

Irrigation and M&I
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 Rev. SCCAO Draft 10/17-2004
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 Contract No.
 14-06-200-8293A-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 THE COUNTY OF TULARE
 PROVIDING FOR PROJECT WATER SERVICE

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
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5 LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
6 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
7 AND THE COUNTY OF TULARE
8 PROVIDING FOR PROJECT WATER SERVICE

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

23 a public agency of the State of California, duly organized, existing, and acting pursuant to the
24 laws thereof;

25 WITNESSETH, That:

26 EXPLANATORY RECITALS

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

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

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

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

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

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

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

50 [4th] WHEREAS, the Contractor and the United States entered into
51 Contract No. 14-06-200-8293A, as amended, which established terms for the delivery to the
52 Contractor of Project Water via the Cross Valley Canal from November 10, 1975, through
53 February 29, 1996; and

54 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
55 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
56 interim renewal contract(s) identified as Contract No(s). 14-06-200-8293A-IR1, -IR2, -IR3,
57 -IR4, -IR5, -IR6, -IR7, and -IR8, the current of which is hereinafter referred to as the Existing
58 Contract, which provided for the continued water service to the Contractor from March 1, 2004,
59 through February 28, 2005; and

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

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

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

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

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

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

81 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
82 agricultural areas within California for more than 50 years, and is considered by the Contractor
83 as an essential portion of its water supply; and

84 [12th] WHEREAS, the economies of regions within the Project, including the
85 Contractor's, depend upon the continued availability of water, including water service from the
86 Project; and

87 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
88 partnerships to pursue measures to improve water supply, water quality, and reliability of the
89 Project for all Project purposes; and

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

96 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
97 relationship in order to achieve their mutual goals; and

98 [15.2] WHEREAS, the Contractor desires to contract with DWR for conveyance of
99 Project Water through the facilities of the State Water Project (SWP) as aforesaid under an
100 arrangement wherein the United States will furnish the necessary power for pumping such water
101 through DWR's Delta Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-
102 existing CVP Project use power policy; and

103 [15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject
104 to needs and obligations of the SWP and the availability of transportation capacity and payment
105 of costs as herein provided; and

106 [16th] WHEREAS, the United States, DWR, and the Contractor are willing to enter into
107 this Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

110 DEFINITIONS

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

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

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

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

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

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

126 (f) "Contractor's Service Area" or, if applicable, "Subcontractor's Service
127 Area," shall mean the area to which the Contractor is permitted to provide Project Water under
128 this Contract as described in Exhibit "A" attached hereto, which may be modified from time to
129 time in accordance with Article 35 of this Contract without amendment of this Contract;

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

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

135 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
136 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
137 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

141 (j) "Full Cost Rate" shall mean an annual water rate as determined by
142 the Contracting Officer that shall amortize the expenditures for construction properly allocable to
143 the Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
144 deficits funded, less payments, over such periods as may be required under Federal Reclamation
145 law, or applicable contract provisions. Interest will accrue on both the construction expenditures
146 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
147 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
148 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes
149 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules
150 and Regulations for the RRA;

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

153 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable
154 to the delivery of Irrigation Water;

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

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

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

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

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

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

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

178 (r2) "Operations Manual" shall mean the manual setting forth detailed
179 operations and management procedures prepared by DWR, the Contracting Officer and the
180 Contractor;

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

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

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

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

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

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

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

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

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

204 (x5) “Subcontractor” shall mean an individual, group of individuals,
205 organization, or entity in the County who contracts with the Contractor to use Water Made
206 Available to the Contractor under this Contract;

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

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

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

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

218 (bb) “Water Scheduled” shall mean Project Water made available to the
219 Contractor for which times and quantities for delivery have been established by the Contractor
220 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

221 (cc) “Year” shall mean the period from and including March 1 of each
222 Calendar Year through the last day of February of the following Calendar Year.

223 TERM OF CONTRACT

224 2. (a) This Contract shall be effective March 1, 2005, through February 28,
225 2030. In the event the Contractor wishes to renew this Contract beyond February 28, 2030, the
226 Contractor shall submit a request for renewal in writing to the Contracting Officer no later than

227 two years prior to the date this Contract expires. The renewal of this Contract insofar as it
228 pertains to the furnishing of Irrigation Water to the Contractor shall be governed by subdivision
229 (b) of this Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I
230 Water to the Contractor shall be governed by subdivision (c) of this Article. The terms of this
231 Contract and its renewal insofar as it pertains to conveyance of water in SWP Facilities shall be
232 governed by subdivision (e) of this Article.

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

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

249 (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the
250 Contractor has the physical and legal ability to deliver Project Water.

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

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

269 (d) The Contracting Officer shall make a determination ten years after
270 the date of execution of this Contract, and every five years thereafter during the term of this
271 Contract, of whether a conversion of the relevant portion of this Contract to a contract under

272 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the
273 Act of July 2, 1956 (70 Stat. 483). The Contracting Officer shall also make a determination ten
274 years after the date of execution of this Contract and every five years thereafter during the term
275 of the Contract of whether a conversion of the relevant portion of this Contract to a contract
276 under subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.

277 Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights
278 and benefits under the Act of July 2, 1956 (70 Stat 483). The Contracting Officer anticipates that
279 during the term of this Contract, all authorized Project construction expected to occur will have
280 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all
281 costs that are properly assignable to the Contractor, and agrees further that, at any time after such
282 allocation is made, and subject to satisfaction of the conditions set out in this subdivision, this
283 Contract shall, at the request of the Contractor, be converted to a contract under subsection 9(d)
284 or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to applicable
285 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the
286 Contracting Officer. A condition for such conversion to occur shall be a determination by the
287 Contracting Officer that, account being taken of the amount credited to return by the Contractor
288 as provided for under Federal Reclamation law, the remaining amount of construction costs
289 assignable for ultimate return by the Contractor can probably be repaid to the United States
290 within the term of a contract under subsection 9(d) or 9(c) (1), whichever is applicable. If the
291 remaining amount of costs that are properly assignable to the Contractor cannot be determined
292 during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide
293 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
294 make such a determination as soon thereafter as possible so as to permit, upon request of the

295 Contractor and satisfaction of the conditions set out above, conversion to a contract under
296 subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of costs has
297 not been made at a time which allows conversion of this Contract during the term of this
298 Contract or the Contractor has not requested conversion of this Contract within such term, the
299 parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of
300 this Article a provision that carries forth in substantially identical terms the provisions of this
301 subdivision.

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

307 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

308 3. (a) During each Year, consistent with all applicable State water rights,
309 permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of
310 this Contract, the Contracting Officer shall make available in the Delta for delivery to the
311 Contractor 5,308 acre-feet of Project Water for irrigation and M&I purposes. Cross Valley
312 Contractors shall have a primary priority to pumping capacity made available by the SWP for
313 CVP purposes up to the allocation made for CVP irrigation contractors south of the Delta.
314 Allocations of water supply to Cross Valley Contractors and any additional pumping capacity
315 made available by SWP for Cross Valley Contractors' purposes shall be addressed in the
316 Operations Manual. Water Delivered to the Contractor in accordance with this subdivision shall

317 be scheduled, and paid for pursuant to the provisions of Articles 4 and 7 of this Contract,
318 attached exhibits, and the Operations Manual (including any subsequent modifications thereto).

