

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

LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES
PAJARO VALLEY WATER MANAGEMENT AGENCY,
WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 1,
AND SANTA CLARA VALLEY WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

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8 AND SANTA CLARA VALLEY WATER DISTRICT
9 PROVIDING FOR PROJECT WATER SERVICE
10 FROM THE DELTA DIVISION

11 THIS CONTRACT, made this ____ day of _____, 2005, in pursuance
12 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
13 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
16 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
17 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
18 OF AMERICA, hereinafter referred to as the United States, and PAJARO VALLEY WATER
19 MANAGEMENT AGENCY (PVWMA), WESTLANDS WATER DISTRICT DISTRIBUTION
20 DISTRICT NO. 1 (WWD-DD1), and SANTA CLARA VALLEY WATER DISTRICT (SCVWD),
21 hereinafter collectively referred to as “the Contractors,” and each individually as “Contractor,” each
22 a public agency of the State of California, duly organized, existing, and acting pursuant to the laws
23 thereof;

24 WITNESSETH, That:

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EXPLANATORY RECITALS

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

[2nd] WHEREAS, the United States constructed the Delta Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor(s) pursuant to the terms of this Contract; and

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

[4th] WHEREAS, the Mercy Springs Water District (MSWD) and the United States entered into Contract No. 14-06-200-3365, as amended, which established terms for the delivery to the MSWD of Project Water from the Delta Division Facilities from June 21, 1967, through February 28, 1995; and

[5th] WHEREAS, MSWD and the United States have pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contracts identified as Contract No(s). 14-06-200-3365A-IR1 and 14-06-200-3365-IR2, which provided for the continued water service to MSWD from March 1, 1995, through February 29, 2000; and

[5.1] WHEREAS during the term of Contract No. 14-06-200-3365A-IR2 and following the approval of the United States, MSWD assigned to the Contractors on May 14, 1999, the right,

48 title, and interest in that portion of Contract No. 14-06-200-3365A-IR2 consisting of 6,260 acre-feet
49 of Project Water, including any rights to renew that partial interest in Contract No. 14-06-200-
50 3365A-IR2 (this transaction is referred to as “the Assignment”); and

51 [5.2] WHEREAS, concurrent with the Assignment, the Contractors entered into a separate
52 agreement, entitled “Agreement Relating to Partial Assignment of Water Service Contract,” dated
53 May 14, 1999, stating the terms and conditions by which the Contractors would share the assigned
54 Project Water supply. Consistent with the Agreement Relating to Partial Assignment of Water
55 Service Contract and SCVWD’s Integrated Water Resources Plan, water available to SCVWD
56 under this Contract is used to provide a more reliable water supply to its customers when shortages
57 occur in its CVP Water Service Contract No. 7-07-20-W0023 water supplies and other water
58 supplies; and

59 [5.3] WHEREAS, the Contractors and the United States have subsequent to the
60 Assignment entered into interim renewal contracts identified as Contract Nos. 14-06-200-3365A-
61 IR3-B, 14-06-200-3365A-IR4-B, 14-06-200-3365A-IR5-B, 14-06-200-3365A-IR6-B, 14-06-200-
62 3365A-IR7-B, and 14-06-200-3365A-IR8-B, the current of which is hereinafter referred to as the
63 Existing Contract, which provided for continued water service to the Contractors from March 1,
64 2004, through February 28, 2006;

65 [5.4] WHEREAS, the United States and SCVWD entered into Contract
66 No. 6-07-20-X0290 for the transfer of the operation and maintenance of certain San Felipe Division
67 facilities to SCVWD, and said contract requires any entity receiving CVP water through San Felipe
68 Division facilities to pay SCVWD an equitable share of the operation and maintenance of certain
69 joint-use San Felipe Division facilities pursuant to the terms of that contract; and

70 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
71 Existing Contract following completion of appropriate environmental documentation, including a
72 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
73 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
74 CVPIA and the potential renewal of all existing contracts for Project Water; and

75 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
76 environmental review necessary to provide for long-term renewal of the Existing Contract; and

77 [8th] WHEREAS, the Contractors have requested the long-term renewal of the Existing
78 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of
79 the State of California, for water service from the Project; and

80 [9th] WHEREAS, the United States has determined that each Contractor has fulfilled all
81 of its obligations under the Existing Contract; and

