

AG and M&I  
T.O. Draft 09/14-2004  
T.O. Draft 08/08-2004  
R.O. Final Delta Division Form 07/23-2004  
R.O. Draft 07/22-2004  
CVP-Wide Form 05/23-2004  
Delta Division  
Contract No.  
2-07-20-W0266-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
LAGUNA WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE DELTA DIVISION

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6 LAGUNA WATER DISTRICT  
7 PROVIDING FOR PROJECT WATER SERVICE  
8 FROM THE DELTA DIVISION

9 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, in pursuance  
10 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
11 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
12 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
13 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.  
14 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all  
15 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES  
16 OF AMERICA, hereinafter referred to as the United States, and the LAGUNA WATER  
17 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly  
18 organized, existing, and acting pursuant to the laws thereof;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

21 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
22 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

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

27 [2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related  
28 facilities, which will be used in part for the furnishing of water from the Delta-Mendota Canal to  
29 Mendota Pool (Pool) pursuant to the terms of this Contract and Central California Irrigation District  
30 has agreed to transport said water from the Pool; and

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

33 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
34 No. 2-07-20-W0266, as amended, which established terms for the delivery to the Contractor of  
35 Project Water from the Delta Division Facilities to the Pool from May 21, 1982, through  
36 December 31, 1995; and

37 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
38 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
39 interim renewal contract(s) identified as Contract No(s). 2-07-20-W0266-IR1, 2-07-20-W0266-IR2,  
40 2-07-20-W0266-IR3, 2-07-20-W0266-IR4, 2-07-20-W0266-IR5, 2-07-20-W0266-IR6, 2-07-20-  
41 W0266-IR7, and 14-06-200-7823-IR8, the current of which is hereinafter referred to as the Existing  
42 Contract, which provided for the continued water service to the Contractor from January 1, 1996,  
43 through February 28, 2006; and

44 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the  
45 Existing Contract following completion of appropriate environmental documentation, including a

46 programmatic environmental impact statement (PEIS) pursuant to the National Environmental  
47 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the  
48 CVPIA and the potential renewal of all existing contracts for Project Water; and

49 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
50 environmental review necessary to provide for long-term renewal of the Existing Contract; and

51 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
52 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of  
53 the State of California, for water service from the Project; and

54 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
55 its obligations under the Existing Contract; and

56 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
57 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
58 beneficial use and/or has demonstrated projected future demand for water use such that the  
59 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the  
60 quantity of Project Water to be made available to it pursuant to this Contract; and

61 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and  
62 agricultural areas within California for more than 50 years, and is considered by the Contractor as  
63 an essential portion of its water supply; and

64 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's,  
65 depend upon the continued availability of water, including water service from the Project; and

66 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
67 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
68 Project for all Project purposes; and

69 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
70 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment  
71 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
72 reasonable balance among competing demands for use of Project Water; and to comply with all  
73 applicable environmental statutes, all consistent with the legal obligations of the United States  
74 relative to the Project; and

75 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
76 relationship in order to achieve their mutual goals; and

77 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
78 assignments, rescheduling and conveyance of Project Water and non-Project water under this  
79 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial  
80 use of water; and

81 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a  
82 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the  
83 Explanatory Recital immediately above; and

84 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
85 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

88 DEFINITIONS

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

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

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

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

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

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

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

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

110 (g.1) "Delta Division Facilities" shall mean those existing and future Project  
111 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the

112 Tracy Pumping Plant, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir, used to  
113 divert, store and convey water to those Project Contractors entitled to receive water conveyed  
114 through the Delta-Mendota Canal;

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

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

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

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

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



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

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

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

147 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the  
148 delivery of M&I Water;

149 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable  
150 care, control, operation, repair, replacement (other than capital replacement), and maintenance of  
151 Project facilities;

152 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)  
153 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the  
154 Delta Division Facilities pursuant to written agreement(s) with the United States. When this  
155 Contract was entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota  
156 Water Authority.

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

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

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

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

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

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

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

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

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

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

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

185 TERM OF CONTRACT

186 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,  
187 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract  
188 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the  
189 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of  
190 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be  
191 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to  
192 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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

198 (2) The conditions which must be met for this Contract to be renewed are:  
199 (i) the Contractor has prepared a water conservation plan that has been determined by the  
200 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and  
201 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is  
202 implementing an effective water conservation and efficiency program based on the Contractor's

203 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating  
204 and maintaining all water measuring devices and implementing all water measurement methods as  
205 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has  
206 reasonably and beneficially used the Project Water supplies made available to it and, based on  
207 projected demands, is reasonably anticipated and expects to fully utilize for reasonable and  
208 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)  
209 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor  
210 has the physical and legal ability to deliver Project Water.

