have approved a
394 schedule or any revision thereof submitted in accordance within subdivision (a) and (b) of Article 4
395 of this Contract, and if the Contracting Officer and/or DWR are unable to make water of suitable
396 quality available in the quantities and at the times requested in the schedule and the Contractor does
397 not elect to receive and does not receive such water at other times during such Year, then the
398 Contractor shall be entitled to an adjustments for overpayment as provided in subdivision (c) of
399 Article 7, subdivision (d) of Article 8, and Article 10 of this Contract. Notwithstanding any other
400 provision of law, this shall be the Contractor's sole remedy against the State of California, DWR, its
401 officers, agents, and employees for failure to deliver a quantity of water of suitable quality under this
402 Contract for any reason.

403 TIME FOR DELIVERY OF WATER

404 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
405 announce the Contracting Officer's expected declaration of the Water Made Available. Such
406 declaration will be expressed in terms of both Water Made Available and the Recent Historic
407 Average and will be updated monthly, and more frequently if necessary, based on then-current
408 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
409 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
410 basis of the estimate, with relevant supporting information, upon the written request of the

411 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
412 shall provide the Contractor with the updated Recent Historic Average. The declaration of Project
413 operations will be expressed in terms of both Water Made Available and the Recent Historic
414 Average.

415 (b) On or before each March 1 and at such other times as necessary, the
416 Contractor, after approval of the receiving agency on behalf of the Contractor, shall submit to DWR
417 and the Contracting Officer a written schedule, satisfactory to the Contracting Officer and consistent
418 with the criteria specified in the Operations Manual. The written schedule shall show the monthly
419 quantities of Project Water to be delivered by the United States to the Contractor pursuant to this
420 Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable
421 means to deliver Project Water according to the approved schedule for the Year commencing on such
422 March 1.

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

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

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

434 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

435 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
436 Contract shall be delivered to the Contractor at a point or points of delivery either on Project and/or
437 State facilities or another location or locations mutually agreed to in writing by the Contracting
438 Officer, DWR, and the Contractor. The parties acknowledge that Project Water to be furnished to the
439 Contractor pursuant to this Contract shall be conveyed by DWR and delivered to the Contractor by
440 direct delivery via the Cross Valley Canal and/or by exchange arrangements involving Arvin-Edison
441 Water Storage District or others. The parties further acknowledge that such exchange arrangements
442 are not transfers subject to Section 3405(a) of CVPIA. Notwithstanding Article 9 of this Contract,
443 such exchange arrangements, other than the previously approved exchange arrangements with Arvin-
444 Edison Water Storage District, shall be submitted to the Contracting Officer for approval in
445 accordance with principles historically applied by the Contracting Officer in approving Cross Valley
446 exchange arrangements. DWR shall have no obligation to make such exchange arrangements or be
447 responsible for water transported in facilities that are not a part of the SWP.

448 (b) Omitted.

449 (b2) When Project Water is made available by the Contracting Officer at Clifton
450 Court Forebay, or at other points mutually agreed to by the parties in accordance with Article 5,
451 DWR shall provide to the Contractor, subject to the availability of capacity as determined by DWR,
452 conveyance from the Delta and storage in DWR's share of storage at San Luis Reservoir, if
453 necessary, of such Project Water consistent with subdivision (k) of Article 3, the following
454 provisions, and the Operations Manual;

455 (1) The Contracting Officer shall deliver or cause to be delivered into the
456 DWR's Clifton Court Forebay, Project Water in such quantities and of such quality as shall be

457 sufficient to perform the Contracting Officer's and DWR's obligation to furnish water to the
458 Contractor as set forth in this contract. Such deliveries into Clifton Court Forebay shall be made at
459 such times and rates of flow as the Contracting Officer and DWR shall agree.

460 (2) DWR, in accordance with an approved Project Water delivery
461 schedule, shall convey the amount of water delivered into DWR's Clifton Court Forebay by the
462 Contracting Officer directly: (i) to turnouts from the California Aqueduct from Reaches 3 through
463 16A or to other points of diversion mutually agreed to in writing by DWR and the Contractor, or (ii)
464 to DWR or Federal share of storage in San Luis Reservoir for later release and delivery to the
465 Contractor or (iii) to replace water delivered to the Contractor from DWR's share of San Luis
466 Reservoir prior to DWR receiving Project Water from the Contracting Officer, to the extent DWR
467 determines under subdivision (k) of Article 3 that capacity (and water in the event of an exchange) is
468 available for such conveyance, storage, or exchange (if any). Such deliveries of Project Water shall
469 be required to be made pursuant to subdivision (k) of Article 3 and in a manner which will not
470 increase the cost of or adversely affect SWP operations and the quantity or quality of water deliveries
471 to SWP Contractors.

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

476 (4) The total amount of Project Water delivered at Clifton Court Forebay to
477 DWR by the Contracting Officer shall include water to compensate DWR for water conveyance and
478 storage losses incurred in the delivery of Project Water to the Contractor. The amount of such

479 conveyance and storage losses will be determined pursuant to procedures set forth in the Operations
480 Manual.

