

Irrigation and M&I
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Rev. SCCAO Draft 10/17-2004
Rev. SCCAO Draft 03/19-2004
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Rev. RO Draft 02/06-2002
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Contract No.
14-06-200-8466A-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 HILLS VALLEY IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE

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Exhibit A - Map of Contractor's Service Area

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

5 LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
6 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
7 AND HILLS VALLEY IRRIGATION DISTRICT
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 HILLS VALLEY IRRIGATION DISTRICT, hereinafter referred to as

23 the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant
24 to the 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 flood
29 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
30 restoration, generation and distribution of electric energy, salinity control, navigation and other
31 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San
32 Joaquin River and their tributaries; and

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

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

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

41 [2.4] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the
42 Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost to
43 either the United States or DWR; and

44 [2.5] WHEREAS, the Contractor has the right to use the Cross Valley Canal for conveyance
45 of the Project Water furnished hereunder; and

46 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to
47 California law for operation of the Project; and

48 [4th] WHEREAS, the Contractor and the United States entered into Contract
49 No. 14-06-200-8466A, as amended, which established terms for the delivery to the Contractor of
50 Project Water via the Cross Valley Canal from May 11, 1976, through February 29, 1996; and

51 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
52 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim
53 renewal contract(s) identified as Contract No(s). 14-06-200-8466A-IR1, -IR2, -IR3, -IR4, -IR5, -IR6,
54 -IR7, and -IR8, the current of which is hereinafter referred to as the Existing Contract, which provided
55 for the continued water service to the Contractor from March 1, 2004, through February 28, 2005; and

56 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of
57 the Existing Contract following completion of appropriate environmental documentation, including a
58 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy
59 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the
60 potential renewal of all existing contracts for Project Water; and

61 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
62 environmental review necessary to provide for long-term renewal of the Existing Contract; and

63 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
64 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
65 State of California, for water service from the Project; and

66 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its
67 obligations under the Existing Contract; and

68 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
69 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and

70 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor
71 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project
72 Water to be made available to it pursuant to this Contract; and

73 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
74 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
75 essential portion of its water supply; and

76 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
77 depend upon the continued availability of water, including water service from the Project; and

78 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
79 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
80 purposes; and

81 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
82 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
83 the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
84 reasonable balance among competing demands for use of Project Water; and to comply with all
85 applicable environmental statutes, all consistent with the legal obligations of the United States relative
86 to the Project; and

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

89 [15.2] WHEREAS, the Contractor desires to contract with DWR for conveyance of Project
90 Water through the facilities of the State Water Project (SWP) as aforesaid under an arrangement
91 wherein the United States will furnish the necessary power for pumping such water through DWR's
92 Delta Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-existing CVP Project use
93 power policy; and

94 [15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject to
95 needs and obligations of the SWP and the availability of transportation capacity and payment of costs
96 as herein provided; and

97 [16th] WHEREAS, the United States, DWR, and the Contractor are willing to enter into this
98 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

101 DEFINITIONS

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

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

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

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

112 (d) “Contracting Officer” shall mean the Secretary of the Interiors duly
113 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or
114 regulation;

115 (e) “Contract Total” shall mean the maximum amount of water to
116 which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

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

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

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

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

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

132 (j) "Full Cost Rate" shall mean an annual water rate, as determined
133 by the Contracting Officer that shall amortize the expenditures for construction properly allocable to
134 the Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
135 deficits funded, less payments, over such periods as may be required under Federal Reclamation law,
136 or applicable contract provisions. Interest will accrue on both the construction expenditures and funded
137 O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the
138 case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
139 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,

140 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the
141 RRA;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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TERM OF CONTRACT

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

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

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

233 available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions
234 of this Contract; and (vi) the Contractor has the physical and legal ability to deliver Project Water.

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

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

251 (d) The Contracting Officer shall make a determination ten years after the
252 date of execution of this Contract, and every five years thereafter during the term of this Contract, of
253 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
254 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat.
255 483). The Contracting Officer shall also make a determination ten years after the date of execution of
256 this Contract and every five years thereafter during the term of the Contract of whether a conversion of

257 the relevant portion of this Contract to a contract under subsection 9(c)(1) of the Reclamation Project
258 Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the Contractor
259 reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat 483). The
260 Contracting Officer anticipates that during the term of this Contract, all authorized Project construction
261 expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such
262 completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at
263 any time after such allocation is made, and subject to satisfaction of the conditions set out in this
264 subdivision, this Contract shall, at the request of the Contractor, be converted to a contract under
265 subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to
266 applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and
267 the Contracting Officer. A condition for such conversion to occur shall be a determination by the
268 Contracting Officer that, account being taken of the amount credited to return by the Contractor as
269 provided for under Federal Reclamation law, the remaining amount of construction costs assignable for
270 ultimate return by the Contractor can probably be repaid to the United States within the term of a
271 contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the remaining amount of costs
272 that are properly assignable to the Contractor cannot be determined during the term of this Contract,
273 the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination
274 could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter
275 as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out
276 above, conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event
277 such determination of costs has not been made at a time which allows conversion of this Contract
278 during the term of this Contract or the Contractor has not requested conversion of this Contract within
279 such term, the parties shall incorporate in any subsequent renewal contract as described in subdivision

280 (b) of this Article a provision that carries forth in substantially identical terms the provisions of this
281 subdivision.