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

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

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

229 (d) The Contracting Officer shall make a determination ten years after the date of  
230 execution of this Contract, and every five years thereafter during the term of this Contract, of  
231 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of  
232 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70  
233 Stat 483). The Contracting Officer shall also make a determination ten years after the date of  
234 execution of this Contract and every five years thereafter during the term of this Contract of whether  
235 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the  
236 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this  
237 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956  
238 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all  
239 authorized Project construction expected to occur will have occurred, and on that basis the  
240 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to  
241 the Contractor, and agrees further that, at any time after such allocation is made, and subject to  
242 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the  
243 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable of  
244 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and  
245 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such  
246 conversion to occur shall be a determination by the Contracting Officer that, account being taken of  
247 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the  
248 remaining amount of construction costs assignable for ultimate return by the Contractor can

249 probably be repaid to the United States within the term of a contract under subsection 9(d) or  
250 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to  
251 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall  
252 notify the Contractor, and provide the reason(s) why such a determination could not be made.  
253 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as  
254 to permit, upon request of the Contractor and satisfaction of the conditions set out above,  
255 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such  
256 determination of costs has not been made at a time which allows conversion of this Contract during  
257 the term of this Contract or the Contractor has not requested conversion of this Contract within such  
258 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)  
259 of this Article a provision that carries forth in substantially identical terms the provisions of this  
260 subdivision.

261 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

262 3. (a) During each Year, consistent with all applicable State water rights, permits,  
263 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
264 Contract, the Contracting Officer shall make available for delivery to the Contractor 800 acre-feet  
265 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance  
266 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7  
267 of this Contract.

268 (b) Because the capacity of the Project to deliver Project Water has been  
269 constrained in recent years and may be constrained in the future due to many factors including  
270 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
271 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in

272 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected  
273 that the Contract Total set forth in this Contract will not be available to the Contractor in many  
274 years. During the most recent five years, the Recent Historic Average of Water Made Available to  
275 the Contractor was 526 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights  
276 and obligations of the parties under any provision of this Contract.

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

279 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)  
280 that receives Project Water through the Delta Division Facilities obtains a contractual agreement  
281 that the Contracting Officer shall make Project Water available at a point or points of delivery in or  
282 north of the Delta, at the request of the Contractor and upon completion of any required  
283 environmental documentation, this Contract shall be amended to provide for deliveries in or north  
284 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely  
285 to those changes made necessary by the addition of such alternate points of delivery in or north of  
286 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to  
287 deliver Project Water does not trigger this right of amendment.

288 (d) The Contractor shall make reasonable and beneficial use of all water  
289 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),  
290 groundwater banking programs, surface water storage programs, and other similar programs  
291 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
292 Contractor's Service Area which are consistent with applicable State law and result in use consistent  
293 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is  
294 (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this

295 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses  
296 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered  
297 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation  
298 law. Groundwater recharge programs, groundwater banking programs, surface water storage  
299 programs, and other similar programs utilizing Project Water or other water furnished pursuant to  
300 this Contract conducted outside the Contractor's Service Area may be permitted upon written  
301 approval of the Contracting Officer, which approval will be based upon environmental  
302 documentation, Project Water rights, and Project operational concerns. The Contracting Officer  
303 will address such concerns in regulations, policies, or guidelines.

304 (e) The Contractor shall comply with requirements applicable to the Contractor  
305 in biological opinion(s) prepared as a result of a consultation regarding the execution of this  
306 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA) as  
307 amended, that are within the Contractor's legal authority to implement. The Existing Contract,  
308 which evidences in excess of 36 years of diversions for irrigation and/or M&I purposes of the  
309 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in  
310 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and  
311 any other needed environmental review. Nothing herein shall be construed to prevent the  
312 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
313 respect to any biological opinion or other environmental documentation referred to in this Article.

314 (f) Following the declaration of Water Made Available under Article 4 of this  
315 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
316 available to the Project, can be made available to the Contractor in addition to the Contract Total  
317 under this Article during the Year without adversely impacting other Project Contractors. At the



318 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making  
319 such a determination. If the Contracting Officer determines that Project Water, or other water  
320 available to the Project, can be made available to the Contractor, the Contracting Officer will  
321 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
322 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable  
323 of taking such water to determine the most equitable and efficient allocation of such water. If the  
324 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
325 such water available to the Contractor in accordance with applicable statutes, regulations,  
326 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and  
327 operational constraints, long-term Project Contractors shall have a first right to acquire such water,  
328 including Project Water made available pursuant to Section 215 of the RRA.

329 (g) The Contractor may request permission to reschedule for use during the  
330 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,  
331 referred to as “rescheduled water.” The Contractor may request permission to use during the  
332 current Year a quantity of Project Water which may be made available by the United States to the  
333 Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written  
334 approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and  
335 policies.