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

485 (6) Priorities for use of DWR's share of storage at San Luis Reservoir for
486 storage of Project Water shall be subject to subdivision (k) of Article 3 and all DWR obligations to
487 the SWP operations and SWP Contractors and to the criteria specified in the Operations Manual.

488 (7) Subject to the necessary arrangements, the Contracting Officer shall
489 transmit or cause to be transmitted, by exchange or otherwise, such quantities of power as shall be
490 required by DWR to pump through its Delta Pumping Plant and its share of Dos Amigos Pumping
491 Plant, the quantities of Project Water transported into Clifton Court Forebay pursuant to (1) of this
492 subdivision.

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

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

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

506 (b4) Project Water may be provided by the Contracting Officer to the Contractor, at
507 the Contractor's request and subject to the terms and conditions of this Contract, through Federal
508 Delta diversion and conveyance facilities and/or stored in the Federal share of storage at San Luis
509 Reservoir for reregulation for later delivery to the Contractor to the extent such diversion,
510 conveyance and/or storage does not diminish the ability of the Project to deliver Project Water to
511 users in the Delta Division, San Luis Unit and San Felipe Division service areas pursuant to existing
512 contracts and assignments or any renewals thereof, to meet current Reclamation commitments to
513 Pajaro Valley Water Management Agency, or to meet other legal obligations of the Project including,
514 but not limited to agreements related to the joint operation of the state and Federal projects.

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

519 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
520 measured and recorded with equipment furnished, installed, operated, and maintained by the United
521 States, DWR or the Operating Non-Federal Entity/Entities at the point or points of delivery
522 established pursuant to subdivision (a) of this Article. Upon the request of either party to this
523 Contract, the Contracting Officer or DWR shall investigate, or cause to be investigated by the

524 appropriate Operating Non-Federal Entity, the accuracy of such measurements and shall take any
525 necessary steps to adjust any errors appearing therein. For any period of time when accurate
526 measurements have not been made, the Contracting Officer shall consult with the Contractor and the
527 appropriate Operating Non-Federal Entity prior to making a final determination of the quantity
528 delivered for that period of time.

529 (e) Neither the Contracting Officer, nor DWR, nor any Operating Non-Federal
530 Entity/Entities shall be responsible for the control, carriage, handling, use, disposal, or distribution of
531 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
532 subdivision (a) of this Article. The Contractor shall indemnify the United States, DWR, and their
533 officers, employees, agents, and assigns on account of damage or claim of damage of any nature
534 whatsoever for which there is legal responsibility, including property damage, personal injury, or
535 death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of
536 such Water Delivered beyond such delivery points, except for any damage or claim arising out of:
537 (i) acts or omissions of the Contracting Officer, DWR, or any of their officers, employees, agents, or
538 assigns, including the Operating Non-Federal Entity/Entities, with the intent of creating the situation
539 resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer, DWR, or any of
540 their officers, employees, agents, or assigns, including the Operating Non-Federal Entity/Entities;
541 (iii) negligence of the Contracting Officer or any of his officers, employees, agents, or assigns
542 including the Operating Non-Federal Entity/Entities; or (iv) damage or claims resulting from a
543 malfunction of facilities owned and/or operated by the United States, DWR, or the Operating Non-
544 Federal Entity/Entities; Provided, That the Contractor is not the Operating Non-Federal Entity that
545 owned or operated the malfunctioning facility(ies) from which the damage claim arose. In the event
546 any such claim or liability, referenced in this Article or otherwise arising from this Contract, is made

547 against DWR, its officers or its employees, the Contractor agrees to defend, indemnify and hold each
548 of them harmless from such claim to the extent such claim does not arise from an error or omission of
549 DWR related to the carriage and control of Project Water made available to the Contractor by the
550 Contracting Officer.

551 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

552 6. (a) The Contractor has established a measuring program satisfactory to the
553 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
554 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
555 water delivered for M&I purposes is measured at each M&I service connection. The water
556 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
557 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
558 maintaining and repairing all such measuring devices and implementing all such water measuring
559 methods at no cost to the United States. The Contractor shall use the information obtained from such
560 water measuring devices or water measuring methods to ensure its proper management of the water,
561 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
562 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided
563 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
564 from establishing and collecting any charges, assessments, or other revenues authorized by California
565 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
566 report described in subdivision (c) of Article 26.

567 (b) To the extent the information has not otherwise been provided, upon execution
568 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
569 the measurement devices or water measuring methods being used or to be used to implement

570 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
571 connections or alternative measurement programs approved by the Contracting Officer, at which such
572 measurement devices or water measuring methods are being used, and, if applicable, identifying the
573 locations at which such devices and/or methods are not yet being used including a time schedule for
574 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
575 within 60 days as to the adequacy of, and necessary modifications, if any, of the measuring devices or
576 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
577 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
578 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
579 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
580 which the Contractor shall modify said measuring devices and/or measuring methods as required by
581 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

588 (e) The Contractor shall inform the Contracting Officer, DWR, and the Operating
589 Non-Federal Entity/Entities on or before the 20th calendar day of each month of the quantity of
590 Irrigation and M&I Water taken during the preceding month.