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

287 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

288 3. (a) During each Year, consistent with all applicable State water rights, permits, and
289 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
290 Contracting Officer shall make available in the Delta for delivery to the Contractor 3,346 acre-feet of
291 Project Water for irrigation and M&I purposes. Cross Valley Contractors shall have a primary priority
292 to pumping capacity made available by the SWP for CVP purposes up to the allocation made for CVP
293 irrigation contractors south of the Delta. Allocations of water supply to Cross Valley Contractors and
294 any additional pumping capacity made available by SWP for Cross Valley Contractors' purposes shall
295 be addressed in the Operations Manual. Water Delivered to the Contractor in accordance with this
296 subdivision shall be scheduled, and paid for pursuant to the provisions of Articles 4 and 7 of this
297 Contract, attached exhibits, and the Operations Manual (including any subsequent modifications
298 thereto).

299 (b) Because the capacity of the Project to deliver Project Water has been
300 constrained in recent years and may be constrained in the future due to many factors including
301 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
302 actually receiving the full amount of Project Water set out in subdivision (a) of this Article in any
303 given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the

304 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
305 the most recent five years, the Recent Historic Average of water made available to the Contractor was
306 2,201 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the
307 parties under any provision of this Contract.

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

310 (d) The Contractor shall make reasonable and beneficial use of all water furnished
311 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
312 banking programs, surface water storage programs, and other similar programs utilizing Project Water
313 or other water furnished pursuant to this Contract conducted within the Contractor's Service Area
314 which are consistent with applicable State law and result in use consistent with Federal Reclamation
315 law will be allowed; Provided, That any direct recharge program(s) is (are) described in the
316 Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
317 further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's
318 Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
319 reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge
320 programs, groundwater banking programs, surface water storage programs, and other similar programs
321 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the
322 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which
323 approval will be based upon environmental documentation, Project Water rights, and Project
324 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
325 guidelines.

326 (e) The Contractor shall comply with requirements applicable to the Contractor in
327 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract

328 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
329 within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess
330 of 28 years of diversions for irrigation and/or M&I purposes of the quantities of water provided in
331 subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline
332 for the biological assessment(s) prepared pursuant to the ESA, and any other needed environmental
333 review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking
334 judicial relief in a court of competent jurisdiction with respect to any biological opinion or other
335 environmental documentation referred to in this Article.

336 (f) Following the declaration of Water Made Available under Article 4 of this
337 Contract, the Contracting Officer will make a determination whether Project Water, or other water
338 available to the Project, can be made available to the Contractor in addition to the Contract Total under
339 Article 3 of this Contract during the Year without adversely impacting other Project Contractors. At
340 the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
341 such a determination. If the Contracting Officer determines that Project Water, or other water
342 available to the Project, can be made available to the Contractor, the Contracting Officer will announce
343 the availability of such water and shall so notify the Contractor as soon as practicable. The
344 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
345 taking such water to determine the most equitable and efficient allocation of such water. If the
346 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such
347 water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and
348 policies. If the Contracting Officer determines that there is an unusually large water supply not
349 otherwise storable for Project purposes or infrequent and otherwise unmanaged flood flows of short
350 duration from the Friant Division, then Friant Division Project Water may be made available to the
351 Contractor as Section 215 Water if the Contractor enters into a temporary contract, not to exceed one

352 year, with the United States for the delivery of such water or, as otherwise provided for in Federal
353 Reclamation law and associated regulations: Provided, That such water shall be first made available to
354 the original 28 long-term Friant Division contractors. Water in addition to the quantities provided for
355 in this Contract made available to the Contractor by the Contracting Officer shall be scheduled,
356 conveyed and/or stored by DWR only to the extent that DWR has provided separate approval to do so.

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

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

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

374 (j) The Contracting Officer shall make reasonable efforts to protect the water rights
375 necessary for the Project and to provide the water available under this Contract. The Contracting

376 Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by
377 law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting
378 Officer retains the right to object to the substance of the Contractor's position in such a proceeding;
379 Provided further, That in such proceedings the Contracting Officer shall recognize the Contractor has a
380 legal right under the terms of this Contract to use Project Water.

381 (k) Conveyance and/or storage of Project Water by DWR shall be subject to
382 capacity available in State Facilities in excess of capacity determined by DWR in its sole discretion to
383 be needed for all SWP operations including the Environmental Water Account and similar programs,
384 or any services to long-term SWP Contractors. For purposes of determining the available capacity
385 under this Contract, the deliveries of Project Water to the Contractor shall not be considered a "service
386 to long-term SWP Contractors," notwithstanding any arrangement the Contractor may have with a
387 SWP Contractor. Conveyance and/or storage for the Contractor may be curtailed prior or subsequent
388 to approval of the Contractor's schedule under Article 4 of this Contract, in the event DWR determines
389 it will interfere with the delivery of water to SWP Contractors or other SWP operations necessary to
390 meet long-term obligations of the SWP, including delivery of water to SWP storage or regulation of
391 stored water for delivery to SWP Contractors.