319 (b) Because the capacity of the Project to deliver Project Water has been
320 constrained in recent years and may be constrained in the future due to many factors including
321 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
322 Contractor actually receiving the full amount of Project Water set out in subdivision (a) of this
323 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
324 PEIS projected that the Contract Total set forth in this Contract will not be available to the
325 Contractor in many years. During the most recent five years, the Recent Historic Average of
326 water made available to the Contractor was 3,493 acre-feet. Nothing in subdivision (b) of this
327 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

330 (d) The Contractor or, if applicable, Subcontractor, shall make reasonable and
331 beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs
332 (direct, indirect or in lieu), groundwater banking programs, surface water storage programs, and
333 other similar programs utilizing Project Water or other water furnished pursuant to this Contract
334 conducted within the Contractor's Service Area or, if applicable, Subcontractor's Service Area,
335 which are consistent with applicable State law and result in use consistent with Federal
336 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are)
337 described in the Contractor's or Subcontractor's water conservation plan submitted pursuant to
338 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
339 sufficient lawful uses exist in the Contractor's Service Area or, if applicable, Subcontractor's

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

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

359 (f) Following the declaration of Water Made Available under Article 4 of this
360 Contract, the Contracting Officer will make a determination whether Project Water, or other
361 water available to the Project, can be made available to the Contractor in addition to the Contract
362 Total under Article 3 of this Contract during the Year without adversely impacting other Project

363 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
364 Contractor prior to making such a determination. If the Contracting Officer determines that
365 Project Water, or other water available to the Project, can be made available to the Contractor,
366 the Contracting Officer will announce the availability of such water and shall so notify the
367 Contractor as soon as practicable. The Contracting Officer will thereafter meet with the
368 Contractor and other Project Contractors capable of taking such water to determine the most
369 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
370 quantity of such water, the Contracting Officer shall make such water available to the Contractor
371 in accordance with applicable statutes, regulations, guidelines, and policies. If the Contracting
372 Officer determines that there is an unusually large water supply not otherwise storable for Project
373 purposes or infrequent and otherwise unmanaged flood flows of short duration from the Friant
374 Division, then Friant Division Project Water may be made available to the Contractor as Section
375 215 Water if the Contractor enters into a temporary contract, not to exceed one year, with the
376 United States for the delivery of such water or, as otherwise provided for in Federal Reclamation
377 law and associated regulations: Provided, That such water shall be first made available to the
378 original 28 long-term Friant Division contractors. Water in addition to the quantities provided
379 for in this Contract made available to the Contractor by the Contracting Officer shall be
380 scheduled, conveyed and/or stored by DWR only to the extent that DWR has provided separate
381 approval to do so.

382 (g) The Contractor may request permission to reschedule for use during the
383 subsequent Year some or all of the Water Made Available to the Contractor during the current
384 Year referred to as “carryover”. The Contractor may request permission to use during the
385 current Year a quantity of Project Water which may be made available by the United States to

386 the Contractor during the subsequent Year referred to as “preuse”. The Contracting Officer’s
387 written approval may permit such uses in accordance with applicable statutes, regulations,
388 guidelines, and policies.

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

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

401 (j) The Contracting Officer shall make reasonable efforts to protect the water
402 rights necessary for the Project and to provide the water available under this Contract. The
403 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
404 extent permitted by law, in administrative proceedings related to the Project Water rights;
405 Provided, That the Contracting Officer retains the right to object to the substance of the
406 Contractor’s position in such a proceeding. Provided further, That in such proceedings the
407 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
408 Contract to use Project Water.

409 (k) Conveyance and/or storage of Project Water by DWR shall be subject to
410 capacity available in State Facilities in excess of capacity determined by DWR in its sole
411 discretion to be needed for all SWP operations. For purposes of determining the available
412 capacity under this Contract, the deliveries of Project Water to the Contractor shall not be
413 considered a “service to long-term SWP Contractors,” notwithstanding any arrangement the
414 Contractor may have with a SWP Contractor. Conveyance and/or storage for the Contractor may
415 be curtailed prior or subsequent to approval of the Contractor's schedule under Article 4 of this
416 Contract, in the event DWR determines it will interfere with the delivery of water to SWP
417 Contractors or other SWP operations necessary to meet long-term obligations of the SWP,
418 including delivery of water to SWP storage or reregulation of stored water for delivery to SWP
419 Contractors.

420 (l) If in any Year after DWR and the Contracting Officer have approved a
421 schedule or any revision thereof submitted in accordance within subdivision (a) and (b) of
422 Article 4 of this Contract, and if the Contracting Officer and/or DWR are unable to make water
423 of suitable quality available in the quantities and at the times requested in the schedule and the
424 Contractor does not elect to receive and does not receive such water at other times during such
425 Year, then the Contractor shall be entitled to an adjustments for overpayment as provided in
426 subdivision (c) of Article 7, subdivision (d) of Article 8, and Article 10 of this Contract.
427 Notwithstanding any other provision of law, this shall be the Contractor’s sole remedy against
428 the State of California, DWR, its officers, agents and employees for failure to deliver a quantity
429 of water of suitable quality under this Contract for any reason.

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TIME FOR DELIVERY OF WATER

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

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

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the

452 Contractor's Service Area or, if applicable, Subcontractor's Service Area, or to sell, transfer or
453 exchange pursuant to Article 9 of this Contract during any Year.

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

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

462 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

463 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
464 Contract shall be delivered to the Contractor at a point or points of delivery either on Project
465 and/or State facilities or another location or locations mutually agreed to in writing by the
466 Contracting Officer, DWR, and the Contractor. The parties acknowledge that Project Water to
467 be furnished to the Contractor pursuant to this Contract shall be conveyed by DWR and
468 delivered to the Contractor by direct delivery via the Cross Valley Canal and/or by exchange
469 arrangements involving Arvin-Edison Water Storage District or others. The parties further
470 acknowledge that such exchange arrangements are not transfers subject to Section 3405(a) of
471 CVPIA. Notwithstanding Article 9 of this Contract, such exchange arrangements, other than the
472 previously approved exchange arrangements with Arvin-Edison Water Storage District, shall be
473 submitted to the Contracting Officer for approval in accordance with principles historically
474 applied by the Contracting Officer in approving Cross Valley exchange arrangements. DWR

475 shall have no obligation to make such exchange arrangements or be responsible for water
476 transported in facilities that are not a part of the SWP.

477 (b) Omitted.