591 RATES AND METHOD OF PAYMENT FOR WATER

592 7. (a) The Contractor shall pay the United States as provided in this Article for all
593 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
594 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
595 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
596 modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal
597 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
598 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or
599 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
600 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
601 this Contract are set forth in Exhibit “B,” as may be revised annually.

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

604 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
605 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
606 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
607 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
608 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
609 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
610 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
611 such notification shall revise Exhibit “B.”

612 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
613 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project

614 Water for the following Year and the computations and cost allocations upon which those Rates are
615 based. The Contractor shall be allowed not less than two months to review and comment on such
616 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
617 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
618 upcoming Year, and such notification shall revise Exhibit "B."

619 (c) Except as otherwise provided in the Operations Manual, at the time the
620 Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to
621 subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the
622 United States equal to the total amount payable pursuant to the applicable Rate(s) set under
623 subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
624 Contract during the first two calendar months of the Year. Before the end of the first month and
625 before the end of each calendar month thereafter, the Contractor shall make an advance payment to
626 the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to
627 be delivered pursuant to this Contract during the second month immediately following. Adjustments
628 between advance payments for Water Scheduled and payments at Rates due for Water Delivered
629 shall be made before the end of the following month; Provided, That any revised schedule submitted
630 by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water
631 Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance
632 payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in
633 advance of such payment. In any month in which the quantity of Water Delivered to the Contractor
634 pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
635 additional Project Water shall be delivered to the Contractor unless and until an advance payment at
636 the Rates then in effect for such additional Project Water is made. Final adjustment between the

637 advance payments for the Water Scheduled and payments for the quantities of Water Delivered
638 during each Year pursuant to this Contract shall be made as soon as practicable but no later than
639 April 30th of the following Year, or 60 days after the delivery of Project Water carried over under
640 subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

641 (d) The Contractor shall also make a payment in addition to the Rate(s) in
642 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
643 appropriate Tiered Pricing Component then in effect, before the end of the month following the
644 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
645 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
646 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
647 report for the subject month prepared by the Operating Non-Federal Entity/Entities or, if there is no
648 Operating Non-Federal Entity/Entities, by the Contracting Officer. The water delivery report shall be
649 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
650 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
651 adjustment of payments due to the United States for Charges for the next month. Any amount to be
652 paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant
653 to Article 20 of this Contract.

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

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

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

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

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

681 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
682 80 percent of the Contract Total, then before the end of the month following the month of delivery

683 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
684 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
685 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
686 one-half of the difference between the Rate established under subdivision (a) of this Article and the
687 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
688 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
689 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
690 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
691 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
692 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
693 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
694 Water Delivered.

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

702 (3) For purposes of determining the applicability of the Tiered Pricing
703 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
704 transfers to others but shall not include Project Water transferred to and the Contractor, nor shall it

705 include the additional water provided to the Contractor under the provisions of subdivision (f) of
706 Article 3 of this Contract.

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

714 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
715 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
716 upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the
717 delivery of the transferred Project Water to the transferee's point of delivery in accordance with the
718 then-applicable Project ratesetting policy. If the Contractor is receiving lower Rates and Charges
719 because of inability to pay and is transferring Project Water to another entity whose Rates and
720 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water
721 shall be the Contractor's Rates and Charges and will not be adjusted to reflect the Contractor's
722 inability to pay.

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

725 (n) With respect to the Rates for M&I Water the Contractor asserts that it is not
726 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
727 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the

728 Contractor does not waive any legal rights or remedies that it may have with respect to such disputed
729 issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor
730 may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or
731 imposition of any deficit charges accruing during the term of the Existing Contract and any preceding
732 interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of
733 any such deficit charges or interest in the Rates; (4) the application by the United States of payments
734 made by the Contractor under its Existing Contract and any preceding interim renewal contracts, if
735 applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees
736 that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of
737 any Project M&I contractor on any of these issues, and credits for payments heretofore made;
738 Provided, That the basis for such ruling is applicable to the Contractor.

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

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

744 8. (a) To the extent Project Water is conveyed through State Facilities, payment for
745 conveyance of water through the State Facilities shall be made by the Contractor directly to DWR.
746 Exhibit "C" sets forth the charges and interest rates applicable at the time this long-term renewal
747 contract is executed. DWR shall invoice the Contractor monthly for all conveyance charges owing
748 for the previous month. Payment by the Contractor to DWR shall be due 30 days after the date of the
749 invoice. Any payment not received within 30 days after the date of the invoice shall be considered
750 delinquent. Delinquent charges shall be calculated in accordance with Exhibit "C" of this Contract;

751 Provided, That no interest shall be charged to or be paid by the Contractor unless such delinquency
752 continues for more than 30 days in total.

753 (b) Omitted.