82 [10th] WHEREAS, each Contractor has demonstrated to the satisfaction of the Contracting
83 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
84 beneficial use and/or has demonstrated projected future demand for water use such that the
85 Contractor has or will have the capability and expects to utilize fully for reasonable and beneficial
86 use the quantity of Project Water to be made available to it pursuant to this Contract; and

87 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
88 agricultural areas within California for more than 50 years, and is considered by each Contractor as
89 an essential portion of its water supply; and

90 [12th] WHEREAS, the economies of regions within the Project, including the Contractors,
91 depend upon the continued availability of water, including water service from the Project; and

92 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
93 partnerships to pursue measures to improve water supply, water quality, and reliability of the
94 Project for all Project purposes; and

95 [14th] WHEREAS, the mutual goals of the United States and the Contractors include: to
96 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
97 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
98 reasonable balance among competing demands for use of Project Water; and to comply with all
99 applicable environmental statutes, all consistent with the legal obligations of the United States
100 relative to the Project; and

101 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
102 relationship in order to achieve their mutual goals; and

103 [15.1] WHEREAS, each Contractor has utilized or may utilize transfers, contract
104 assignments, rescheduling and conveyance of Project Water and non-Project water under this
105 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
106 use of water; and

107 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a
108 disincentive to the Contractors in continuing to carry out the beneficial activities set out in the
109 Explanatory Recital immediately above; and

110 [16th] WHEREAS, the United States and the Contractors are willing to enter into this
111 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

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DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:
 - (a) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;
 - (b) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;
 - (c) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;
 - (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;
 - (e) “Contract Total” shall mean the maximum amount of water to which the Contractor(s) is(are) entitled under subdivision (a) of Article 3 of this Contract;
 - (f) “Contractor's Service Area” shall mean the respective area to which each Contractor is permitted to provide Project Water under this Contract as described in Exhibits “A-1,” “A-2,” and “A-3” attached hereto, each of which may be modified from time to time in accordance with Article 35 of this Contract without amendment of this Contract;
 - (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

136 (g.1) “Delta Division Facilities” shall mean those existing and future Project
137 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
138 Tracy Pumping Plant, the O’Neill Forebay, the O’Neill Pumping/Generating Plant, and the San Luis
139 Reservoir, used to divert, store, and convey water to those Project Contractors entitled to receive
140 water conveyed through the Delta-Mendota Canal;

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

144 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in
145 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
146 Reclamation law;

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

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

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

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

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

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

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

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

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

182 Water Authority and, with respect to the San Luis Unit facilities, the California Department of
183 Water Resources;

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

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

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

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

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

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

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

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

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

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

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

212 TERM OF CONTRACT

213 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,
214 and supersedes the Existing Contract. In the event the Contractor(s) wish(es) to renew this Contract
215 beyond February 28, 2030, the Contractor(s) shall submit a request for renewal in writing to the
216 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
217 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor(s) shall be
218 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
219 the furnishing of M&I Water to the Contractor(s) shall be governed by subdivision (c) of this
220 Article.

221 (b) (1) Under terms and conditions of a renewal contract that are mutually
222 agreeable to the United States and the Contractor(s) requesting renewal, and upon a determination
223 by the Contracting Officer that at the time of contract renewal the conditions set forth in subdivision
224 (b) (2) of this Article are met, and subject to Federal and State law, this Contract, insofar as it
225 pertains to the furnishing of Irrigation Water to the Contractor(s), shall be renewed for a period of
226 25 years.

227 (2) For each Contractor seeking renewal, the conditions which must be
228 met for this Contract to be renewed by that Contractor are: (i) the Contractor has prepared a water
229 conservation plan that has been determined by the Contracting Officer in accordance with Article 26
230 of this Contract to meet the conservation and efficiency criteria for evaluating such plans
231 established under Federal law; (ii) the Contractor is implementing an effective water conservation
232 and efficiency program based on the Contractor's water conservation plan as required by Article 26
233 of this Contract; (iii) the Contractor is operating and maintaining all water measuring devices and
234 implementing all water measurement methods as approved by the Contracting Officer pursuant to
235 Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water
236 supplies made available to it and, based on projected demands, is reasonably anticipated and expects
237 to fully utilize for reasonable and beneficial use the quantity of Project Water to be made available
238 to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this
239 Contract; and (vi) the Contractor has or will have the physical and legal ability to deliver Project
240 Water. A failure by any Contractor to meet the conditions set forth in this subdivision will not
241 preclude the United States and any other Contractor which has met the conditions set forth in this
242 subdivision from renewing this Contract.