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

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

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

347 (j) The Contracting Officer shall make reasonable efforts to protect the water  
348 rights necessary for the Project and to provide the water available under this Contract. The  
349 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
350 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,  
351 That the Contracting Officer retains the right to object to the substance of the Contractor's position  
352 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall  
353 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

354 TIME FOR DELIVERY OF WATER

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

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

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

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

378 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

379 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
380 Contract shall be delivered to the Contractor at the Delta-Mendota Canal to the Mendota Pool and  
381 any additional point or points of delivery either on Project facilities or another location or locations  
382 mutually agreed to in writing by the Contracting Officer and the Contractor.

383 (b) The Contracting Officer, either directly or indirectly through its written  
384 agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to  
385 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the  
386 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

387                   (b.1) Transportation of Project Water shall be made available from the Mendota  
388 Pool through facilities of the Central California Irrigation District under the terms and conditions set  
389 forth in an agreement between the Contractor and the Central California Irrigation District, which  
390 deliveries may involve exchange in any Year between the Contractor and any other contractor  
391 which as contracted with the United States for delivery of water from the Delta-Mendota Canal or  
392 Mendota Pool, or both.

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

397                   (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
398 measured and recorded with equipment furnished, installed, operated, and maintained by the  
399 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating  
400 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting  
401 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.  
402 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause  
403 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such  
404 measurements and shall take any necessary steps to adjust any errors appearing therein. For any  
405 period of time when accurate measurements have not been made, the Contracting Officer shall  
406 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to  
407 making a final determination of the quantity delivered for that period of time.

408                   (e) Absent a separate contrary written agreement with the Contractor, neither the  
409 Contracting Officer nor any Operating Non-Federal Entity (ies) shall be responsible for the control,

410 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to  
411 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this  
412 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and  
413 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal  
414 responsibility, including property damage, personal injury, or death arising out of or connected with  
415 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such  
416 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of  
417 the Contracting Officer or any of its officers, employees, agents, and assigns, including the  
418 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage  
419 or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,  
420 and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting  
421 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal  
422 Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the  
423 Operating Non-Federal Entity(ies).

424 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

425 6. (a) The Contractor has established a measuring program satisfactory to the  
426 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
427 purposes within the Contractor's Service Area is measured at each agricultural turnout and such  
428 water delivered for M&I purposes is measured at each M&I service connection. The water  
429 measuring devices or water measuring methods of comparable effectiveness must be acceptable to  
430 the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
431 maintaining and repairing all such measuring devices and implementing all such water measuring  
432 methods at no cost to the United States. The Contractor shall use the information obtained from

433 such water measuring devices or water measuring methods to ensure its proper management of the  
434 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water  
435 delivered for M&I purposes by customer class as defined in the Contractor's water conservation  
436 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude  
437 the Contractor from establishing and collecting any charges, assessments, or other revenues  
438 authorized by California law. The Contractor shall include a summary of all its annual surface  
439 water deliveries in the annual report described in subdivision (c) of Article 26.

440           (b) To the extent the information has not otherwise been provided, upon  
441 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report  
442 describing the measurement devices or water measuring methods being used or to be used to  
443 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I  
444 service connections or alternative measurement programs approved by the Contracting Officer, at  
445 which such measurement devices or water measuring methods are being used, and, if applicable,  
446 identifying the locations at which such devices and/or methods are not yet being used including a  
447 time schedule for implementation at such locations. The Contracting Officer shall advise the  
448 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the  
449 measuring devices or water measuring methods identified in the Contractor's report and if the  
450 Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
451 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,  
452 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith  
453 the earliest practicable date by which the Contractor shall modify said measuring devices and/or  
454 measuring methods as required by the Contracting Officer to ensure compliance with subdivision  
455 (a) of this Article.

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

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

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

465 RATES AND METHOD OF PAYMENT FOR WATER

466 7. (a) The Contractor shall pay the United States as provided in this Article for all  
467 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
468 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's  
469 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,  
470 modified, or superceded only through a public notice and comment procedure; (ii) applicable  
471 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
472 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,  
473 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting  
474 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon  
475 execution of this Contract are set forth in Exhibit "B," as may be revised annually.

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

478                   (1)     Prior to July 1 of each Calendar Year, the Contracting Officer shall provide  
479 the Contractor an estimate of the Charges for Project Water that will be applied to the period  
480 October 1, of the current Calendar Year, through September 30, of the following Calendar Year,  
481 and the basis for such estimate. The Contractor shall be allowed not less than two months to review  
482 and comment on such estimates. On or before September 15 of each Calendar Year, the  
483 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the  
484 period October 1 of the current Calendar Year, through September 30, of the following Calendar  
485 Year, and such notification shall revise Exhibit "B."