754 (c) Conveyance charges for the Contractor shall be determined by DWR on the
755 same basis it uses to determine conveyance charges for use of SWP facilities by entities that are not
756 SWP contractors. The method for determining this charge is described in DWR's annual Bulletin
757 132. The charge for conveyance of water under this Contract shall be set forth in Exhibit "C" of this
758 Contract and revised annually.

759 (1) In accordance with subdivision (c) of this Article, when DWR provides
760 conveyance directly from the Delta or from the Federal share of storage at San Luis Reservoir, the
761 unit conveyance charge shall equal at a minimum the sum of the following, as determined by DWR:

762 (i) The equivalent unit Transportation capital and Minimum OMP&R Costs for those reaches of the
763 California Aqueduct utilized for the delivery; (ii) The portion of the Delta Water Rate for Reaches 1,
764 2A, 2B and 3 of the California Aqueduct; (iii) The replacement component of the transportation
765 Variable OM&R Costs for the Harvey O. Banks Delta Pumping Plant and DWR's share of the Dos
766 Amigos Pumping Plant; (iv) A charge to offset direct fish losses associated with pumping at the
767 Banks Pumping Plant, pursuant to the December 30, 1986, agreement between the California
768 Department of Fish and Game and DWR; and (v) The incremental costs, if any, caused by the
769 conveyance and delivery of Project Water to the Contractor which, unless included in the increased
770 charges to the Contractor, would result in increased charges to the SWP Contractors or increased
771 costs to DWR.

772 (2) When DWR provides conveyance from the State's share of storage in
773 San Luis Reservoir, the unit charge shall equal the sum of the following as determined by DWR: (i)

774 The San Luis Facilities portion of the Delta Water Rate; (ii) The net unit energy cost to replace water
775 in San Luis Reservoir; and (iii) The sum of all unit charges provided under subdivision (c)(1) of this
776 Article.

777 (d) Should DWR deliver Project Water to San Luis Reservoir on behalf of the
778 Contractor and it is later determined by DWR that capacity to store such Project Water in DWR's
779 share of San Luis Reservoir is no longer available because of need for such storage to meet SWP
780 operations and obligations to SWP Contractors and the Contractor cannot take delivery of such
781 Project Water, DWR shall relieve the Contractor of its obligations to pay DWR for all such Project
782 Water so transported, stored, and no longer available to the Contractor. DWR shall reimburse the
783 Contractor for payments which have previously been made to DWR for any such conveyed and
784 stored supply, less the administrative charge described in subdivision (f) of this Article.

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

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

791 SALES, TRANSFERS, OR EXCHANGES OF WATER

792 9. (a) The right to receive Project Water provided for in this Contract may be sold,
793 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
794 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
795 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
796 Contract may take place without the prior written approval of the Contracting Officer, except as

797 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
798 approved absent all appropriate environmental documentation including but not limited to documents
799 prepared pursuant to NEPA and ESA. Such environmental documentation should include, as
800 appropriate, an analysis of groundwater impacts and economic and social effects, including
801 environmental justice, of the proposed water transfers on both the transferor and transferee. No sale,
802 transfer or exchange of the right to Project Water under this Contract may take place without the prior
803 written approval of the Contracting Officer and of DWR, if SWP Facilities are used to convey such
804 water.

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

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

829 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

846 (c) In the event that the Contractor contests the accuracy of any statement
847 submitted to it by DWR pursuant to this Contract it shall give DWR notice thereof at least ten days
848 prior to the day upon which payment of the stated amount is due. To the extent that DWR finds that
849 the Contractor's contentions regarding the statement are correct, it shall revise the statement
850 accordingly, and the Contractor shall make payment of the revised amounts on or before the due date.
851 To the extent that DWR does not find the Contractor's contentions to be correct, or where time is not
852 available for review of such contentions for correctness prior to due date, the Contractor shall make
853 payment of the stated amounts on or before the due date, but may make the contested part of such
854 payment under protest and seek an adjustment as described in subdivision (d) of this Article.

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

860 TEMPORARY REDUCTIONS-RETURN FLOWS

861 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and State
862 Facilities and the requirements of Federal law; (ii) the authorized purposes and priorities of the State
863 Facilities and State laws and policies governing the SWP; (iii) the obligations of the United States

864 and DWR under existing contracts, or renewals thereof, providing for water deliveries from the
865 Project and State Facilities; and (iv) the terms and conditions of this Contract; the Contracting Officer
866 and DWR shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as
867 provided in this Contract.

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

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

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

895 (c) In any Year in which there may occur a shortage for any of the reasons
896 specified in subdivision (b) of this Article, the Contracting Officer shall apportion the available
897 Project Water supply among the Contractors and others entitled, under existing contracts and future
898 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of Section
899 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the contractual
900 obligations of the United States.