392 (l) If in any Year after DWR and the Contracting Officer have approved a schedule
393 or any revision thereof submitted in accordance within subdivision (a) and (b) of Article 4 of this
394 Contract, and if the Contracting Officer and/or DWR are unable to make water of suitable quality
395 available in the quantities and at the times requested in the schedule and the Contractor does not elect
396 to receive and does not receive such water at other times during such Year, then the Contractor shall be
397 entitled to an adjustments for overpayment as provided in subdivision (c) of Article 7, subdivision (d)
398 of Article 8, and Article 10 of this Contract. Notwithstanding any other provision of law, this shall be

399 the Contractor's sole remedy against the State of California, DWR, its officers, agents and employees
400 for failure to deliver a quantity of water of suitable quality under this Contract for any reason.

401 TIME FOR DELIVERY OF WATER

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

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

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

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

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

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

430 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

444 (b) Omitted.

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

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

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

467 (3) If DWR delivers water to the Contractor from DWR's share of storage in
468 San Luis Reservoir prior to the Contracting Officer providing Project Water at DWR's Clifton Court

469 Forebay, the United States shall return a like amount of water to DWR pursuant to the procedures set
470 forth in the Operations Manual.

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

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

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

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

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

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

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

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

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

514 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
515 measured and recorded with equipment furnished, installed, operated, and maintained by the

516 United States, DWR, or the Operating Non-Federal Entity/Entities at the point or points of delivery
517 established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract,
518 the Contracting Officer or DWR shall investigate, or cause to be investigated by the appropriate
519 Operating Non-Federal Entity, the accuracy of such measurements and shall take any necessary steps
520 to adjust any errors appearing therein. For any period of time when accurate measurements have not
521 been made, the Contracting Officer shall consult with the Contractor and the appropriate Operating
522 Non-Federal Entity prior to making a final determination of the quantity delivered for that period of
523 time.

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

540 owned or operated the malfunctioning facility(ies) from which the damage claim arose. In the event
541 any such claim or liability, referenced in this Article or otherwise arising from this Contract, is made
542 against DWR, its officers or its employees, the Contractor agrees to defend, indemnify and hold each
543 of them harmless from such claim to the extent such claim does not arise from an error or omission of
544 DWR related to the carriage and control of Project Water made available to the Contractor by the
545 Contracting Officer.

546 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

562 (b) To the extent the information has not otherwise been provided, upon execution
563 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the

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

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

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

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

586

RATES AND METHOD OF PAYMENT FOR WATER

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7. (a) The Contractor shall pay the United States as provided in this Article for all

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Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with:

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(i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-

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existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or

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superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation

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law and associated rules and regulations, or policies; and (iii) other applicable provisions of this

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Contract. Payments shall be made by cash transaction, electronic funds transfer, or any other

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mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates,

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Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract

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are set forth in Exhibit "B," as may be revised annually.

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(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and

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Tiered Pricing Component as follows:

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

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Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of

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the current Calendar Year, through September 30, of the following Calendar Year, and the basis for

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such estimate. The Contractor shall be allowed not less than two months to review and comment on

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such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify

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the Contractor in writing of the Charges to be in effect during the period October 1 of the current

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Calendar Year, through September 30, of the following Calendar Year, and such notification shall

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revise Exhibit "B."

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(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make

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available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project Water

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for the following Year and the computations and cost allocations upon which those Rates are based.

610 The Contractor shall be allowed not less than two months to review and comment on such
611 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
612 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
613 upcoming Year, and such notification shall revise Exhibit "B."

614 (c) Except as otherwise provided in the Operations Manual, at the time the
615 Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to
616 subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the
617 United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision
618 (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the
619 first two calendar months of the Year. Before the end of the first month and before the end of each
620 calendar month thereafter, the Contractor shall make an advance payment to the United States, at the
621 Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to
622 this Contract during the second month immediately following. Adjustments between advance
623 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before
624 the end of the following month; Provided, That any revised schedule submitted by the Contractor
625 pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
626 Contract during any month shall be accompanied with appropriate advance payment, at the Rates then
627 in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In
628 any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals
629 the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be
630 delivered to the Contractor unless and until an advance payment at the Rates then in effect for such
631 additional Project Water is made. Final adjustment between the advance payments for the Water
632 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this
633 Contract shall be made as soon as practicable but no later than April 30th of the following Year, or

634 60 days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this
635 Contract if such water is not delivered by the last day of February.

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

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

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

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

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

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

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

675 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
676 80 percent of the Contract Total, then before the end of the month following the month of delivery the
677 Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing
678 Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80
679 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
680 one-half of the difference between the Rate established under subdivision (a) of this Article and the
681 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered

682 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
683 shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii)
684 the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all
685 Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80
686 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation Water
687 and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total Water
688 Delivered.