478 (b2) When Project Water is made available by the Contracting Officer at
479 Clifton Court Forebay, DWR shall provide to the Contractor, subject to the availability of
480 capacity as determined by DWR, conveyance from the Delta and storage in DWR's share of
481 storage at San Luis Reservoir, if necessary, of such Project Water consistent with subdivision (k)
482 of Article 3, the following provisions, and the Operations Manual;

483 (1) The Contracting Officer shall deliver or cause to be delivered into
484 the DWR's Clifton Court Forebay, or at points mutually agreed to by the parties in accordance
485 with Article 5, Project Water in such quantities and of such quality as shall be sufficient to
486 perform the Contracting Officer's and DWR's obligation to furnish water to the Contractor as set
487 forth in this contract. Such deliveries into Clifton Court Forebay shall be made at such times and
488 rates of flow as the Contracting Officer and DWR shall agree.

489 (2) DWR, in accordance with an approved Project Water delivery
490 schedule, shall convey the amount of water delivered into DWR's Clifton Court Forebay by the
491 Contracting Officer directly: (i) to turnouts from the California Aqueduct from Reaches 3
492 through 16A or to other points of diversion mutually agreed to in writing by DWR and the
493 Contractor, or (ii) to DWR or federal share of storage in San Luis Reservoir for later release and
494 delivery to the Contractor or (iii) to replace water delivered to the Contractor from DWR's share
495 of San Luis Reservoir prior to DWR receiving Project Water from the Contracting Officer, to the
496 extent DWR determines under subdivision (k) of Article 3 that capacity (and water in the event
497 of an exchange) is available for such conveyance, storage, or exchange (if any). Such deliveries

498 of Project Water shall be required to be made pursuant to subdivision (k) of Article 3 and in a
499 manner which will not increase the cost of or adversely affect SWP operations and the quantity
500 or quality of water deliveries to SWP Contractors.

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

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

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

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

518 (7) Subject to the necessary arrangements, the Contracting Officer
519 shall transmit or cause to be transmitted, by exchange or otherwise, such quantities of power as
520 shall be required by DWR to pump through its Delta Pumping Plant and its share of Dos Amigos

521 Pumping Plant, the quantities of Project Water transported into Clifton Court Forebay pursuant
522 to (1) of this subdivision.

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

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

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

537 (b4) Project Water may be provided by the Contracting Officer to the
538 Contractor, at the Contractor's request and subject to the terms and conditions of this Contract,
539 through Federal Delta diversion and conveyance facilities and/or stored in the Federal share of
540 storage at San Luis Reservoir for reregulation for later delivery to the Contractor to the extent
541 such diversion, conveyance and/or storage does not diminish the ability of the Project to deliver
542 Project Water to users in the Delta Division, San Luis Unit and San Felipe Division service areas
543 pursuant to existing contracts and assignments or any renewals thereof, to meet current

544 Reclamation commitments to Pajaro Valley Water Management Agency, or to meet other legal
545 obligations of the Project including, but not limited to agreements related to the joint operation of
546 the state and Federal projects.

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

552 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
553 measured and recorded with equipment furnished, installed, operated, and maintained by the
554 United States, DWR or the Operating Non-Federal Entity/Entities at the point or points of
555 delivery established pursuant to subdivision (a) of this Article. Upon the request of either party
556 to this Contract, the Contracting Officer or DWR shall investigate, or cause to be investigated by
557 the appropriate Operating Non-Federal Entity, the accuracy of such measurements and shall take
558 any necessary steps to adjust any errors appearing therein. For any period of time when accurate
559 measurements have not been made, the Contracting Officer shall consult with the Contractor and
560 the appropriate Operating Non-Federal Entity prior to making a final determination of the
561 quantity delivered for that period of time.

562 (e) Neither the Contracting Officer, nor DWR, nor any Operating
563 Non-Federal Entity/Entities shall be responsible for the control, carriage, handling, use, disposal,
564 or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the delivery
565 points specified in subdivision (a) of this Article. The Contractor shall indemnify the
566 United States, DWR, and their officers, employees, agents, and assigns on account of damage or

567 claim of damage of any nature whatsoever for which there is legal responsibility, including
568 property damage, personal injury, or death arising out of or connected with the control, carriage,
569 handling, use, disposal, or distribution of such Water Delivered beyond such delivery points,
570 except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or
571 any of his officers, employees, agents, or assigns, including the Operating Non-Federal
572 Entity/Entities, with the intent of creating the situation resulting in any damage or claim;
573 (ii) willful misconduct of the Contracting Officer, or any of his officers, employees, agents, or
574 assigns, including the Operating Non-Federal Entity/Entities; (iii) negligence of the Contracting
575 Officer, DWR, or any of their officers, employees, agents, or assigns including the Operating
576 Non-Federal Entity/Entities; or (iv) damage or claims resulting from a malfunction of facilities
577 owned and/or operated by the United States, DWR, or the Operating Non-Federal Entity/Entities;
578 Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated
579 the malfunctioning facility(ies) from which the damage claim arose. In the event any such claim
580 or liability, referenced in this Article or otherwise arising from this Contract, is made against
581 DWR, its officers or its employees, the Contractor agrees to defend, indemnify and hold each of
582 them harmless from such claim to the extent such claim does not arise from an error or omission
583 of DWR related to the carriage and control of Project Water made available to the Contractor by
584 the Contracting Officer.

585 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

586 6. (a) The Contractor has established a measuring program satisfactory to the
587 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
588 purposes within the Contractor's Service Area or, if applicable, Subcontractor's Service Area, is
589 measured at each agricultural turnout and such water delivered for M&I purposes is measured at

590 each M&I service connection. The water measuring devices or water measuring methods of
591 comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be
592 responsible for installing, operating, and maintaining and repairing all such measuring devices
593 and implementing all such water measuring methods at no cost to the United States. The
594 Contractor shall use the information obtained from such water measuring devices or water
595 measuring methods to ensure its proper management of the water, to bill water users for water
596 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by
597 customer class as defined in the Contractor's or, if applicable, Subcontractor's, water
598 conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however,
599 shall preclude the Contractor from establishing and collecting any charges, assessments, or other
600 revenues authorized by California law. The Contractor shall include a summary of all its annual
601 surface water deliveries in the annual report described in subdivision (c) of Article 26.

602 (b) To the extent the information has not otherwise been provided, upon
603 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
604 report describing the measurement devices or water measuring methods being used or to be used
605 to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
606 service connections or alternative measurement programs approved by the Contracting Officer,
607 at which such measurement devices or water measuring methods are being used, and, if
608 applicable, identifying the locations at which such devices and/or methods are not yet being used
609 including a time schedule for implementation at such locations. The Contracting Officer shall
610 advise the Contractor in writing within 60 days as to the adequacy of, and necessary
611 modifications, if any, of the measuring devices or water measuring methods identified in the
612 Contractor's report and if the Contracting Officer does not respond in such time, they shall be

613 deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices
614 or methods are inadequate, the parties shall within 60 days following the Contracting Officer's
615 response, negotiate in good faith the earliest practicable date by which the Contractor shall
616 modify said measuring devices and/or measuring methods as required by the Contracting Officer
617 to ensure compliance with subdivision (a) of this Article.