243 (3) The terms and conditions of the renewal contract described in
244 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
245 consistent with the parties' respective legal rights and obligations, and in consideration of all
246 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
247 without limitation, the need by the Contractor(s) seeking renewal for continued delivery of Project
248 Water; environmental conditions affected by implementation of the Contract to be renewed, and
249 specifically changes in those conditions that occurred during the life of the Contract to be renewed;

250 the Secretary's progress toward achieving the purposes of the CVPIA as set out in Section 3402 and
251 in implementing the specific provisions of the CVPIA; and current and anticipated economic
252 circumstances of the region served by the Contractor(s) seeking renewal.

253 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
254 Contractor(s) seeking renewal, shall be renewed for successive periods of up to 40 years each,
255 which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and
256 conditions mutually agreeable to the parties and consistent with Federal and State law. Each
257 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed
258 adoption and application of any revised policy applicable to the delivery of M&I Water that would
259 limit the term of any subsequent renewal contract with the Contractor(s) for the furnishing of M&I
260 Water to less than 40 years.

261 (d) The Contracting Officer shall make a determination ten years after the date of
262 execution of this Contract, and every five years thereafter during the term of this Contract, of
263 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
264 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
265 Stat 483). The Contracting Officer shall also make a determination ten years after the date of
266 execution of this Contract and every five years thereafter during the term of this Contract of whether
267 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
268 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
269 Contract, each Contractor reserves and shall have all rights and benefits under the Act of July 2,
270 1956 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
271 authorized Project construction expected to occur will have occurred, and on that basis the
272 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to

273 the Contractor(s), and agrees further that, at any time after such allocation is made, and subject to
274 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
275 Contractor(s) that maintain(s) a right to Project Water pursuant to the agreement set forth in Recital
276 5.2, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of the
277 Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
278 conditions mutually agreeable to the Contractor(s) entitled to receive water under the converted
279 contract and the Contracting Officer. A condition for such conversion to occur shall be a
280 determination by the Contracting Officer that, account being taken of the amount credited to return
281 by the Contractor(s) entitled to receive water under the converted contract as provided for under
282 Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return
283 by the Contractor(s) entitled to receive water under the converted contract can probably be repaid to
284 the United States within the term of a contract under subsection 9(d) or 9(c)(1), whichever is
285 applicable. If the remaining amount of costs that are properly assignable to the Contractor(s)
286 entitled to receive water under the converted contract cannot be determined during the term of this
287 Contract, the Contracting Officer shall notify the Contractor(s) entitled to receive water under the
288 converted contract, and provide the reason(s) why such a determination could not be made. Further,
289 the Contracting Officer shall make such a determination as soon thereafter as possible so as to
290 permit, upon request of the Contractor(s) entitled to receive water under the converted contract and
291 satisfaction of the conditions set out above, conversion to a contract under subsection 9(d) or
292 9(c)(1), whichever is applicable. In the event such determination of costs has not been made at a
293 time which allows conversion of this Contract during the term of this Contract or the Contractor(s)
294 has not requested conversion of this Contract within such term, the parties shall incorporate in any

295 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries
296 forth in substantially identical terms the provisions of this subdivision.

297 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

298 3. (a) During each Year, consistent with all applicable State water rights, permits,
299 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
300 Contract, the Contracting Officer shall make available for delivery to the Contractor(s) up to a total
301 of 6,260 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the
302 Contractor(s) in accordance with this subdivision shall be scheduled and paid for pursuant to the
303 provisions of Articles 4 and 7 of this Contract.

304 (b) Because the capacity of the Project to deliver Project Water has been
305 constrained in recent years and may be constrained in the future due to many factors including
306 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
307 Contractor(s) actually receiving the amount of Project Water set out in subdivision (a) of this
308 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS
309 projected that the Contract Total set forth in this Contract will not be available to the Contractor in
310 many years. During the most recent five years, the Recent Historic Average of Water Made
311 Available to the Contractors was 4,119.08 acre-feet. Nothing in subdivision (b) of this Article shall
312 affect the rights and obligations of the parties under any provision of this Contract.