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

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

701 (k) For the term of this Contract, Rates under the respective ratesetting policies will
702 be established to recover only reimbursable O&M (including any deficits) and capital costs of the
703 Project, as those terms are used in the then-current Project ratesetting policies, and interest, where
704 appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant
705 Project ratesetting policy. Changes of significance in practices which implement the Contracting

706 Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the
707 Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

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

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

718 (n) With respect to the Rates for M&I Water the Contractor asserts that it is
719 not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
720 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
721 Contractor does not waive any legal rights or remedies that it may have with respect to such disputed
722 issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor
723 may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or
724 imposition of any deficit charges accruing during the term of the Existing Contract and any preceding
725 interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of
726 any such deficit charges or interest in the Rates; (4) the application by the United States of payments
727 made by the Contractor under its Existing Contract and any preceding interim renewal contracts, if
728 applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that
729 the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any

730 Project M&I contractor on any of these issues, and credits for payments heretofore made; Provided,
731 that the basis for such ruling is applicable to the Contractor.

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

735 RATES AND METHOD OF PAYMENT FOR CONVEYANCE
736 AND OTHER SERVICES BY DWR

737 8. (a) To the extent Project Water is conveyed through State Facilities, payment for
738 conveyance of water through the State Facilities shall be made by the Contractor directly to DWR.
739 Exhibit C sets forth the charges and interest rates applicable at the time this long-term renewal contract
740 is executed. DWR shall invoice the Contractor monthly for all conveyance charges owing for the
741 previous month. Payment by the Contractor to DWR shall be due 30 days after the date of the invoice.
742 Any payment not received within 30 days after the date of the invoice shall be considered delinquent.
743 Delinquent charges shall be calculated in accordance with Exhibit "C" of this Contract; Provided, That
744 no interest shall be charged to or be paid by the Contractor unless such delinquency continues for more
745 than 30 days in total.

746 (b) Omitted.

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

752 (1) In accordance with subdivision (c) of this Article, when DWR provides
753 conveyance directly from the Delta or from the Federal share of storage at San Luis Reservoir, the unit

754 conveyance charge shall equal at a minimum the sum of the following, as determined by DWR:

755 (i) The equivalent unit transportation capital and Minimum OMP&R Costs for those reaches of the
756 California Aqueduct utilized for the delivery; (ii) The portion of the Delta Water Rate for Reaches 1,
757 2A, 2B, and 3 of the California Aqueduct; (iii) The replacement component of the Transportation
758 Variable OM&R Costs for the Harvey O. Banks Delta Pumping Plant and DWR's share of the Dos
759 Amigos Pumping Plant; (iv) A charge to offset direct fish losses associated with pumping at the Banks
760 Pumping Plant, pursuant to the December 30, 1986, agreement between the California Department of
761 Fish and Game and DWR; and (v) The incremental costs, if any, caused by the conveyance and
762 delivery of Project Water to the Contractor which, unless included in the increased charges to the
763 Contractor, would result in increased charges to the SWP Contractors or increased costs to DWR.

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

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

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

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

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

783 SALES, TRANSFERS, OR EXCHANGES OF WATER

784 9. (a) The right to receive Project Water provided for in this Contract may be sold,
785 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
786 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
787 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
788 Contract may take place without the prior written approval of the Contracting Officer, except as
789 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
790 approved absent all appropriate environmental documentation including but not limited to documents
791 prepared pursuant to NEPA and ESA. Such environmental documentation should include, as
792 appropriate, an analysis of groundwater impacts and economic and social effects, including
793 environmental justice, of the proposed water transfers on both the transferor and transferee. No sale,
794 transfer or exchange of the right to Project Water under this Contract may take place without the prior
795 written approval of the Contracting Officer and of DWR, if State Facilities are used to convey such
796 water.

797 (b) In order to facilitate efficient water management by means of water transfers of
798 the type historically carried out among Project Contractors located within the same geographical area
799 and to allow the Contractor to participate in an accelerated water transfer program during the term of
800 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental

801 documentation including, but not limited to, documents prepared pursuant to NEPA and ESA
802 analyzing annual transfers within such geographical areas and the Contracting Officer shall determine
803 whether such transfers comply with applicable law. Following the completion of the environmental
804 documentation, such transfers addressed in such documentation shall be conducted with advance
805 notice to the Contracting Officer, but shall not require prior written approval by the Contracting
806 Officer. Such environmental documentation and the Contracting Officer's compliance determination
807 shall be reviewed every five years and updated, as necessary, prior to the expiration of the then-
808 existing five-year period. All subsequent environmental documentation shall include an alternative to
809 evaluate not less than the quantity of Project Water historically transferred within the same
810 geographical area.

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

821 APPLICATION OF PAYMENTS AND ADJUSTMENTS

822 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
823 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the
824 Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall

825 be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at the
826 option of the Contractor may be credited against amounts to become due to the United States or DWR
827 by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
828 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project
829 Water supply provided for herein. All credits and refunds of overpayments shall be made within 30
830 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in
831 response to the notice to the Contractor that it has finalized the accounts for the Year in which the
832 overpayment was made.

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

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

847 (d) If in any year, by reason of errors in computation or other causes, there is an
848 overpayment or underpayment to DWR by the Contractor of its charges provided for herein, the

849 amount of such overpayment or underpayment shall be credited or debited, as the case may be, to the
850 Contractor's account for the next succeeding Year and DWR shall notify the Contractor thereof in
851 writing.