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

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

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

629 RATES AND METHOD OF PAYMENT FOR WATER

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

636 (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction,
637 electronic funds transfer, or any other mechanism as may be agreed to in writing by the
638 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component
639 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may
640 be revised annually.

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

643 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
644 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
645 period October 1, of the current Calendar Year, through September 30, of the following Calendar
646 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
647 to review and comment on such estimates. On or before September 15 of each Calendar Year,
648 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
649 the period October 1 of the current Calendar Year, through September 30, of the following
650 Calendar Year, and such notification shall revise Exhibit "B".

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

658 (c) Except as otherwise provided in the Operations Manual, at the time the
659 Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant
660 to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to
661 the United States equal to the total amount payable pursuant to the applicable Rate(s) set under
662 subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
663 Contract during the first two calendar months of the Year. Before the end of the first month and
664 before the end of each calendar month thereafter, the Contractor shall make an advance payment
665 to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water
666 Scheduled to be delivered pursuant to this Contract during the second month immediately
667 following. Adjustments between advance payments for Water Scheduled and payments at Rates
668 due for Water Delivered shall be made before the end of the following month; Provided, That
669 any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
670 increases the amount of Water Delivered pursuant to this Contract during any month shall be
671 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
672 Water is not delivered to the Contractor in advance of such payment. In any month in which the
673 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of
674 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered
675 to the Contractor unless and until an advance payment at the Rates then in effect for such
676 additional Project Water is made. Final adjustment between the advance payments for the Water
677 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this
678 Contract shall be made as soon as practicable but no later than April 30th of the following Year,
679 or 60 days after the delivery of Project Water carried over under subdivision (g) of Article 3 of
680 this Contract if such water is not delivered by the last day of February.

681 (d) The Contractor shall also make a payment in addition to the Rate(s) in
682 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
683 appropriate Tiered Pricing Component then in effect, before the end of the month following the
684 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
685 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
686 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the
687 water delivery report for the subject month prepared by the Operating Non-Federal
688 Entity/Entities or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The
689 water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered
690 Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of
691 Charges shall be made through the adjustment of payments due to the United States for Charges
692 for the next month. Any amount to be paid for past due payment of Charges and the Tiered
693 Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

702 (g) All revenues received by the United States from the Contractor relating to
703 the delivery of Project Water or the delivery of non-project water through Project facilities shall

704 be allocated and applied in accordance with Federal Reclamation law and the associated rules or
705 regulations, and the then-current Project ratesetting policies for M&I Water or Irrigation Water.

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

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

721 (j) (1) Beginning at such time as deliveries of Project Water in a Year
722 exceed 80 percent of the Contract Total, then before the end of the month following the month of
723 delivery the Contractor shall make an additional payment to the United States equal to the
724 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
725 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
726 Contract Total, shall equal one-half of the difference between the Rate established under

727 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
728 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
729 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between
730 (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost
731 Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered
732 pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the
733 Contract Total, this increment shall be deemed to be divided between Irrigation Water and M&I
734 Water in the same proportion as actual deliveries of each bear to the cumulative total Water
735 Delivered.

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

744 (3) For purposes of determining the applicability of the Tiered Pricing
745 Component pursuant to this Article, Water Delivered shall include Project Water that the
746 Contractor transfers to others but shall not include Project Water transferred to the Contractor,
747 nor shall it include the additional water provided to the Contractor under the provisions of
748 subdivision (f) of Article 3 of this Contract.

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

757 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
758 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
759 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
760 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
761 accordance with the then-applicable Project ratesetting policy. If the Contractor is receiving
762 lower Rates and Charges because of inability to pay and is transferring Project Water to another
763 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges
764 for transferred Project Water shall be the Contractor's Rates and Charges and will not be
765 adjusted to reflect the Contractor's inability to pay.

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

768 (n) With respect to the Rates for M&I Water the Contractor asserts that it is
769 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
770 of the date of this Contract or deficit-related interest charges thereon. By entering into this
771 Contract, the Contractor does not waive any legal rights or remedies that it may have with

772 respect to such disputed issues. Notwithstanding the execution of this Contract and payments
773 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
774 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
775 term of the Existing Contract and any preceding interim renewal contracts, if applicable;
776 (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest
777 in the Rates; (4) the application by the United States of payments made by the Contractor under
778 its Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the
779 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
780 shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project
781 M&I contractor on any of these issues, and credits for payments heretofore made; Provided, That
782 the basis for such ruling is applicable to the Contractor.

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

786 RATES AND METHOD OF PAYMENT FOR CONVEYANCE
787 AND OTHER SERVICES BY DWR

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

795 with Exhibit “C” of this Contract; Provided, That no interest shall be charged to or be paid by the
796 Contractor unless such delinquency continues for more than 30 days in total.

797 (b) Omitted.

798 (c) Conveyance charges for the Contractor shall be determined by DWR on
799 the same basis it uses to determine conveyance charges for use of SWP facilities by entities that
800 are not SWP contractors. The method for determining this charge is described in DWR’s annual
801 Bulletin 132. The charge for conveyance of water under this Contract shall be set forth in
802 Exhibit “C” of this Contract and revised annually.

803 (1) In accordance with subdivision (c) of this Article, when DWR
804 provides conveyance directly from the Delta or from the Federal share of storage at San Luis
805 Reservoir, the unit conveyance charge shall equal at a minimum the sum of the following, as
806 determined by DWR: (i) The equivalent unit transportation capital and Minimum OMP&R Costs
807 for those reaches of the California Aqueduct utilized for the delivery; (ii) The portion of the
808 Delta Water Rate for Reaches 1, 2A, 2B, and 3 of the California Aqueduct; (iii) The replacement
809 component of the Transportation Variable OM&R Costs for the Harvey O. Banks Delta Pumping
810 Plant and DWR's share of the Dos Amigos Pumping Plant; (iv) A charge to offset direct fish
811 losses associated with pumping at the Banks Pumping Plant, pursuant to the December 30, 1986,
812 agreement between the California Department of Fish and Game and DWR; and (v) The
813 incremental costs, if any, caused by the conveyance and delivery of Project Water to the
814 Contractor which, unless included in the increased charges to the Contractor, would result in
815 increased charges to the SWP Contractors or increased costs to DWR.

816 (2) When DWR provides conveyance from the State’s share of storage
817 in San Luis Reservoir, the unit charge shall equal the sum of the following as determined by

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

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

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

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

836 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

850 (b) In order to facilitate efficient water management by means of water
851 transfers of the type historically carried out among Project Contractors located within the same
852 geographical area and to allow the Contractor to participate in an accelerated water transfer
853 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
854 all necessary environmental documentation including, but not limited to, documents prepared
855 pursuant to NEPA and ESA analyzing annual transfers within such geographical areas and the
856 Contracting Officer shall determine whether such transfers comply with applicable law.
857 Following the completion of the environmental documentation, such transfers addressed in such
858 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
859 require prior written approval by the Contracting Officer. Such environmental documentation
860 and the Contracting Officer's compliance determination shall be reviewed every five years and
861 updated, as necessary, prior to the expiration of the then-existing five-year period. All
862 subsequent environmental documentation shall include an alternative to evaluate not less than the
863 quantity of Project Water historically transferred within the same geographical area.