313 (c) Each Contractor shall utilize the Project Water in accordance with all
314 applicable legal requirements.

315 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)
316 that receives Project Water through the Delta Division Facilities obtains a contractual agreement
317 that the Contracting Officer shall make Project Water available at a point or points of delivery in or

318 north of the Delta, at the request of the Contractor(s) and upon completion of any required
319 environmental documentation, this Contract shall be amended to provide for deliveries in or north
320 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely
321 to those changes made necessary by the addition of such alternate points of delivery in or north of
322 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to
323 deliver Project Water does not trigger this right of amendment.

324 (d) Each Contractor shall make reasonable and beneficial use of all water
325 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
326 groundwater banking programs, surface water storage programs, and other similar programs
327 utilizing Project Water or other water furnished pursuant to this Contract conducted within a
328 Contractor's Service Area which are consistent with applicable State law and result in use consistent
329 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is
330 (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this
331 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses
332 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered
333 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation
334 law. Groundwater recharge programs, groundwater banking programs, surface water storage
335 programs, and other similar programs utilizing Project Water or other water furnished pursuant to
336 this Contract conducted outside of a Contractor's Service Area may be permitted upon written
337 approval of the Contracting Officer, which approval will be based upon environmental
338 documentation, Project Water rights, and Project operational concerns. The Contracting Officer
339 will address such concerns in regulations, policies, or guidelines.

340 (e) Each Contractor shall comply with requirements applicable to that Contractor
341 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
342 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
343 amended, that are within the Contractor's legal authority to implement. The Existing Contract
344 which evidences in excess of 37 years of diversions for irrigation and/or M&I purposes of the
345 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
346 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and
347 any other needed environmental review. Nothing herein shall be construed to prevent the
348 Contractor(s) from challenging or seeking judicial relief in a court of competent jurisdiction with
349 respect to any biological opinion or other environmental documentation referred to in this Article.

350 (f) Following the declaration of Water Made Available under Article 4 of this
351 Contract, the Contracting Officer will make a determination whether Project Water, or other water
352 available to the Project, can be made available to the Contractor(s) in addition to the Contract Total
353 under this Article during the Year without adversely impacting other Project Contractors. At the
354 request of the Contractor(s), the Contracting Officer will consult with the requesting Contractor(s),
355 prior to making such a determination. If the Contracting Officer determines that Project Water, or
356 other water available to the Project, can be made available to the Contractor(s), the Contracting
357 Officer will announce the availability of such water and shall so notify the Contractor(s) as soon as
358 practical. The Contracting Officer will thereafter meet with the Contractor(s) and other Project
359 Contractors capable of taking such water to determine the most equitable and efficient allocation of
360 such water. If the Contractor(s) request(s) the delivery of any quantity of such water, the
361 Contracting Officer shall make such water available to the requesting Contractor(s) in accordance
362 with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term

363 contractual commitments, water rights and operational constraints, long-term Project Contractors
364 shall have a first right to acquire such water, including Project Water made available pursuant to
365 Section 215 of the RRA.

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

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

380 (i) Project Water furnished to a Contractor pursuant to this Contract may be
381 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
382 Contract upon a request by that Contractor and written approval by the Contracting Officer in
383 accordance with the terms and conditions of such approval.

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

386 Contracting Officer shall not object to participation by any Contractor, in the capacity and to the
387 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
388 That the Contracting Officer retains the right to object to the substance of any Contractor's position
389 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall
390 recognize that each Contractor has a legal right under the terms of this Contract to use Project
391 Water.

392 TIME FOR DELIVERY OF WATER

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

402 (b) On or before each March 1 and at such other times as necessary, one of the
403 Contractors shall submit to the Contracting Officer the Contractor(s)' (combined) written schedule,
404 satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be
405 delivered by the United States to the Contractor(s) pursuant to this Contract for the Year
406 commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver
407 Project Water according to the approved schedule for the Year commencing on such March 1.

408 (c) A Contractor shall not schedule Project Water in excess of the quantity of
409 Project Water that the Contractor(s) intend to put to reasonable and beneficial use within each
410 Contractor's Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract
411 during any Year.

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

417 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

418 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
419 Contract shall be delivered to the Contractor(s) at a point or points and any additional point or
420 points of delivery either on Project facilities or another location or locations mutually agreed to in
421 writing by the Contracting Officer and the Contractor(s).