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

493                   (c)     At the time the Contractor submits the initial schedule for the delivery of  
494 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
495 shall make an advance payment to the United States equal to the total amount payable pursuant to  
496 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
497 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
498 of the first month and before the end of each calendar month thereafter, the Contractor shall make  
499 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
500 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately



501 following. Adjustments between advance payments for Water Scheduled and payments at Rates  
 502 due for Water Delivered shall be made before the end of the following month; Provided, That any  
 503 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases  
 504 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied  
 505 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not  
 506 delivered to the Contractor in advance of such payment. In any month in which the quantity of  
 507 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled  
 508 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor  
 509 unless and until an advance payment at the Rates then in effect for such additional Project Water is  
 510 made. Final adjustment between the advance payments for the Water Scheduled and payments for  
 511 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon  
 512 as practicable but no later than April 30th of the following Year, or 60 days after the delivery of  
 513 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not  
 514 delivered by the last day of February.

515 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
 516 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
 517 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
 518 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
 519 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
 520 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
 521 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no  
 522 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be  
 523 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water

524 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the  
525 adjustment of payments due to the United States for Charges for the next month. Any amount to be  
526 paid for past due payment of Charges and the Tiered Pricing Component shall be computed  
527 pursuant to Article 20 of this Contract.

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

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

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

540 (h) The Contracting Officer shall keep its accounts pertaining to the  
541 administration of the financial terms and conditions of its long-term contracts, in accordance with  
542 applicable Federal standards, so as to reflect the application of Project costs and revenues. The  
543 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a  
544 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project  
545 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer

546 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes  
547 relating to accountings, reports, or information.

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

555 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
556 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
557 delivery the Contractor shall make an additional payment to the United States equal to the  
558 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
559 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
560 Contract Total, shall equal one-half of the difference between the Rate established under  
561 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
562 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which  
563 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established  
564 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost  
565 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of  
566 Article 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall  
567 be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual  
568 deliveries of each bear to the cumulative total Water Delivered.

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

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

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

590                           (l)     Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,  
591 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates, in

592 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect  
593 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred  
594 Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and  
595 Charges because of inability to pay and is transferring Project Water to another entity whose Rates  
596 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project  
597 Water shall not be adjusted to reflect the Contractor's inability to pay.

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

600 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not  
601 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the  
602 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the  
603 Contractor does not waive any legal rights or remedies that it may have with respect to such  
604 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the  
605 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,  
606 computation, or imposition of any deficit charges accruing during the term of the Existing Contract  
607 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such  
608 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by  
609 the United States of payments made by the Contractor under its Existing Contract and any  
610 preceding interim renewal contracts if applicable; and (5) the application of such payments in the  
611 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any  
612 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and  
613 credits for payments heretofore made, provided that the basis for such ruling is applicable to the  
614 Contractor.

615                   NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

616           8.       The Contractor and the Contracting Officer concur that, as of the effective date of  
617 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further  
618 liability therefore.

619                   SALES, TRANSFERS, OR EXCHANGES OF WATER

620           9.       (a)     The right to receive Project Water provided for in this Contract may be sold,  
621 transferred, or exchanged to others for reasonable and beneficial uses within the State of California  
622 if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable  
623 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this  
624 Contract may take place without the prior written approval of the Contracting Officer, except as  
625 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be  
626 approved absent all appropriate environmental documentation, including but not limited to,  
627 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should  
628 include, as appropriate, an analysis of groundwater impacts and economic and social effects,  
629 including environmental justice, of the proposed water transfers on both the transferor and  
630 transferee.

631                   (b)     In order to facilitate efficient water management by means of water transfers  
632 of the type historically carried out among Project Contractors located within the same geographical  
633 area and to allow the Contractor to participate in an accelerated water transfer program during the  
634 term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary  
635 environmental documentation, including but not limited to documents prepared pursuant to NEPA  
636 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer  
637 shall determine whether such transfers comply with applicable law. Following the completion of

638 the environmental documentation, such transfers addressed in such documentation shall be  
639 conducted with advance notice to the Contracting Officer, but shall not require prior written  
640 approval by the Contracting Officer. Such environmental documentation and the Contracting  
641 Officer's compliance determination shall be reviewed every five years and updated, as necessary,  
642 prior to the expiration of the then existing five-year period. All subsequent environmental  
643 documentation shall include an alternative to evaluate not less than the quantity of Project Water  
644 historically transferred within the same geographical area.

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

655 APPLICATION OF PAYMENTS AND ADJUSTMENTS

656 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
657 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
658 the Contractor arising out of this Contract then due and payable. Overpayments of more than  
659 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
660 overpayment at the option of the Contractor may be credited against amounts to become due to the

661 United States by the Contractor. With respect to overpayment, such refund or adjustment shall  
662 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the  
663 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments  
664 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or  
665 refund such overpayment in response to the notice to the Contractor that it has finalized the  
666 accounts for the Year in which the overpayment was made.

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

672 TEMPORARY REDUCTIONS--RETURN FLOWS

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

678 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may  
679 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein  
680 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of  
681 the Project facilities or any part thereof necessary for the delivery of Project Water to the  
682 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will  
683 give the Contractor due notice in advance of such temporary discontinuance or reduction, except in



684 case of emergency, in which case no notice need be given; Provided, That the United States shall  
685 use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
686 service after such reduction or discontinuance, and if requested by the Contractor, the United States  
687 will, if possible, deliver the quantity of Project Water which would have been delivered hereunder  
688 in the absence of such discontinuance or reduction.