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

875 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

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

907 TEMPORARY REDUCTIONS-RETURN FLOWS

908 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and
909 State Facilities and the requirements of Federal law; (ii) the authorized purposes and priorities of

910 the State Facilities and State laws and policies governing the SWP; (iii) the obligations of the
911 United States and DWR under existing contracts, or renewals thereof, providing for water
912 deliveries from the Project and State Facilities; and (iv) the terms and conditions of this Contract;
913 the Contracting Officer and DWR shall make all reasonable efforts to optimize Project Water
914 deliveries to the Contractor as provided in this Contract.

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

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

932 Service Area or, if applicable, Subcontractor's Service Area, by the Contractor or those claiming
933 by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

950 (d) DWR shall make all reasonable efforts consistent with sound fiscal
951 policies, and proper operating procedures to maintain the necessary facilities and to deliver
952 Project Water to the Contractor in accordance with the provisions of this Contract in such a
953 manner and at such times as such Project Water is scheduled by the Contractor; Provided, That

954 such Project Water has been furnished to DWR by the Contracting Officer; and, Provided,
955 further, That in no event shall any liability accrue against DWR or any of its officers, agents or
956 employees for damage, direct or indirect for failure to deliver Project Water to the Contractor on
957 account of errors in operation, drought, or any other cause beyond the control of DWR.
958 Inasmuch as DWR is providing only conveyance and storage services under this Contract, it
959 bears no responsibility for the availability of Project Water for such conveyance.

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

967 UNAVOIDABLE GROUNDWATER PERCOLATION

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

972 RULES AND REGULATIONS

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

978

WATER AND AIR POLLUTION CONTROL

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

983

QUALITY OF WATER

984 16. (a) Project and State Facilities used to deliver Project Water to the Contractor
985 pursuant to this Contract shall be operated and maintained to enable the United States and DWR
986 to deliver Project Water to the Contractor in accordance with the water quality standards
987 specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 850), as added by Section
988 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The
989 United States and DWR are under no obligation to construct or furnish water treatment facilities
990 to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this
991 Contract. The United States and DWR do not warrant the quality of Water Delivered to the
992 Contractor pursuant to this Contract.

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

1000

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

1001

1002 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
1003 or, if applicable, Subcontractor, other than from the United States and Irrigation Water furnished

1004 pursuant to the terms of this Contract may be simultaneously transported through the same
1005 distribution facilities of the Contractor or, if applicable, Subcontractor, subject to the following:
1006 (i) if the facilities utilized for commingling Irrigation Water and non-project water were
1007 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
1008 Federal Reclamation law will be applicable only to the Landholders of lands which receive
1009 Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established
1010 through the certification requirements as specified in the Acreage Limitation Rules and
1011 Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the
1012 Contractor's Service Area or, if applicable, Subcontractor's Service Area, can be established and
1013 the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to
1014 irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water
1015 and non-Project water are/were constructed with funds made available pursuant to Federal
1016 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of
1017 Federal Reclamation law, unless the Contractor pays to the United States the incremental fee
1018 described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will
1019 calculate annually the cost to the Federal Government, including interest of storing or delivering
1020 non-Project water, which for purposes of this Contract shall be determined as follows: The
1021 quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within
1022 the Contractor's Service Area. The incremental fee per acre is the mathematical result of such
1023 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982
1024 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land
1025 within the Contractor's Service Area that receives non-Project water through Federally financed
1026 or constructed facilities. The incremental fee calculation methodology will continue during the

1027 term of this Contract absent promulgation of a contrary Reclamation-wide rule, regulation, or
1028 policy adopted after the Contractor has been afforded the opportunity to review and comment on
1029 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall
1030 supersede this provision. The Contractor and the Contracting Officer concur that, as of the
1031 effective date of this Contract, the Contractor has a distribution system that was constructed
1032 without the use of Federally financed funds. The use of this distribution system is not subject to
1033 the provisions of this subdivision of this Article. The Contractor and the Contracting Officer
1034 concur that, as of the effective date of this Contract, the Contractor has a distribution system that
1035 was constructed without the use of Federally financed funds. The use of this distribution system
1036 is not subject to the provision of this subdivision of this Article. A separate written agreement
1037 with DWR must be obtained by the Contractor prior to conveyance of such water in State
1038 Facilities.

1039 (b) Omitted.

1040 OPINIONS AND DETERMINATIONS

1041 18. (a) Where the terms of this Contract provide for actions to be based upon the
1042 opinion or determination of any party to this Contract, said terms shall not be construed as
1043 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
1044 determinations. The parties, notwithstanding any other provisions of this Contract, expressly
1045 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
1046 or unreasonable opinion or determination. Each opinion or determination by any party shall be
1047 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is
1048 intended to or shall affect or alter the standard of judicial review applicable under Federal law to

1049 any opinion or determination implementing a specific provision of Federal law embodied in
1050 statute or regulation.

1051 (b) The Contracting Officer and DWR shall have the right to make
1052 determinations necessary to administer this Contract that are consistent with the provisions of
1053 this Contract, the laws of the United States and of the State of California, and the rules and
1054 regulations promulgated by the Secretary of the Interior and DWR. Such determinations shall be
1055 made in consultation with the Contractor to the extent reasonably practicable.

1056 COORDINATION AND COOPERATION

1057 19. (a) In order to further their mutual goals and objectives, the Contracting
1058 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
1059 with other affected Project Contractors, in order to improve the operation and management of the
1060 Project. The communication, coordination, and cooperation regarding operations and
1061 management shall include, but not be limited to, any action which will or may materially affect
1062 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
1063 Project financial matters including, but not limited to, budget issues. The communication,
1064 coordination, and cooperation provided for hereunder shall extend to all provisions of this
1065 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,
1066 and determinations to be made by the respective party.

1067 (b) Within 120 days following the effective date of this Contract, the
1068 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
1069 with interested Project Contractors to develop a mutually agreeable, written Project-wide
1070 process, which may be amended as necessary separate and apart from this Contract. The goal of
1071 this process shall be to provide, to the extent practicable, the means of mutual communication

1072 and interaction regarding significant decisions concerning Project operation and management on
1073 a real-time basis.

1074 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
1075 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
1076 intent:

1077 (1) The Contracting Officer will, at the request of the Contractor,
1078 assist in the development of integrated resource management plans for the Contractor. Further,
1079 the Contracting Officer will, as appropriate, seek authorizations for implementation of
1080 partnerships to improve water supply, water quality, and reliability.

1081 (2) The Secretary will, as appropriate, pursue program and project
1082 implementation and authorization in coordination with Project Contractors to improve the water
1083 supply, water quality, and reliability of the Project for all Project purposes.

1084 (3) The Secretary will coordinate with Project Contractors and the
1085 State of California to seek improved water resource management.