852 TEMPORARY REDUCTIONS—RETURN FLOWS

853 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and State
854 Facilities and the requirements of Federal law; (ii) the authorized purposes and priorities of the State
855 Facilities and State laws and policies governing the SWP; (iii) the obligations of the United States and
856 DWR under existing contracts, or renewals thereof, providing for water deliveries from the Project and
857 State Facilities; and (iv) the terms and conditions of this Contract; the Contracting Officer and DWR
858 shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in
859 this Contract.

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

871 (c) The United States reserves the right to all seepage and return flow water derived
872 from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the

873 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States
874 any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract
875 within the Contractor's Service Area by the Contractor or those claiming by, through, or under the
876 Contractor.

877 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

894 (d) DWR shall make all reasonable efforts consistent with sound fiscal policies, and
895 proper operating procedures to maintain the necessary facilities and to deliver Project Water to the
896 Contractor in accordance with the provisions of this Contract in such a manner and at such times as

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

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

910 UNAVOIDABLE GROUNDWATER PERCOLATION

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

915 RULES AND REGULATIONS

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

920 WATER AND AIR POLLUTION CONTROL

921 15. The Contractor, in carrying out this Contract, shall comply with all applicable
922 water and air pollution laws and regulations of the United States and the State of California,

923 and shall obtain all required permits or licenses from the appropriate Federal, State, or local
924 authorities.

925 QUALITY OF WATER

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

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

940 WATER ACQUIRED BY THE CONTRACTOR
941 OTHER THAN FROM THE UNITED STATES

942 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
943 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
944 be simultaneously transported through the same distribution facilities of the Contractor subject to the
945 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
946 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
947 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation

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

972 (b) Omitted.

973 OPINIONS AND DETERMINATIONS

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

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

988 COORDINATION AND COOPERATION

989 19. (a) In order to further their mutual goals and objectives, the Contracting Officer and
990 the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected
991 Project Contractors, in order to improve the operation and management of the Project. The
992 communication, coordination, and cooperation regarding operations and management shall include, but
993 not be limited to, any action which will or may materially affect the quantity or quality of Project
994 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
995 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder

996 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
997 authority for all actions, opinions, and determinations to be made by the respective party.

998 (b) Within 120 days following the effective date of this Contract, the Contractor,
999 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
1000 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
1001 amended as necessary separate and apart from this Contract. The goal of this process shall be to
1002 provide, to the extent practicable, the means of mutual communication and interaction regarding
1003 significant decisions concerning Project operation and management on a real-time basis.

1004 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract,
1005 it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

1006 (1) The Contracting Officer will, at the request of the Contractor, assist in
1007 the development of integrated resource management plans for the Contractor. Further, the Contracting
1008 Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water
1009 supply, water quality, and reliability.

1010 (2) The Secretary will, as appropriate, pursue program and project
1011 implementation and authorization in coordination with Project Contractors to improve the water
1012 supply, water quality, and reliability of the Project for all Project purposes.

1013 (3) The Secretary will coordinate with Project Contractors and the State of
1014 California to seek improved water resource management.

1015 (4) The Secretary will coordinate actions of agencies within the Department
1016 of the Interior that may impact the availability of water for Project purposes.

1017 (5) The Contracting Officer shall periodically, but not less than annually,
1018 hold division level meetings to discuss Project operations, division level water management activities,
1019 and other issues as appropriate.

1020 (d) Without limiting the contractual obligations of the Contracting Officer under the
1021 other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
1022 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
1023 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
1024 the physical integrity of structures or facilities.

1025 CHARGES FOR DELINQUENT PAYMENTS

1026 20. (a) The Contractor shall be subject to interest, administrative and penalty charges on
1027 delinquent installments or payments. When a payment is not received by the due date, the Contractor
1028 shall pay an interest charge for each day the payment is delinquent beyond the due date. When a
1029 payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to
1030 cover additional costs of billing and processing the delinquent payment. When a payment is
1031 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)
1032 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
1033 shall pay any fees incurred for debt collection services associated with a delinquent payment.

1034 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
1035 Federal Register by the Department of the Treasury for application to overdue payments, or the interest
1036 rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project
1037 Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and
1038 remain fixed for the duration of the delinquent period.

1039 (c) When a partial payment on a delinquent account is received, the amount
1040 received shall be applied, first to the penalty, second to the administrative charges, third to the accrued
1041 interest, and finally to the overdue payment.

1042 EQUAL OPPORTUNITY

1043 21. During the performance of this Contract, the Contractor agrees as follows:

1044 (a) The Contractor will not discriminate against any employee or applicant for
1045 employment because of race, color, religion, sex, or national origin. The Contractor will take
1046 affirmative action to ensure that applicants are employed, and that employees are treated during
1047 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
1048 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
1049 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
1050 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
1051 conspicuous places, available to employees and applicants for employment, notices to be provided by
1052 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1053 (b) The Contractor will, in all solicitations or advertisements for employees placed
1054 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
1055 employment without discrimination because of race, color, religion, sex, or national origin.