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

426 (c) Each Contractor shall deliver Irrigation Water in accordance with any
427 applicable land classification provisions of Federal Reclamation law and the associated regulations.
428 Each Contractor shall not deliver Project Water to land outside that Contractor's Service Area unless
429 approved in advance by the Contracting Officer.

430 (d) All Water Delivered to the Contractor(s) pursuant to this Contract shall be
431 measured and recorded with equipment furnished, installed, operated, and maintained by the
432 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
433 Non-Federal Entity(ies), unless undertaken by a Contractor with the consent of the Contracting
434 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.
435 Upon the request of any party to this Contract, the Contracting Officer shall investigate, or cause to
436 be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
437 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
438 period of time when accurate measurements have not been made, the Contracting Officer shall
439 consult with the Contractor that is the subject of the request and the appropriate Operating Non-
440 Federal Entity(ies), if any, prior to making a final determination of the quantity delivered for that
441 period of time.

442 (e) Absent a separate contrary written agreement with any Contractor, neither the
443 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
444 carriage, handling, use, disposal, or distribution of Water Delivered to a Contractor pursuant to this
445 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this
446 Article. Each Contractor shall indemnify the United States, its officers, employees, agents, and
447 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal
448 responsibility, including property damage, personal injury, or death arising out of or connected with
449 the control, carriage, handling, use, disposal, or distribution of such Water Delivered to a Contractor
450 beyond such point or points of delivery, except for any damage or claim arising out of: (i) acts or
451 omissions of the Contracting Officer or any of its officers, employees, agents, and assigns,
452 including the Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in

453 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,
454 employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of
455 the Contracting Officer or any of its officers, employees, agents, and assigns including the
456 Operating Non-Federal Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the
457 United States or the Operating Non-Federal Entity(ies).

458 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

459 6. (a) Each Contractor has established a measuring program satisfactory to the
460 Contracting Officer. Each Contractor shall ensure that all surface water delivered for irrigation
461 purposes to the Contractor's customers within the Contractor's Service Area is measured at each
462 agricultural turnout and such water delivered for M&I purposes to the Contractor's customers is
463 measured at each M&I service connection. The water measuring devices or water measuring
464 methods of comparable effectiveness must be acceptable to the Contracting Officer. PVWMA and
465 WWD-DD1 shall be responsible for installing, operating, maintaining, and repairing all such
466 measuring devices and implementing all such water measuring methods at no cost to the United
467 States. SCVWD shall be responsible for ensuring that its retail customers are installing, operating,
468 maintaining, and repairing all such measuring devices and implementing all such water measuring
469 methods at no cost to the United States. Each Contractor shall use the information obtained from
470 such water measuring devices or water measuring methods to ensure its proper management of the
471 water; to bill water users for water delivered by that Contractor; and, if applicable, to record water
472 delivered for M&I purposes by customer class as defined in that Contractor's water conservation
473 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude
474 a Contractor from establishing and collecting any charges, assessments, or other revenues

475 authorized by California law. Each Contractor shall include a summary of all its annual surface
476 water deliveries in the annual report described in subdivision (c) of Article 26.

477 (b) To the extent the information has not otherwise been provided, upon
478 execution of this Contract, each Contractor shall provide to the Contracting Officer a written report
479 describing the measurement devices or water measuring methods being used or to be used by that
480 Contractor to implement subdivision (a) of this Article and identifying the agricultural turnouts and
481 the M&I service connections or alternative measurement programs approved by the Contracting
482 Officer, at which such measurement devices or water measuring methods are being used, and, if
483 applicable, identifying the locations at which such devices and/or methods are not yet being used
484 including a time schedule for implementation at such locations. The Contracting Officer shall
485 advise the appropriate Contractor(s) in writing within 60 days as to the adequacy, and necessary
486 modifications, if any, of the measuring devices or water measuring methods identified in the
487 Contractor's report and if the Contracting Officer does not respond in such time, they shall be
488 deemed adequate. If the Contracting Officer notifies a Contractor that the measuring devices or
489 methods are inadequate, the parties shall within 60 days following the Contracting Officer's
490 response, negotiate in good faith the earliest practicable date by which that Contractor shall modify
491 said measuring devices and/or measuring methods as required by the Contracting Officer to ensure
492 compliance with subdivision (a) of this Article.