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

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

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

917 UNAVOIDABLE GROUNDWATER PERCOLATION

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

922 RULES AND REGULATIONS

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

927 WATER AND AIR POLLUTION CONTROL

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

931

QUALITY OF WATER

932 16. (a) Project and State Facilities used to deliver Project Water to the Contractor
933 pursuant to this Contract shall be operated and maintained to enable the United States and DWR to
934 deliver Project Water to the Contractor in accordance with the water quality standards specified in
935 subsection 2(b) of the Act of August 26, 1937 (50 Stat. 850), as added by Section 101 of the Act of
936 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States and DWR are
937 under no obligation to construct or furnish water treatment facilities to maintain or to improve the
938 quality of Water Delivered to the Contractor pursuant to this Contract. The United States and DWR
939 do not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

946 WATER ACQUIRED BY THE CONTRACTOR
947 OTHER THAN FROM THE UNITED STATES

948 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
949 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
950 be simultaneously transported through the same distribution facilities of the Contractor subject to the
951 following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were
952 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
953 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
954 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the

955 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
956 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
957 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
958 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
959 Water and non-Project water are/were constructed with funds made available pursuant to Federal
960 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
961 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
962 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
963 cost to the Federal Government, including interest of storing or delivering non-Project water, which
964 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
965 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
966 The incremental fee per acre is the mathematical result of such quotient times the interest rate
967 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
968 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
969 receives non-Project water through Federally financed or constructed facilities. The incremental fee
970 calculation methodology will continue during the term of this Contract absent promulgation of a
971 contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded
972 the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule,
973 regulation, or policy is adopted it shall supersede this provision. The Contractor and the Contracting
974 Officer concur that, as of the effective date of this Contract, the Contractor has a distribution system
975 that was constructed without the use of Federally financed funds. The use of this distribution system
976 is not subject to the provisions of this subdivision of this Article. A separate written agreement with
977 DWR must be obtained by the Contractor prior to conveyance of such water in State Facilities.

978 (b) Omitted.

979 OPINIONS AND DETERMINATIONS

980 18. (a) Where the terms of this Contract provide for actions to be based upon the
981 opinion or determination of any party to this Contract, said terms shall not be construed as permitting
982 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations.
983 The parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek
984 relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or
985 determination. Each opinion or determination by any party shall be provided in a timely manner.
986 Nothing in subdivision (a) of Article 18 of this Contract is intended to or shall affect or alter the
987 standard of judicial review applicable under Federal law to any opinion or determination
988 implementing a specific provision of Federal law embodied in statute or regulation.

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

994 COORDINATION AND COOPERATION

995 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
996 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
997 affected Project Contractors, in order to improve the operation and management of the Project. The
998 communication, coordination, and cooperation regarding operations and management shall include,
999 but not be limited to, any action which will or may materially affect the quantity or quality of Project
1000 Water supply, the allocation of Project Water supply, and Project financial matters including, but not

1001 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
1002 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
1003 authority for all actions, opinions, and determinations to be made by the respective party.

1004 (b) Within 120 days following the effective date of this Contract, the Contractor,
1005 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
1006 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
1007 amended as necessary separate and apart from this Contract. The goal of this process shall be to
1008 provide, to the extent practicable, the means of mutual communication and interaction regarding
1009 significant decisions concerning Project operation and management on a real-time basis.

1010 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract,
1011 it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

1012 (1) The Contracting Officer will, at the request of the Contractor, assist in
1013 the development of integrated resource management plans for the Contractor. Further, the
1014 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
1015 improve water supply, water quality, and reliability.

1016 (2) The Secretary will, as appropriate, pursue program and project
1017 implementation and authorization in coordination with Project Contractors to improve the water
1018 supply, water quality, and reliability of the Project for all Project purposes.

1019 (3) The Secretary will coordinate with Project Contractors and the State of
1020 California to seek improved water resource management.

1021 (4) The Secretary will coordinate actions of agencies within the
1022 Department of the Interior that may impact the availability of water for Project purposes.

1023 (5) The Contracting Officer shall periodically, but not less than annually,
1024 hold division level meetings to discuss Project operations, division level water management
1025 activities, and other issues as appropriate.

1026 (d) Without limiting the contractual obligations of the Contracting Officer under
1027 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
1028 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
1029 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
1030 the physical integrity of structures or facilities.

1031 CHARGES FOR DELINQUENT PAYMENTS

1032 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
1033 on delinquent installments or payments. When a payment is not received by the due date, the
1034 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
1035 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
1036 charge to cover additional costs of billing and processing the delinquent payment. When a payment
1037 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
1038 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
1039 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
1040 payment.

1041 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
1042 the Federal Register by the Department of the Treasury for application to overdue payments, or the
1043 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation
1044 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due
1045 date and remain fixed for the duration of the delinquent period.

1046 (c) When a partial payment on a delinquent account is received, the amount
1047 received shall be applied, first to the penalty, second to the administrative charges, third to the
1048 accrued interest, and finally to the overdue payment.