1086 (4) The Secretary will coordinate actions of agencies within the
1087 Department of the Interior that may impact the availability of water for Project purposes.

1088 (5) The Contracting Officer shall periodically, but not less than
1089 annually, hold division level meetings to discuss Project operations, division level water
1090 management activities, and other issues as appropriate.

1091 (d) Without limiting the contractual obligations of the Contracting Officer
1092 under the other Article of this Contract, nothing in this Article shall be construed to limit or
1093 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the

1094 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
1095 protect health, safety, or the physical integrity of structures or facilities.

1096 CHARGES FOR DELINQUENT PAYMENTS

1097 20. (a) The Contractor shall be subject to interest, administrative and penalty
1098 charges on delinquent installments or payments. When a payment is not received by the due
1099 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
1100 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
1101 administrative charge to cover additional costs of billing and processing the delinquent payment.
1102 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
1103 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
1104 due date. Further, the Contractor shall pay any fees incurred for debt collection services
1105 associated with a delinquent payment.

1106 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
1107 in the Federal Register by the Department of the Treasury for application to overdue payments,
1108 or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the
1109 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
1110 determined as of the due date and remain fixed for the duration of the delinquent period.

1111 (c) When a partial payment on a delinquent account is received, the amount
1112 received shall be applied, first to the penalty, second to the administrative charges, third to the
1113 accrued interest, and finally to the overdue payment.

1114 EQUAL OPPORTUNITY

1115 21. During the performance of this Contract, the Contractor agrees as follows:

1116 (a) The Contractor will not discriminate against any employee or applicant for
1117 employment because of race, color, religion, sex, or national origin. The Contractor will take
1118 affirmative action to ensure that applicants are employed, and that employees are treated during
1119 employment, without regard to their race, color, religion, sex, or national origin. Such action
1120 shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
1121 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
1122 compensation; and selection for training, including apprenticeship. The Contractor agrees to
1123 post in conspicuous places, available to employees and applicants for employment, notices to be
1124 provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1125 (b) The Contractor will, in all solicitations or advertisements for employees
1126 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1127 consideration for employment without discrimination because of race, color, religion, sex, or
1128 national origin.

1129 (c) The Contractor will send to each labor union or representative of workers
1130 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1131 to be provided by the Contracting Officer, advising the said labor union or workers'
1132 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of
1133 September 24, 1965, and shall post copies of the notice in conspicuous places available to
1134 employees and applicants for employment.

1135 (d) The Contractor will comply with all provisions of Executive Order
1136 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders
1137 of the Secretary of Labor.

1138 (e) The Contractor will furnish all information and reports required by said
1139 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1140 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
1141 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
1142 such rules, regulations, and orders.

1143 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1144 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1145 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared
1146 ineligible for further Government contracts in accordance with procedures authorized in said
1147 amended Executive Order, and such other sanctions may be imposed and remedies invoked as
1148 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
1149 otherwise provided by law.

1150 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1151 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1152 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1153 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
1154 action with respect to any subcontract or purchase order as may be directed by the Secretary of
1155 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
1156 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,
1157 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
1158 the United States to enter into such litigation to protect the interests of the United States.

1159 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1160 22. (a) The obligation of the Contractor to pay the United States and DWR as
1161 provided in this Contract is a general obligation of the Contractor notwithstanding the manner in
1162 which the obligation may be distributed among the Contractor's water users and notwithstanding
1163 the default of individual water users in their obligations to the Contractor.

1164 (b) The payment of charges becoming due hereunder is a condition precedent
1165 to receiving benefits under this Contract. The United States and DWR shall not make water or

1166 conveyance facilities available to the Contractor through Project or State Facilities during any
1167 period in which the Contractor may be in arrears in the advance payment of water rates due the
1168 United States. The Contractor shall not furnish water made available pursuant to this Contract
1169 for lands or parties which are in arrears in the advance payment of water rates levied or
1170 established by the Contractor.

1171 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1172 obligation to require advance payment for water rates which it levies. Subdivision (b) of this
1173 Article applies to periods when the Contractor is in arrears on payment of charges to DWR.

1174 (d) If in any year the Contractor fails or is unable to raise sufficient funds by
1175 other means, the governing body of the Contractor shall levy upon all property within the
1176 Contractor's boundary not exempt from taxation, a special assessment sufficient to provide for all
1177 payments due the United States and DWR under this Contract.

1178 (e) Assessments levied by the governing body of the Contractor pursuant to
1179 subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor
1180 charged with the duty of enforcing and collecting assessments levied by the Contractor.

1181 (f) All money collected by way of special assessments under this Article for
1182 payments due DWR shall be kept in a separate fund by the treasurer or other officer of the
1183 Contractor charged with the safekeeping and disbursement of funds of the Contractor, and, upon
1184 the written demand of DWR, the treasurer or other officer shall pay over to DWR all money in
1185 his possession or control then due DWR under this contract, which money shall be applied by
1186 DWR to the satisfaction of the amount due under this Contract.

1187 (g) In the event of failure, neglect, or refusal of any officer of the Contractor
1188 to levy any assessment necessary to provide payment by the Contractor under this Contract, to

1189 enforce or to collect the assessment, or to pay over to the United States or DWR any money then
1190 due collected on the assessment, either or both DWR and the United States may take such action
1191 in a court of competent jurisdiction as they deem necessary to compel the performance in their
1192 proper sequence of all such duties. Action taken pursuant hereto shall not deprive DWR or
1193 United States or limit any remedy provided by this Contract or by law for the recovery of money
1194 due or which may become due under this Contract.

1195 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1196 23. (a) The Contractor, or if applicable, Subcontractor shall comply with Title VI
1197 of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975
1198 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and
1199 any other applicable civil rights laws, as well as with their respective implementing regulations
1200 and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

1201 (b) These statutes require that no person in the United States shall, on the
1202 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1203 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1204 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
1205 Contractor agrees to immediately take any measures necessary to implement this obligation,
1206 including permitting officials of the United States to inspect premises, programs, and documents.

1207 (c) The Contractor makes this agreement in consideration of and for the
1208 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1209 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1210 Reclamation, including installment payments after such date on account of arrangements for
1211 Federal financial assistance which were approved before such date. The Contractor recognizes
1212 and agrees that such Federal assistance will be extended in reliance on the representations and
1213 agreements made in this Article, and that the United States reserves the right to seek judicial
1214 enforcement thereof.

1215 PRIVACY ACT COMPLIANCE

1216 24. (a) The Contractor, or if applicable, Subcontractor shall comply with the
1217 Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and
1218 regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification
1219 and reporting records, required to be submitted to the Contractor, or if applicable, Subcontractor
1220 for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.
1221 1266), and pursuant to 43 CFR 426.18.