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

695 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

706 (c) In any Year in which there may occur a Condition of Shortage for any of the  
707 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the  
708 Contracting Officer will first allocate the available Project Water consistent with the Central Valley  
709 Project M&I Water Shortage Policy in its form on the effective date of this Contract for determining  
710 the amount of Project Water available for delivery to the Project Contractors. Subject to the  
711 foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting  
712 Officer shall then apportion Project Water among the Contractor and others entitled to Project  
713 Water from Delta Division Facilities under long-term water service or repayment contracts (or  
714 renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

715 (1) The Contracting Officer shall make an initial and subsequent  
716 determination as necessary of the total quantity of Project Water estimated to be scheduled or  
717 actually scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term  
718 water service or repayment contracts then in force for the delivery of Project Water by the United  
719 States from Delta Division Facilities during the relevant Year, the quantity so determined being  
720 hereinafter referred to as the scheduled total;

721 (2) A determination shall be made of the total quantity of Project Water  
722 that is available for meeting the scheduled total, the quantity so determined being hereinafter  
723 referred to as the available supply;

724 (3) The total quantity of Project Water estimated to be scheduled or  
725 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4  
726 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred  
727 to as the Contractor's proportionate share; and

728                   (4)     The available supply shall be multiplied by the Contractor's  
729 proportionate share and the result shall be the quantity of Project Water made available by the  
730 United States to the Contractor for the relevant Year in accordance with the schedule developed by  
731 the Contracting Officer under subdivision (c) (1) of this Article, but in no event shall such amount  
732 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the  
733 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta  
734 Division Facilities to long-term water service and repayment Contractors during the relevant Year,  
735 such additions or reductions to the available supply shall be apportioned consistent with  
736 subparagraphs (1) through (4), inclusive.

737                   (d)     By entering into this Contract, the Contractor does not waive any legal rights  
738 or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
739 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of  
740 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is  
741 implemented in order to allocate Project Water between municipal and industrial and irrigation  
742 purposes; Provided, that the Contractor has commenced any such judicial challenge or any  
743 administrative procedures necessary to institute any judicial challenge within six months of the  
744 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any  
745 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein  
746 shall be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

747                                   UNAVOIDABLE GROUNDWATER PERCOLATION

748                   13.     To the extent applicable, the Contractor shall not be deemed to have delivered  
749 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such

750 lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of  
751 the delivery of Irrigation Water by the Contractor to Eligible Lands.

752 RULES AND REGULATIONS

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

757 WATER AND AIR POLLUTION CONTROL

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

761 QUALITY OF WATER

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

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

776 (c) Omitted.

777 WATER ACQUIRED BY THE CONTRACTOR  
778 OTHER THAN FROM THE UNITED STATES

779 17. (a) Water or water rights now owned or hereafter acquired by the Contractor  
780 other than from the United States and Irrigation Water furnished pursuant to the terms of this  
781 Contract may be simultaneously transported through the same distribution facilities of the  
782 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water  
783 and non-Project water were constructed without funds made available pursuant to Federal  
784 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the  
785 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation  
786 Water must be established through the certification requirements as specified in the Acreage  
787 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands  
788 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be  
789 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the  
790 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with  
791 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to  
792 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the  
793 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,  
794 the Contracting Officer will calculate annually the cost to the Federal Government, including  
795 interest of storing or delivering non-Project water, which for purposes of this Contract shall be  
796 determined as follows: The quotient shall be the unpaid distribution system costs divided by the  
797 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the  
798 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the  
799 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of

800 excess or full cost land within the Contractor's Service Area that receives non-Project water through  
801 Federally financed or constructed facilities. The incremental fee calculation methodology will  
802 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide  
803 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review  
804 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is  
805 adopted it shall supercede this provision.

806 (b) Water or water rights now owned or hereafter acquired by the Contractor,  
807 other than from the United States may be stored, conveyed, and/or diverted through Project  
808 facilities, subject to the completion of appropriate environmental documentation, with the approval  
809 of the Contracting Officer and the execution of any contract determined by the Contracting Officer  
810 to be necessary, consistent with the following provisions:

811 (1) The Contractor may introduce non-Project water into Project facilities  
812 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,  
813 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
814 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project  
815 use power policy, if such Project use power policy is applicable, each as amended, modified, or  
816 superceded from time to time.

817 (2) Delivery of such non-Project water in and through Project facilities  
818 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes  
819 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to  
820 other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any  
821 other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

822                   (3)     Neither the United States nor the Operating Non-Federal Entity(ies)  
823 shall be responsible for control, care or distribution of the non-Project water before it is introduced  
824 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to  
825 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their  
826 respective officers, agents, and employees, from any claim for damage to persons or property, direct  
827 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in  
828 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project  
829 water into Project facilities.