1049 EQUAL OPPORTUNITY

1050 21. During the performance of this Contract, the Contractor agrees as follows:

1051 (a) The Contractor will not discriminate against any employee or applicant for
1052 employment because of race, color, religion, sex, or national origin. The Contractor will take
1053 affirmative action to ensure that applicants are employed, and that employees are treated during
1054 employment, without regard to their race, color, religion, sex, or national origin. Such action shall

1055 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
1056 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
1057 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
1058 conspicuous places, available to employees and applicants for employment, notices to be provided by
1059 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1060 (b) The Contractor will, in all solicitations or advertisements for employees placed
1061 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
1062 employment without discrimination because of race, color, religion, sex, or national origin.

1063 (c) The Contractor will send to each labor union or representative of workers with
1064 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
1065 provided by the Contracting Officer, advising the said labor union or workers' representative of the
1066 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
1067 shall post copies of the notice in conspicuous places available to employees and applicants for
1068 employment.

1069 (d) The Contractor will comply with all provisions of Executive Order
1070 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
1071 the Secretary of Labor.

1072 (e) The Contractor will furnish all information and reports required by said
1073 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1074 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
1075 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
1076 regulations, and orders.

1077 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1078 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1079 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
1080 for further Government contracts in accordance with procedures authorized in said amended
1081 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said
1082 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
1083 by law.

1084 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1085 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1086 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1087 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
1088 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
1089 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,
1090 That in the event the Contractor becomes involved in, or is threatened with, litigation with a
1091 subcontractor or vendor as a result of such direction, the Contractor may request the United States to
1092 enter into such litigation to protect the interests of the United States.

1093 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1094 22. (a) The obligation of the Contractor to pay the United States and DWR as
1095 provided in this Contract is a general obligation of the Contractor notwithstanding the manner in
1096 which the obligation may be distributed among the Contractor's water users and notwithstanding the
1097 default of individual water users in their obligations to the Contractor.

1098 (b) The payment of charges becoming due hereunder is a condition precedent to
1099 receiving benefits under this Contract. The United States and DWR shall not make water or
1100 conveyance facilities available to the Contractor through Project or State Facilities during any period
1101 in which the Contractor may be in arrears in the advance payment of water rates due the United
1102 States. The Contractor shall not furnish water made available pursuant to this Contract for lands or
1103 parties which are in arrears in the advance payment of water rates levied or established by the
1104 Contractor.

1105 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1106 obligation to require advance payment for water rates which it levies. Subdivision (b) of this Article
1107 applies to periods when the Contractor is in arrears on payment of charges to DWR.

1108 (d) If in any year the Contractor fails or is unable to raise sufficient funds by other
1109 means, the governing body of the Contractor shall levy upon all property within the Contractor's
1110 boundary not exempt from taxation, a special assessment sufficient to provide for all payments due
1111 the United States and DWR under this Contract.

1112 (e) Assessments levied by the governing body of the Contractor pursuant to
1113 subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor charged
1114 with the duty of enforcing and collecting assessments levied by the Contractor.

1115 (f) All money collected by way of special assessments under this Article for
1116 payments due DWR shall be kept in a separate fund by the treasurer or other officer of the Contractor
1117 charged with the safekeeping and disbursement of funds of the Contractor, and, upon the written

1118 demand of DWR, the treasurer or other officer shall pay over to DWR all money in his possession or
1119 control then due DWR under this Contract, which money shall be applied by DWR to the satisfaction
1120 of the amount due under this Contract.

1121 (g) In the event of failure, neglect, or refusal of any officer of the Contractor to
1122 levy any assessment necessary to provide payment by the Contractor under this Contract, to enforce
1123 or to collect the assessment, or to pay over to the United States or DWR any money then due
1124 collected on the assessment, either or both DWR and the United States may take such action in a
1125 court of competent jurisdiction as they deem necessary to compel the performance in their proper
1126 sequence of all such duties. Action taken pursuant hereto shall not deprive DWR or United States or
1127 limit any remedy provided by this Contract or by law for the recovery of money due or which may
1128 become due under this Contract.

1129 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1130 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
1131 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1132 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1133 well as with their respective implementing regulations and guidelines imposed by the U.S.
1134 Department of the Interior and/or Bureau of Reclamation.

1135 (b) These statutes require that no person in the United States shall, on the grounds
1136 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1137 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1138 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1139 agrees to immediately take any measures necessary to implement this obligation, including permitting
1140 officials of the United States to inspect premises, programs, and documents.

1141 (c) The Contractor makes this agreement in consideration of and for the purpose
1142 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1143 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1144 installment payments after such date on account of arrangements for Federal financial assistance
1145 which were approved before such date. The Contractor recognizes and agrees that such Federal
1146 assistance will be extended in reliance on the representations and agreements made in this Article,
1147 and that the United States reserves the right to seek judicial enforcement thereof.

1148

PRIVACY ACT COMPLIANCE

1149 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1150 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1151 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1152 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
1153 Stat. 1266), and pursuant to 43 CFR 426.18.

1154 (b) With respect to the application and administration of the criminal penalty
1155 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1156 for maintaining the certification and reporting records referenced in (a) above are considered to be
1157 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1158 (c) The Contracting Officer or a designated representative shall provide the
1159 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1160 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1161 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1162 contained in the Landholder's certification and reporting records.