1056 (c) The Contractor will send to each labor union or representative of workers with
1057 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
1058 provided by the Contracting Officer, advising the said labor union or workers' representative of the
1059 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
1060 shall post copies of the notice in conspicuous places available to employees and applicants for
1061 employment.

1062 (d) The Contractor will comply with all provisions of Executive Order
1063 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the
1064 Secretary of Labor.

1065 (e) The Contractor will furnish all information and reports required by said
1066 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1067 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
1068 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
1069 regulations, and orders.

1070 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1071 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1072 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
1073 for further Government contracts in accordance with procedures authorized in said amended Executive
1074 Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive
1075 Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1076 (g) The Contractor will include the provisions of paragraphs (a) through (g) in every
1077 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of
1078 Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be
1079 binding upon each subcontractor or vendor. The Contractor will take such action with respect to any
1080 subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing
1081 such provisions, including sanctions for noncompliance: Provided, however, That in the event the
1082 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a
1083 result of such direction, the Contractor may request the United States to enter into such litigation to
1084 protect the interests of the United States.

1085 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1086 22. (a) The obligation of the Contractor to pay the United States and DWR as provided
1087 in this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1088 obligation may be distributed among the Contractor's water users and notwithstanding the default of
1089 individual water users in their obligations to the Contractor.

1090 (b) The payment of charges becoming due hereunder is a condition precedent to
1091 receiving benefits under this Contract. The United States and DWR shall not make water or
1092 conveyance facilities available to the Contractor through Project or State Facilities during any period in
1093 which the Contractor may be in arrears in the advance payment of water rates due the United States.
1094 The Contractor shall not furnish water made available pursuant to this Contract for lands or parties
1095 which are in arrears in the advance payment of water rates levied or established by the Contractor.

1096 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1097 obligation to require advance payment for water rates which it levies. Subdivision (b) of this Article
1098 applies to periods when the Contractor is in arrears on payment of charges to DWR.

1099 (d) If in any year the Contractor fails or is unable to raise sufficient funds by other
1100 means, the governing body of the Contractor shall levy upon all property within the Contractor's
1101 boundary not exempt from taxation, a special assessment sufficient to provide for all payments due the
1102 United States and DWR under this Contract.

1103 (e) Assessments levied by the governing body of the Contractor pursuant to
1104 subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor charged
1105 with the duty of enforcing and collecting assessments levied by the Contractor.

1106 (f) All money collected by way of special assessments under this Article for
1107 payments due DWR shall be kept in a separate fund by the treasurer or other officer of the Contractor
1108 charged with the safekeeping and disbursement of funds of the Contractor, and, upon the written
1109 demand of DWR, the treasurer or other officer shall pay over to DWR all money in his possession or
1110 control then due DWR under this contract, which money shall be applied by DWR to the satisfaction
1111 of the amount due under this Contract.

1112 (g) In the event of failure, neglect, or refusal of any officer of the Contractor to levy
1113 any assessment necessary to provide payment by the Contractor under this Contract, to enforce or to

1114 collect the assessment, or to pay over to the United States or DWR any money then due collected on
1115 the assessment, either or both DWR and the United States may take such action in a court of competent
1116 jurisdiction as they deem necessary to compel the performance in their proper sequence of all such
1117 duties. Action taken pursuant hereto shall not deprive DWR or United States or limit any remedy
1118 provided by this Contract or by law for the recovery of money due or which may become due under
1119 this Contract.

1120 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1121 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1122 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1123 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well
1124 as with their respective implementing regulations and guidelines imposed by the U.S. Department of
1125 the Interior and/or Bureau of Reclamation.

1126 (b) These statutes require that no person in the United States shall, on the grounds
1127 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1128 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1129 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1130 agrees to immediately take any measures necessary to implement this obligation, including permitting
1131 officials of the United States to inspect premises, programs, and documents.

1132 (c) The Contractor makes this agreement in consideration of and for the purpose of
1133 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1134 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1135 installment payments after such date on account of arrangements for Federal financial assistance which
1136 were approved before such date. The Contractor recognizes and agrees that such Federal assistance
1137 will be extended in reliance on the representations and agreements made in this Article, and that the
1138 United States reserves the right to seek judicial enforcement thereof.

1139 PRIVACY ACT COMPLIANCE

1140 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1141 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.)
1142 in maintaining Landholder acreage certification and reporting records, required to be submitted to the
1143 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.
1144 1266), and pursuant to 43 CFR 426.18.

1145 (b) With respect to the application and administration of the criminal penalty
1146 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for
1147 maintaining the certification and reporting records referenced in (a) above are considered to be
1148 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1149 (c) The Contracting Officer or a designated representative shall provide the
1150 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1151 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1152 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained
1153 in the Landholder's certification and reporting records.

1154 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1155 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1156 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1157 authorized to grant requests by individuals for access to their own records.

1158 (e) The Contractor shall forward promptly to the System Manager each proposed
1159 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1160 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1161 information and records necessary to prepare an appropriate response to the requester. These
1162 requirements do not apply to individuals seeking access to their own certification and reporting forms
1163 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act
1164 as a basis for the request.