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

833                   (5)     After Project purposes are met, as determined by the Contracting  
834 Officer, the United States and Project Contractors entitled to Project Water from Delta Division  
835 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be  
836 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
837 any such remaining capacity being made available to non-Project contractors. Other Project  
838 Contractors shall have a second priority to any remaining capacity of facilities declared to be  
839 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
840 any such remaining capacity being made available to non-Project contractors.

841   OPINIONS AND DETERMINATIONS

842           18.     (a)     Where the terms of this Contract provide for actions to be based upon the  
843 opinion or determination of either party to this Contract, said terms shall not be construed as  
844 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

845 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
846 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or  
847 unreasonable opinion or determination. Each opinion or determination by either party shall be  
848 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall  
849 affect or alter the standard of judicial review applicable under Federal law to any opinion or  
850 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

856 COORDINATION AND COOPERATION

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



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

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

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

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

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

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

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

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

895 CHARGES FOR DELINQUENT PAYMENTS

896 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
897 on delinquent installments or payments. When a payment is not received by the due date, the  
898 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
899 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
900 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
901 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
902 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
903 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
904 payment.

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

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

913 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

957 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

970 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

971 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
972 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
973 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,  
974 as well as with their respective implementing regulations and guidelines imposed by the U.S.  
975 Department of the Interior and/or Bureau of Reclamation.

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

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

989 PRIVACY ACT COMPLIANCE

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

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

999 (c) The Contracting Officer or a designated representative shall provide the  
1000 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
1001 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
1002 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
1003 contained in the Landholder's certification and reporting records.

1004 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1005 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
1006 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
1007 authorized to grant requests by individuals for access to their own records.

1008 (e) The Contractor shall forward promptly to the System Manager each proposed  
1009 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
1010 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1011 information and records necessary to prepare an appropriate response to the requester. These  
1012 requirements do not apply to individuals seeking access to their own certification and reporting  
1013 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the  
1014 Privacy Act as a basis for the request.

1015 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1016 25. In addition to all other payments to be made by the Contractor pursuant to this  
1017 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
1018 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of  
1019 direct cost incurred by the United States for work requested by the Contractor associated with this  
1020 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1021 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
1022 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1023 administration.

1024 WATER CONSERVATION

1025 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1026 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1027 implementing an effective water conservation and efficiency program based on the Contractor's  
1028 water conservation plan that has been determined by the Contracting Officer to meet the

1029 conservation and efficiency criteria for evaluating water conservation plans established under  
1030 Federal law. The water conservation and efficiency program shall contain definite water  
1031 conservation objectives, appropriate economically feasible water conservation measures, and time  
1032 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract  
1033 shall be contingent upon the Contractor's continued implementation of such water conservation  
1034 program. In the event the Contractor's water conservation plan or any revised water conservation  
1035 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
1036 determined by the Contracting Officer to meet such criteria, due to circumstances which the  
1037 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be  
1038 made under this Contract so long as the Contractor diligently works with the Contracting Officer to  
1039 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately  
1040 begins implementing its water conservation and efficiency program in accordance with the time  
1041 schedules therein.

1042 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1043 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
1044 the Best Management Practices identified by the time frames issued by the California Urban Water  
1045 Conservation Council for such M&I Water unless any such practice is determined by the  
1046 Contracting Officer to be inappropriate for the Contractor.

1047 (c) The Contractor shall submit to the Contracting Officer a report on the status  
1048 of its implementation of the water conservation plan on the reporting dates specified in the then  
1049 existing conservation and efficiency criteria established under Federal law.

1050 (d) At five-year intervals, the Contractor shall revise its water conservation plan  
1051 to reflect the then current conservation and efficiency criteria for evaluating water conservation

1052 plans established under Federal law and submit such revised water management plan to the  
1053 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1054 water conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1055 evaluating water conservation plans established under Federal law.

1056 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1057 shall be described in the Contractor's water conservation plan.

1058 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1059 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
1060 Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1061 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.  
1062 Any such water shall not be considered Project Water under this Contract. In addition, this Contract  
1063 shall not be construed as limiting or curtailing any rights which the Contractor or any water user  
1064 within the Contractor's Service Area acquires or has available under any other contract pursuant to  
1065 Federal Reclamation law.

1066 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1067 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1068 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San  
1069 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement  
1070 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &  
1071 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the  
1072 rights or obligations of the Contractor or the United States hereunder.

1073 (b) The Contracting Officer has previously notified the Contractor in writing that  
1074 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the

1075 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the  
1076 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1077 Authority, or to any successor approved by the Contracting Officer under the terms and conditions  
1078 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis  
1079 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or  
1080 assessments of any kind, including any assessment for reserve funds, which the Operating Non-  
1081 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or  
1082 establishes for the O&M of the portion of the Project facilities operated and maintained by the  
1083 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such  
1084 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or  
1085 such successor shall not relieve the Contractor of its obligation to pay directly to the United States  
1086 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the  
1087 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects  
1088 payments on behalf of the United States in accordance with the separate agreement identified in  
1089 subdivision (a) of this Article.