1163 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1164 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1165 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1166 authorized to grant requests by individuals for access to their own records.

1167 (e) The Contractor shall forward promptly to the System Manager each proposed
1168 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1169 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1170 information and records necessary to prepare an appropriate response to the requester. These
1171 requirements do not apply to individuals seeking access to their own certification and reporting forms
1172 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1173 Act as a basis for the request.

1174

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1175 25. In addition to all other payments to be made by the Contractor pursuant to this
1176 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1177 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1178 direct cost incurred by the United States for work requested by the Contractor associated with this
1179 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1180 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in

1181 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1182 administration.

WATER CONSERVATION

1183 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1184 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1185 implementing an effective water conservation and efficiency program based on the Contractor's water
1186 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1187 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1188 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1189 economically feasible water conservation measures, and time schedules for meeting those objectives.
1190 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1191 continued implementation of such water conservation program. In the event the Contractor's water
1192 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1193 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1194 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1195 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1196 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1197 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1198 program in accordance with the time schedules therein.

1199 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1200 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1201 the Best Management Practices identified by the time frames issued by the California Urban Water

1202 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1203 Officer to be inappropriate for the Contractor.

1204 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1205 its implementation of the water conservation plan on the reporting dates specified in the then existing
1206 conservation and efficiency criteria established under Federal law.

1207 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1208 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1209 established under Federal law and submit such revised water management plan to the Contracting
1210 Officer for review and evaluation. The Contracting Officer will then determine if the water
1211 conservation plan meets Reclamation's then-current conservation and efficiency criteria for
1212 evaluating water conservation plans established under Federal law.

1213 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1214 be described in the Contractor's water conservation plan.

1215 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1216 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1217 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1218 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1219 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1220 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1221 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1222 Reclamation law.

1223 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1224 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1225 responsibility for funding a portion of the costs of such O&M, have been transferred to two Operating
1226 Non-Federal Entities by separate agreements between the United States and the Operating
1227 Non-Federal Entities. Those separate agreements shall not interfere with or affect the rights or
1228 obligations of the Contractor or the United States hereunder. Specifically, portions of the Delta-
1229 Mendota Canal, the San Luis Canal and other related facilities are operated by the San Luis & Delta-
1230 Mendota Water Authority and the Friant-Kern Canal and related facilities are operated by the Friant
1231 Water Authority.

1232 (b) The Contractor shall pay directly to the applicable Operating Non-Federal
1233 Entity, or to any successor approved by the Contracting Officer under the terms and conditions of the
1234 separate agreements between the United States and the Operating Non-Federal Entity/Entities
1235 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including
1236 any assessment for reserve funds, which the Operating Non-Federal Entities or such
1237 successor/successors determines, sets, or establishes for the O&M of the portion of the Project
1238 facilities operated and maintained by the Operating Non-Federal Entity or such successor. Such
1239 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1240 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project
1241 Rates, Charges, and Tiered Pricing Component(s) except to the extent the Operating
1242 Non-Federal Entity collects payments on behalf of the United States in accordance with the separate
1243 agreement identified in subdivision (a) of this Article.

1244 (c) For so long as the O&M of any portion of the Project facilities serving the
1245 Contractor is performed by the Operating Non-Federal Entities, or any successors thereto, the

1246 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1247 Contract representing the cost associated with the activity being performed by the Operating
1248 Non-Federal Entities or their successors.

1249 (d) In the event the O&M of the Project facilities operated and maintained by the
1250 Operating Non-Federal Entity/Entities is re-assumed by the United States during the term of this
1251 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1252 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1253 Contractor for Project Water under this Contract representing the O&M costs of the portion of such
1254 Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of
1255 written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered
1256 Pricing Component specified in the revised Exhibit AB[®] directly to the United States in compliance
1257 with Article 7 of this Contract.

1258 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1259 29. The expenditure or advance of any money or the performance of any obligation of the
1260 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1261 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1262 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1263 or allotted.

1264 BOOKS, RECORDS, AND REPORTS

1265 30. (a) The Contractor shall establish and maintain accounts and other books and
1266 records pertaining to administration of the terms and conditions of this Contract, including: the
1267 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1268 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1269 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1270 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1271 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1272 during office hours to examine and make copies of the other party's books and records relating to
1273 matters covered by this Contract.

1274 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1275 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1276 such books, records, or information are reasonably related to the administration or performance of
1277 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1278 to provide the requested books, records, or information.

1279 (c) At such time as the Contractor provides information to the Contracting Officer
1280 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1281 Operating Non-Federal Entity/Entities.

1282 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1283 31. (a) The provisions of this Contract shall apply to and bind the successors and
1284 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1285 therein shall be valid until approved in writing by the Contracting Officer.

1286 (b) The assignment of any right or interest in this Contract by a party shall not
1287 interfere with the rights or obligations of the other parties to this Contract absent the written
1288 concurrence of said other parties.

1289 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1290 of any proposed assignment.

1291 (d) No assignment or transfer of any rights to use State Facilities authorized by
1292 this Contract shall be valid without advance written approval by DWR.