1165 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1166 25. In addition to all other payments to be made by the Contractor pursuant to this Contract,
1167 the Contractor shall pay to the United States, within 60 days after receipt of a bill and detailed
1168 statement submitted by the Contracting Officer to the Contractor for such specific items of direct cost
1169 incurred by the United States for work requested by the Contractor associated with this Contract plus
1170 indirect costs in accordance with applicable Bureau of Reclamation policies and procedures. All such
1171 amounts referred to in this Article shall not exceed the amount agreed to in writing in advance by the
1172 Contractor. This Article shall not apply to costs for routine contract administration.

1173 WATER CONSERVATION

1174 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1175 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1176 implementing an effective water conservation and efficiency program based on the Contractor's water
1177 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1178 efficiency criteria for evaluating water conservation plans established under Federal law. The water

1179 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1180 economically feasible water conservation measures, and time schedules for meeting those objectives.
1181 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1182 continued implementation of such water conservation program. In the event the Contractor's water
1183 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1184 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1185 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1186 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1187 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1188 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1189 program in accordance with the time schedules therein.

1190 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1191 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the
1192 Best Management Practices identified by the time frames issued by the California Urban Water
1193 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1194 Officer to be inappropriate for the Contractor.

1195 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1196 its implementation of the water conservation plan on the reporting dates specified in the then existing
1197 conservation and efficiency criteria established under Federal law.

1198 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1199 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1200 established under Federal law and submit such revised water management plan to the Contracting
1201 Officer for review and evaluation. The Contracting Officer will then determine if the water

1202 conservation plan meets Reclamation's then-current conservation and efficiency criteria for evaluating
1203 water conservation plans established under Federal law.

1204 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1205 be described in the Contractor's water conservation plan.

1206 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1207 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1208 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1209 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1210 water shall not be considered Project Water under this Contract. In addition, this Contract shall not be
1211 construed as limiting or curtailing any rights which the Contractor or any water user within the
1212 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1213 Reclamation law.

1214 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1215 28. (a) The O&M of a portion of the Project facilities which serve the
1216 Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to
1217 two Operating Non-Federal Entities by separate agreements between the United States and the
1218 Operating Non-Federal Entities. Those separate agreements shall not interfere with or affect the rights
1219 or obligations of the Contractor or the United States hereunder. Specifically, portions of the Delta-
1220 Mendota Canal, the San Luis Canal and other related facilities are operated by the San Luis & Delta-
1221 Mendota Water Authority and the Friant-Kern Canal and related facilities are operated by the Friant
1222 Water Authority.

1223 (b) The Contractor shall pay directly to the applicable Operating
1224 Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and
1225 conditions of the separate agreements between the United States and the Operating Non-Federal

1226 Entities described in subdivision (a) of this Article, all rates, charges, or assessments of any kind,
1227 including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor
1228 determines, sets, or establishes for the O&M of the portion of the Project facilities operated and
1229 maintained by the Operating Non-Federal Entity or such successor. Such direct payments to the
1230 Operating Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay
1231 directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1232 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf of
1233 the United States in accordance with the separate agreement identified in subdivision (a) of this
1234 Article.

1235 (c) For so long as the O&M of any portion of the Project facilities serving the
1236 Contractor is performed by the Operating Non-Federal Entities, or any successors thereto, the
1237 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract
1238 representing the cost associated with the activity being performed by the Operating Non-Federal
1239 Entities or their successors.

1240 (d) In the event the O&M of the Project facilities operated and maintained by the
1241 Operating Non-Federal Entity/Entities is re-assumed by the United States during the term of this
1242 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1243 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1244 Contractor for Project Water under this Contract representing the O&M costs of the portion of such
1245 Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of
1246 written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered
1247 Pricing Component specified in the revised Exhibit "B" directly to the United States in compliance
1248 with Article 7 of this Contract.

1249 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1250 29. The expenditure or advance of any money or the performance of any obligation
1251 of the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1252 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1253 under this Contract. No liability shall accrue to the United States in case funds are not appropriated or
1254 allotted.

1255 BOOKS, RECORDS, AND REPORTS

1256 30. (a) The Contractor shall establish and maintain accounts and other books and
1257 records pertaining to administration of the terms and conditions of this Contract, including: the
1258 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1259 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1260 matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting
1261 Officer in such form and on such date or dates as the Contracting Officer may require. Subject to
1262 applicable Federal laws and regulations, each party to this Contract shall have the right during office
1263 hours to examine and make copies of the other party's books and records relating to matters covered by
1264 this Contract.

1265 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1266 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1267 such books, records, or information are reasonably related to the administration or performance of this
1268 Contract. Any such request shall allow the Contractor a reasonable period of time within which to
1269 provide the requested books, records, or information.

1270 (c) At such time as the Contractor provides information to the Contracting Officer
1271 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1272 Operating Non-Federal Entity/Entities.

1273 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1274 31. (a) The provisions of this Contract shall apply to and bind the successors and
1275 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1276 therein shall be valid until approved in writing by the Contracting Officer.

1277 (b) The assignment of any right or interest in this Contract by a party shall not
1278 interfere with the rights or obligations of the other parties to this Contract absent the written
1279 concurrence of said other parties.

1280 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1281 of any proposed assignment.