1090 (c) For so long as the O&M of any portion of the Project facilities serving the  
1091 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1092 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1093 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1094 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1095 or its successor.

1096 (d) In the event the O&M of the Project facilities operated and maintained by the  
1097 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the



1098 United States during the term of this Contract, the Contracting Officer shall so notify the  
1099 Contractor, in writing, and present to the Contractor a revised Exhibit “B” which shall include the  
1100 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing  
1101 the O&M costs of the portion of such Project facilities which have been re-assumed. The  
1102 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to  
1103 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit  
1104 “B” directly to the United States in compliance with Article 7 of this Contract.

1105 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1106 29. The expenditure or advance of any money or the performance of any obligation of  
1107 the United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1108 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1109 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1110 or allotted.

1111 BOOKS, RECORDS, AND REPORTS

1112 30. (a) The Contractor shall establish and maintain accounts and other books and  
1113 records pertaining to administration of the terms and conditions of this Contract, including: the  
1114 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1115 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1116 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished  
1117 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may  
1118 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have  
1119 the right during office hours to examine and make copies of the other party's books and records  
1120 relating to matters covered by this Contract.

1121 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1122 records, or other information shall be requested from the Contractor by the Contracting Officer  
1123 unless such books, records, or information are reasonably related to the administration or  
1124 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1125 time within which to provide the requested books, records, or information.

1126 (c) At such time as the Contractor provides information to the Contracting  
1127 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to  
1128 the Operating Non-Federal Entity.

1129 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1130 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1131 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1132 therein shall be valid until approved in writing by the Contracting Officer.

1133 (b) The assignment of any right or interest in this Contract by either party shall  
1134 not interfere with the rights or obligations of the other party to this Contract absent the written  
1135 concurrence of said other party.

1136 (c) The Contracting Officer shall not unreasonably condition or withhold  
1137 approval of any proposed assignment.

1138 SEVERABILITY

1139 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1140 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1141 association or other form of organization whose primary function is to represent parties to Project  
1142 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1143 enforceability of a provision included in this Contract and said person, entity, association, or  
1144 organization obtains a final court decision holding that such provision is legally invalid or  
1145 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1146 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1147 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1148 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
1149 specified above may be extended by mutual agreement of the parties. Pending the completion of

1150 the actions designated above, to the extent it can do so without violating any applicable provisions  
1151 of law, the United States shall continue to make the quantities of Project Water specified in this  
1152 Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1153 found to be legally invalid or unenforceable in the final court decision.

1154 RESOLUTION OF DISPUTES

1155 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1156 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1157 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1158 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1159 notice of the intent to take such action; Provided, That such notice shall not be required where a  
1160 delay in commencing an action would prejudice the interests of the party that intends to file suit.  
1161 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1162 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1163 waive or abridge any right or remedy that the Contractor or the United States may have.

1164 OFFICIALS NOT TO BENEFIT

1165 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1166 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1167 manner as other water users or landowners.

1168 CHANGES IN CONTRACTOR'S SERVICE AREA

1169 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1170 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1171 except upon the Contracting Officer's written consent.

1172 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1173 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1174 for processing said request, and both parties will meet to establish a mutually agreeable schedule for

1175 timely completion of the process. Such process will analyze whether the proposed change is likely  
1176 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability  
1177 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1178 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1179 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply  
1180 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the  
1181 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this  
1182 Contract.

1183 FEDERAL LAWS

1184 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1185 validity or application in connection with the performance of the terms and conditions of this  
1186 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1187 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1188 regulation to the implementing provision of the Contract is granted by a court of competent  
1189 jurisdiction.

1190 NOTICES

1191 37. Any notice, demand, or request authorized or required by this Contract shall be  
1192 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1193 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California  
1194 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board  
1195 of Directors of the Laguna Water District, c/o Redfern Ranches, Inc., P. O. Box 305, Dos Palos,  
1196 California 93620. The designation of the addressee or the address may be changed by notice given  
1197 in the same manner as provided in this Article for other notices.

1198 CONFIRMATION OF CONTRACT

1199 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1200 decree of a court of competent jurisdiction of the State of California, confirming the execution of  
1201 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the

1202 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1203 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1204 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1205 year first above written.