1222 (b) With respect to the application and administration of the criminal penalty
1223 provisions of the Act (5 U.S.C. 552a(i)), the Contractor, or if applicable, Subcontractor and their
1224 employees responsible for maintaining the certification and reporting records referenced in (a)
1225 above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1226 (c) The Contracting Officer or a designated representative shall provide the
1227 Contractor, or if applicable, Subcontractor with current copies of the Interior Department Privacy
1228 Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records
1229 Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance,
1230 safeguarding, and disclosure of information contained in the Landholder's certification and
1231 reporting records.

1232 (d) The Contracting Officer shall designate a full-time employee of the
1233 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
1234 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
1235 Contractor, or if applicable, Subcontractor is authorized to grant requests by individuals for
1236 access to their own records.

1237 (e) The Contractor, or if applicable, Subcontractor shall forward promptly to
1238 the System Manager each proposed denial of access under 43 CFR 2.64; and each request for
1239 amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral;
1240 and provide the System Manager with information and records necessary to prepare an
1241 appropriate response to the requester. These requirements do not apply to individuals seeking
1242 access to their own certification and reporting forms filed with the Contractor, or if applicable,
1243 Subcontractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a
1244 basis for the request.

1245 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1246 25. In addition to all other payments to be made by the Contractor pursuant to this
1247 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1248 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1249 of direct cost incurred by the United States for work requested by the Contractor associated with
1250 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1251 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1252 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1253 contract administration.

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WATER CONSERVATION

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

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

1277 frames issued by the California Urban Water Conservation Council for such M&I Water unless
1278 any such practice is determined by the Contracting Officer to be inappropriate for the Contractor
1279 or, if applicable, Subcontractor.

1280 (c) The Contractor or, if applicable, Subcontractor, shall submit to the
1281 Contracting Officer a report on the status of its implementation of the water conservation plan on
1282 the reporting dates specified in the then-existing conservation and efficiency criteria established
1283 under Federal law.

1284 (d) At five-year intervals, the Contractor or, if applicable, Subcontractor, shall
1285 revise its water conservation plan to reflect the then-current conservation and efficiency criteria
1286 for evaluating water conservation plans established under Federal law and submit such revised
1287 water management plan to the Contracting Officer for review and evaluation. The Contracting
1288 Officer will then determine if the water conservation plan meets Reclamation's then-current
1289 conservation and efficiency criteria for evaluating water conservation plans established under
1290 Federal law.

1291 (e) If the Contractor or, if applicable, Subcontractor, is engaged in direct
1292 groundwater recharge, such activity shall be described in the Contractor's or, if applicable,
1293 Subcontractor's, water conservation plan.

1294 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1295 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1296 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1297 hereafter acquired by the Contractor or, if applicable, Subcontractor, or any user of such water
1298 within the Contractor's Service Area or, if applicable, Subcontractor's, Service Area. Any such
1299 water shall not be considered Project Water under this Contract. In addition, this Contract shall

1300 not be construed as limiting or curtailing any rights which the Contractor or, if applicable,
1301 Subcontractor, or any water user within the Contractor's Service Area or, if applicable,
1302 Subcontractor's, Service Area acquires or has available under any other contract pursuant to
1303 Federal Reclamation law.

1304 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1305 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1306 and responsibility for funding a portion of the costs of such O&M, have been transferred to two
1307 Operating Non-Federal Entities by separate agreements between the United States and the
1308 Operating Non-Federal Entities. Those separate agreements shall not interfere with or affect the
1309 rights or obligations of the Contractor or the United States hereunder. Specifically, portions of
1310 the Delta-Mendota Canal, the San Luis Canal and other related facilities are operated by the
1311 San Luis & Delta-Mendota Water Authority and the Friant-Kern Canal and related facilities are
1312 operated by the Friant Water Authority.

1313 (b) The Contractor shall pay directly to the applicable Operating Non-Federal
1314 Entity, or to any successor approved by the Contracting Officer under the terms and conditions
1315 of the separate agreements between the United States and the Operating Non-Federal Entities
1316 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind,
1317 including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1318 successor determines, sets, or establishes for the O&M of the portion of the Project facilities
1319 operated and maintained by the Operating Non-Federal Entity or such successor. Such direct
1320 payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor
1321 of its obligation to pay directly to the United States the Contractor's share of the Project Rates,
1322 Charges, and Tiered Pricing Component(s) except to the extent the Operating Non-Federal Entity

1323 collects payments on behalf of the United States in accordance with the separate agreement
1324 identified in subdivision (a) of this Article.

1325 (c) For so long as the O&M of any portion of the Project facilities serving the
1326 Contractor is performed by the Operating Non-Federal Entity/Entities, or any successor thereto,
1327 the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1328 this Contract representing the cost associated with the activity being performed by the Operating
1329 Non-Federal Entity/Entities or their successors.

1330 (d) In the event the O&M of the Project facilities operated and maintained by
1331 the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1332 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1333 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1334 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1335 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1336 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1337 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the
1338 United States in compliance with Article 7 of this Contract.

1339 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1340 29. The expenditure or advance of any money or the performance of any obligation of
1341 the United States under this Contract shall be contingent upon appropriation or allotment of
1342 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1343 obligations under this Contract. No liability shall accrue to the United States in case funds are
1344 not appropriated or allotted.

1345 BOOKS, RECORDS, AND REPORTS

1346 30. (a) The Contractor shall establish and maintain accounts and other books and
1347 records pertaining to administration of the terms and conditions of this Contract, including: the
1348 Contractor's financial transactions, water supply data, and Project land and right-of-way
1349 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use

1350 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1351 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1352 Officer may require. Subject to applicable Federal laws and regulations, each party to this

1353 Contract shall have the right during office hours to examine and make copies of the other party's
1354 books and records relating to matters covered by this Contract.

1355 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1356 books, records, or other information shall be requested from the Contractor by the Contracting
1357 Officer unless such books, records, or information are reasonably related to the administration or
1358 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1359 time within which to provide the requested books, records, or information.

1360 (c) At such time as the Contractor provides information to the Contracting
1361 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1362 to the Operating Non-Federal Entity/Entities.

1363 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1364 31. (a) The provisions of this Contract shall apply to and bind the successors and
1365 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1366 therein shall be valid until approved in writing by the Contracting Officer.

1367 (b) The assignment of any right or interest in this Contract by a party shall not
1368 interfere with the rights or obligations of the other parties to this Contract absent the written
1369 concurrence of said other parties.

1370 (c) The Contracting Officer shall not unreasonably condition or withhold
1371 approval of any proposed assignment.

1372 (d) No assignment or transfer of any rights to use State Facilities authorized
1373 by this Contract shall be valid without advance written approval by DWR.