1282 (d) No assignment or transfer of any rights to use State Facilities authorized by this
1283 Contract shall be valid without advance written approval by DWR.

1284 SEVERABILITY

1285 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii)
1286 a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association
1287 or other form of organization whose primary function is to represent parties to Project contracts, brings
1288 an action in a court of competent jurisdiction challenging the legality or enforceability of a provision
1289 included in this Contract and said person, entity, association, or organization obtains a final court
1290 decision holding that such provision is legally invalid or unenforceable and the Contractor has not
1291 intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best
1292 efforts to (i) within 30 days of the date of such final court decision identify by mutual agreement the
1293 provisions in this Contract which must be revised and (ii) within three months thereafter promptly
1294 agree on the appropriate revision(s). The time periods specified above may be extended by mutual
1295 agreement of the parties. Pending the completion of the actions designated above, to the extent it can
1296 do so without violating any applicable provisions of law, the United States shall continue to make the
1297 quantities of Project Water specified in this Contract available to the Contractor pursuant to the
1298 provisions of this Contract which were not found to be legally invalid or unenforceable in the final
1299 court decision.

1300 RESOLUTION OF DISPUTES

1301 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1302 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute.
1303 Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter to

1304 Department of Justice, the party shall provide to the other party 30 days' written notice of the intent to
1305 take such action; Provided, That such notice shall not be required where a delay in commencing an
1306 action would prejudice the interests of the party that intends to file suit. During the 30-day notice
1307 period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the
1308 dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or
1309 remedy that the Contractor or the United States may have.

1310 OFFICIALS NOT TO BENEFIT

1311 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1312 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner
1313 as other water users or landowners.

1314 CHANGES IN CONTRACTOR'S SERVICE AREA

1315 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1316 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1317 except upon the Contracting Officer's written consent.

1318 (b) Within 30 days of receipt of a request for such a change, the Contracting Officer
1319 will notify the Contractor of any additional information required by the Contracting Officer for
1320 processing said request, and both parties will meet to establish a mutually agreeable schedule for
1321 timely completion of the process. Such process will analyze whether the proposed change is likely to:
1322 (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the
1323 Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1324 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1325 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1326 NEPA and ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer
1327 in this process, and such costs will be paid in accordance with Article 25 of this Contract. Upon
1328 approval by the Contracting Officer, the Contractor shall promptly give notice of any such change in
1329 Contractor's Service Area to DWR.

1330

FEDERAL LAWS

1331 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1332 validity or application in connection with the performance of the terms and conditions of this Contract
1333 of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and
1334 conditions of this Contract unless and until relief from application of such Federal law or regulation to
1335 the implementing provision of the Contract is granted by a court of competent jurisdiction.

1336

NOTICES

1337 37. Any notice, demand, or request authorized or required by this Contract shall be deemed
1338 to have been given on behalf of the parties when mailed, postage prepaid; or delivered to the Area
1339 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721; to the
1340 Chief, State Water Project Analysis Office, Department of Water Resources, P. O. Box 942836,
1341 Sacramento, California 94236-0001; and to the Board of Directors of the Hill's Valley Irrigation
1342 District, P. O. Box 911, Visalia, California 93279. The designation of the addressee or the address
1343 may be changed by notice given in the same manner as provided in this Article for other notices.

1344

CONFIRMATION OF CONTRACT

1345 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1346 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1347 Contract. The Contractor shall furnish both the United States and DWR with a certified copy of the
1348 final decree, the validation proceedings, and all pertinent supporting records of the court approving and
1349 confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the
1350 Contractor.

1351 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1352 year first above written.

1353 THE UNITED STATES OF AMERICA

1354 By: _____
1355 Regional Director, Mid-Pacific Region
1356 Bureau of Reclamation

1357 Approved as to Legal Form and DEPARTMENT OF WATER RESOURCES
1358 Sufficiency: OF THE STATE OF CALIFORNIA

1359 By: _____ By: _____
1360 Chief Counsel, Director,
1361 Department of Water Resources Department of Water Resources

1362 (SEAL) HILLS VALLEY IRRIGATION DISTRICT

1363 By: _____
1364 President of the Board of Directors

1365 Attest:

1366 By: _____
1367 Secretary of the Board of Directors

1368 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-20-04 Hills Valley Final Draft LTRC with
1369 exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
HILLS VALLEY IRRIGATION DISTRICT
Water Rates and Charges

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

	<u>Banks Joint Point Pumping</u>	
	<u>Irrigation Water</u>	<u>M&I Water</u>
O&M AND COST-OF-SERVICE RATES:		
Capital Rates:		
Cross Valley Conveyance (if applicable)	\$4.98	**
O&M Rates:		
Water Marketing	\$7.59	
Storage	\$5.83	
Direct Pumping (Project Use Energy)	\$3.25	
Dos Amigos	4/	
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing	\$0.08	
CFO/PFR Adj. Rate: ***	\$1.66	
TOTAL COST-OF-SERVICE RATES:	\$23.39	

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. \$29.68

Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981. \$31.16

SURCHARGES UNDER P.L 102-575
TO RESTORATION FUND*

Restoration Payments [3407(d)(2)(A)] \$7.82

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

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

***Rate represents the Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over

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