1206 THE UNITED STATES OF AMERICA

1207 By: \_\_\_\_\_  
1208 Regional Director, Mid-Pacific Region  
1209 Bureau of Reclamation

1210 (SEAL)

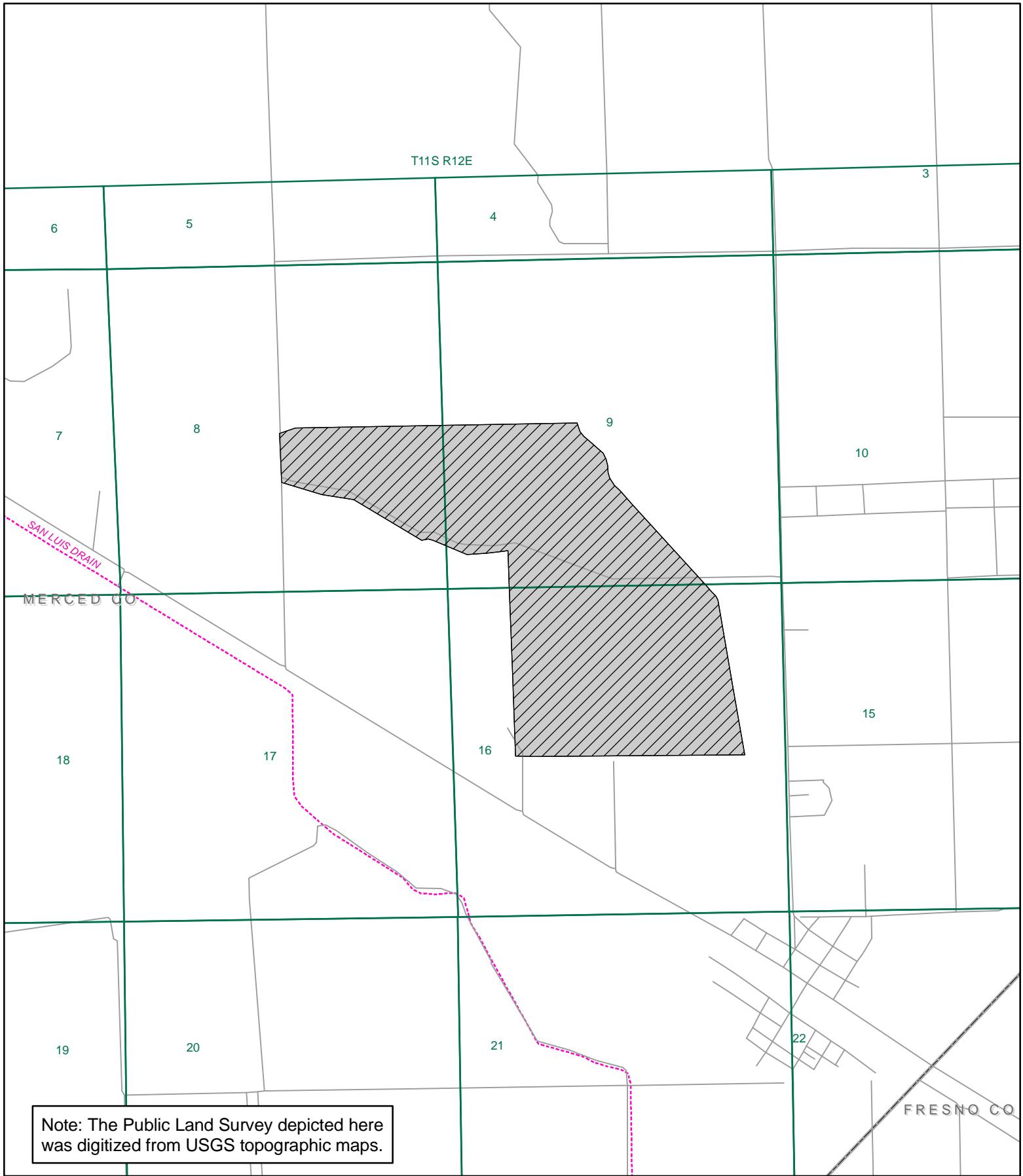
1211 LAGUNA WATER DISTRICT

1212 By: \_\_\_\_\_  
1213 President of the Board of Directors



1214 Attest:

1215 By: \_\_\_\_\_  
1216 Secretary of the Board of Directors

1217 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-14-04 Laguna WD Final Draft LTRC  
1218 with exhibits.doc)



Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

-  Contractor's Service Area
-  District Boundary

# Laguna W.D.

Contract No. 2-07-20-W0266-LTR1  
EXHIBIT A

II

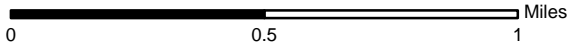


EXHIBIT B  
LAGUNA WATER DISTRICT  
Water Rates and Charges

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>COST-OF-SERVICE RATES:</u>	<u>Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&amp;I</u> <u>Water 1/</u>
Capital Rates	\$ 8.09	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
CFO/PFR Adj. Rate 2/		
<b>TOTAL COST-OF-SERVICE-RATES</b>	<u>\$21.51</u>	<u>1/</u>
<u>FULL-COST RATES</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$34.62</u>	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	<u>\$41.27</u>	
<u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>

1/ To be provided as needed. Contractor does not currently receive M&I water and is not projected to take any in the near future.

2/ Rate represents Chief Financial Officers (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

3/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1-9/30).