1293 SEVERABILITY

1294 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1295 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1296 association or other form of organization whose primary function is to represent parties to Project
1297 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1298 enforceability of a provision included in this Contract and said person, entity, association, or

1299 organization obtains a final court decision holding that such provision is legally invalid or
1300 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1301 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1302 decision identify by mutual agreement the provisions in this Contract which must be revised and
1303 (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods
1304 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1305 actions designated above, to the extent it can do so without violating any applicable provisions of
1306 law, the United States shall continue to make the quantities of Project Water specified in this Contract
1307 available to the Contractor pursuant to the provisions of this Contract which were not found to be
1308 legally invalid or unenforceable in the final court decision.

1309 RESOLUTION OF DISPUTES

1310 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1311 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1312 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1313 any matter to Department of Justice, the party shall provide to the other party 30 days= written notice
1314 of the intent to take such action; Provided, That such notice shall not be required where a delay in
1315 commencing an action would prejudice the interests of the party that intends to file suit. During the
1316 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt
1317 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge
1318 any right or remedy that the Contractor or the United States may have.

1319 OFFICIALS NOT TO BENEFIT

1320 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1321 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1322 manner as other water users or landowners.

1323 CHANGES IN CONTRACTOR'S SERVICE AREA

1324 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1325 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1326 except upon the Contracting Officer's written consent.

1327 (b) Within 30 days of receipt of a request for such a change, the Contracting
1328 Officer will notify the Contractor of any additional information required by the Contracting Officer
1329 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1330 timely completion of the process. Such process will analyze whether the proposed change is likely
1331 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability
1332 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1333 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1334 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1335 NEPA and ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer
1336 in this process, and such costs will be paid in accordance with Article 25 of this Contract. Upon
1337 approval by the Contracting Officer, the Contractor shall promptly give notice of any such change in
1338 Contractor's Service Area to DWR.

1339 FEDERAL LAWS

1340 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1341 validity or application in connection with the performance of the terms and conditions of this
1342 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1343 terms and conditions of this Contract unless and until relief from application of such Federal law or
1344 regulation to the implementing provision of the Contract is granted by a court of competent
1345 jurisdiction.

1346

NOTICES

1347 37. Any notice, demand, or request authorized or required by this Contract shall be
1348 deemed to have been given; mailed, postage prepaid; or delivered to the Area Manager,
1349 South-Central California Area Office, 1243 “N” Street, Fresno, California 93721; to the Chief, State
1350 Water Project Analysis Office, Department of Water Resources, P .O. Box 942836, Sacramento,
1351 California 94236-0001; and to the Board of Directors of the Pixley Irrigation District, P. O. Box 477,
1352 Pixley, California 93256. The designation of the addressee or the address may be changed by notice
1353 given in the same manner as provided in this Article for other notices.

1354

CONFIRMATION OF CONTRACT

1355 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1356 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1357 Contract. The Contractor shall furnish both the United States and DWR with a certified copy of the
1358 final decree, the validation proceedings, and all pertinent supporting records of the court approving
1359 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the
1360 Contractor.

1361 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1362 year first above written.

1363 THE UNITED STATES OF AMERICA

1364 By: _____
1365 Regional Director, Mid-Pacific Region
1366 Bureau of Reclamation

1367 Approved as to Legal Form and DEPARTMENT OF WATER RESOURCES
1368 Sufficiency: OF THE STATE OF CALIFORNIA

1369 By: _____ By: _____
1370 Chief Counsel, Director,
1371 Department of Water Resources Department of Water Resources

1372 (SEAL) PIXLEY IRRIGATION DISTRICT

1373 By: _____
1374 President of the Board of Directors

1375 Attest:

1376 By: _____
1377 Secretary of the Board of Directors

1378 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-20-04 Pixley ID Final Draft LTRC with
1379 exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
PIXLEY IRRIGATION DISTRICT
Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the contract to reflect the current Rates and Charges.

	<u>2004 Rates Per Acre-Foot</u>	
	<u>Banks Joint Point Pumping</u>	
	<u>Irrigation Water</u>	<u>M&I Water</u>
O&M AND COST-OF-SERVICE RATES:		
Capital Rates:		
Cross Valley Conveyance (if applicable)	\$5.52	**
O&M Rates:		
Water Marketing	\$7.59	
Storage	\$5.83	
Direct Pumping (Project Use Energy)	\$3.25	
Dos Amigos	4/	
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
TOTAL COST-OF-SERVICE RATES:	\$22.19	
FULL-COST RATES:		
Section 202(3) Rate is applicable to a Qualified recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$30.38	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$32.95	
SURCHARGES UNDER P.L 102-575 TO RESTORATION FUND*		
Restoration Payments [3407(d)(2)(A)]	\$7.82	

The surcharges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1/01-9/30/02).

** M&I Rates will be calculated when needed.

4/ - Conveyance and Conveyance Pumping operation and maintenance costs were removed for ratesetting purposes and are to be direct billed.