1374 SEVERABILITY

1375 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1376 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1377 an association or other form of organization whose primary function is to represent parties to
1378 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1379 enforceability of a provision included in this Contract and said person, entity, association, or
1380 organization obtains a final court decision holding that such provision is legally invalid or
1381 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1382 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1383 final court decision identify by mutual agreement the provisions in this Contract which must be
1384 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1385 The time periods specified above may be extended by mutual agreement of the parties. Pending
1386 the completion of the actions designated above, to the extent it can do so without violating any
1387 applicable provisions of law, the United States shall continue to make the quantities of Project
1388 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1389 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1390 RESOLUTION OF DISPUTES

1391 33. Should any dispute arise concerning any provisions of this Contract, or the
1392 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1393 resolve the dispute. Prior to the Contractor or, if applicable, Subcontractor, commencing any
1394 legal action, or the Contracting Officer referring any matter to Department of Justice, the party
1395 shall provide to the other party 30 days' written notice of the intent to take such action; Provided,
1396 That such notice shall not be required where a delay in commencing an action would prejudice

1397 the interests of the party that intends to file suit. During the 30-day notice period, the Contractor
1398 or, if applicable, Subcontractor, and the Contracting Officer shall meet and confer in an attempt
1399 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or
1400 abridge any right or remedy that the Contractor or, if applicable, Subcontractor, or the
1401 United States may have.

1402 OFFICIALS NOT TO BENEFIT

1403 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1404 Contractor, or if applicable, Subcontractor shall benefit from this Contract other than as a water
1405 user or landowner in the same manner as other water users or landowners.

1406 CHANGES IN CONTRACTOR'S OR SUBCONTRACTOR'S SERVICE AREA

1407 35. (a) While this Contract is in effect, no change may be made in the
1408 Contractor's Service Area or, if applicable, Subcontractor's, Service Area, by inclusion or
1409 exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting
1410 Officer's written consent.

1411 (b) Within 30 days of receipt of a request for such a change, the Contracting
1412 Officer will notify the Contractor or, if applicable, Subcontractor, of any additional information
1413 required by the Contracting Officer for processing said request, and both parties will meet to
1414 establish a mutually agreeable schedule for timely completion of the process. Such process will
1415 analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary
1416 to the terms of this Contract; (ii) impair the ability of the Contractor or, if applicable,
1417 Subcontractor, to pay for Project Water furnished under this Contract or to pay for any Federally-
1418 constructed facilities for which the Contractor or, if applicable, Subcontractor, is responsible;
1419 and (iii) have an impact on any Project Water rights applications, permits, or licenses. In
1420 addition, the Contracting Officer shall comply with NEPA and ESA. The Contractor or, if
1421 applicable, Subcontractor, will be responsible for all costs incurred by the Contracting Officer in
1422 this process, and such costs will be paid in accordance with Article 25 of this Contract. Upon

1423 approval by the Contracting Officer, the Contractor or, if applicable, the Subcontractor, shall
1424 promptly give notice of any such change in Contractor's Service Area or, if applicable, the
1425 Subcontractor's Service Area, to DWR.

1426 FEDERAL LAWS

1427 36. By entering into this Contract, the Contractor does not waive its rights to contest
1428 the validity or application in connection with the performance of the terms and conditions of this
1429 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1430 the terms and conditions of this Contract unless and until relief from application of such Federal
1431 law or regulation to the implementing provision of the Contract is granted by a court of
1432 competent jurisdiction.

1433 NOTICES

1434 37. Any notice, demand, or request authorized or required by this Contract shall be
1435 deemed to have been given on behalf of the parties when mailed, postage prepaid; or delivered to
1436 the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1437 93721-1813; to the Chief, State Water Project Analysis Office, Department of Water Resources,
1438 P. O. Box 942836, Sacramento, California 94236-0001; and to the Board of Supervisors of the
1439 County of Tulare, P. O. Box 911, Visalia, California 93279. The designation of the addressee or
1440 the address may be changed by notice given in the same manner as provided in this Article for
1441 other notices.

1442 CONFIRMATION OF CONTRACT

1443 38. The Contractor, after the execution of this Contract, shall promptly seek to secure
1444 a decree of a court of competent jurisdiction of the State of California, confirming the execution
1445 of this Contract. The Contractor shall furnish both the United States and DWR with a certified
1446 copy of the final decree, the validation proceedings, and all pertinent supporting records of the
1447 court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid,
1448 and binding on the Contractor.

1449 SUBCONTRACTS--SALE OF WATER

1450 39. The Contractor may enter into subcontracts with third parties for the wholesale
1451 distribution to such third parties of Project Water furnished pursuant to this Contract within the

1452 Contractor's Service Area. Each such subcontract shall be subject to the obligations and
1453 limitations imposed, and to the rights granted, by this Contract and shall so provide. The terms
1454 and conditions of each subcontract, not previously approved, shall be approved by the
1455 Contracting Officer prior to the execution of such subcontract. Approval shall be limited to
1456 approval of the Subcontractor's Service Area and a determination that the subcontract is
1457 consistent with the provisions of this Contract. Nothing contained herein or in any subcontract
1458 shall be deemed in any way to release the Contractor from its primary liability to the
1459 United States hereunder with respect to each and all of the obligations undertaken by the
1460 Contractor in this Contract.

1461 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1462 and year first above written.

1463 THE UNITED STATES OF AMERICA

1464 By: _____
1465 Regional Director, Mid-Pacific Region
1466 Bureau of Reclamation

1467 Approved as to Legal Form and DEPARTMENT OF WATER RESOURCES
1468 Sufficiency: OF THE STATE OF CALIFORNIA

1469 By: _____ By: _____
1470 Chief Counsel, Director,
1471 Department of Water Resources Department of Water Resources

1472 (SEAL) COUNTY OF TULARE

1473 By: _____
1474 Chairman, Board of Supervisors

1475 Attest:

1476 By: _____ By: _____
1477 County Clerk County Counsel

1478 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-19-04 County of Tulare Final Draft
1479 LTRC with exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
COUNTY OF TULARE
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

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	<u>2004 Rates Per Acre-Foot</u>	
	<u>Banks Joint Point Pumping</u>	<u>M&I Water</u>
	<u>Irrigation Water</u>	
O&M AND COST-OF-SERVICE RATES:		
Capital Rates:		
Cross Valley Conveyance (if applicable)	\$5.63	\$9.86
O&M Rates:		
Water Marketing	\$7.59	\$5.01
Storage	\$5.83	\$6.38
Direct Pumping (Project Use Energy)	\$3.25	\$3.25
Dos Amigos	4/	2/
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing	\$2.29	\$36.15
CFO/PFR Adj. Rate: **	\$2.62	\$0.00
TOTAL COST-OF-SERVICE RATES:	\$27.20	\$60.65
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.	\$36.79	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$39.32	
SURCHARGES UNDER P.L 102-575 TO RESTORATION FUND*		
Restoration Payments [3407(d)(2)(A)]	\$7.82	\$15.64

** Rate represents the Chief Financial Officer (CFO) adjustment and Provision for replacement (PFR) credit for option 2 cost deferral to be distributed over a 5-year period beginning with 2003 water rates.

2/ - Except for Folsom-South Canal Conveyance Costs, Conveyance and Conveyance Pumping Operation and Maintenance Costs were removed for ratesetting purposes and
4/ - Conveyance and Conveyance Pumping operation and maintenance costs were removed for ratesetting purposes and are to be direct billed.