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

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

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

502 RATES AND METHOD OF PAYMENT FOR WATER

503 7. (a) Each Contractor shall pay the United States as provided in this Article for
504 Water Delivered to that Contractor at Rates, Charges, and the Tiered Pricing Component established
505 in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and
506 the Secretary's then-existing ratesetting policy for M&I Water, which ratesetting policies shall be
507 amended, modified, or superseded only through a public notice and comment procedure; (ii)
508 applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other
509 applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds
510 transfer, or any other mechanism as may be agreed to in writing by a Contractor and the Contracting
511 Officer. The Rates, Charges, and Tiered Pricing Component applicable to each Contractor upon
512 execution of this Contract are set forth in Exhibits "B-1," "B-2," and "B-3" as may be revised
513 annually.

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

516 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
517 provide each Contractor an estimate of the Charges for Project Water that will be applied to the
518 period October 1, of the current Calendar Year, through September 30, of the following Calendar

519 Year, and the basis for such estimate. Each Contractor shall be allowed not less than two months to
520 review and comment on such estimates. On or before September 15 of each Calendar Year, the
521 Contracting Officer shall notify each Contractor in writing of the Charges to be in effect during the
522 period October 1 of the current Calendar Year, through September 30, of the following Calendar
523 Year, and such notification shall revise Exhibit “B.”

524 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
525 shall make available to each Contractor an estimate of the Rates and Tiered Pricing Component for
526 Project Water for the following Year and the computations and cost allocations upon which those
527 Rates are based. Each Contractor shall be allowed not less than two months to review and comment
528 on such computations and cost allocations. By December 31 of each Calendar Year, the
529 Contracting Officer shall provide each Contractor with the final Rates and Tiered Pricing
530 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit “B.”

531 (c) At the time a Contractor submits the initial schedule for the delivery of
532 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, each
533 Contractor scheduled to receive Delivered Water shall make an advance payment to the United
534 States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a)
535 of this Article, for the Project Water scheduled to be delivered to that Contractor pursuant to this
536 Contract during the first two calendar months of the Year. Before the end of the first month and
537 before the end of each calendar month thereafter, the Contractor(s) scheduled to receive Delivered
538 Water shall make an advance payment to the United States, at the Rate(s) set under subdivision (a)
539 of this Article, for the Water Scheduled pursuant to this Contract during the second month
540 immediately following. Adjustments between advance payments for Water Scheduled and
541 payments at Rates due for Water Delivered shall be made before the end of the following month;

542 Provided, That any revised schedule submitted by a Contractor pursuant to Article 4 of this Contract
543 which increases the amount of Water Delivered pursuant to this Contract during any month shall be
544 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
545 Water is not delivered to the Contractor(s) in advance of such payment. In any month in which the
546 quantity of Water Delivered to the Contractor(s) pursuant to this Contract equals the quantity of
547 Water Scheduled and paid for by the Contractor(s), no additional Project Water shall be delivered to
548 the Contractor(s) unless and until an advance payment at the Rates then in effect for such additional
549 Project Water is made. Final adjustment between the advance payments for the Water Scheduled
550 and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall
551 be made as soon as practicable but no later than April 30th of the following Year, or 60 days after
552 the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such
553 water is not delivered by the last day of February.

554 (d) Each Contractor shall also make a payment in addition to the Rate(s) in
555 subdivision (c) of this Article to the United States for Water Delivered to that Contractor, at the
556 Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month
557 following the month of delivery; Provided, That any Contractor may be granted an exception from
558 the Tiered Pricing Component pursuant to subdivision (j) (2) of this Article. The payments shall be
559 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water
560 delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there
561 is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
562 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
563 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
564 adjustment of payments due to the United States for Charges for the next month. Any amount to be

565 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
566 pursuant to Article 20 of this Contract.

567 (e) Each Contractor shall pay for any Water Delivered to that Contractor under
568 subdivision (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer
569 pursuant to applicable statutes, associated regulations, any applicable provisions of guidelines or
570 ratesetting policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3
571 of this Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I
572 Water under subdivision (a) of this Article.

573 (f) Payments to be made by a Contractor to the United States under this
574 Contract may be paid from any revenues available to that Contractor.

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

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

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

595 (j) (1) Beginning at such time as deliveries of Project Water in a Year
596 exceed 80 percent of the Contract Total, then before the end of the month following the month of
597 delivery the Contractor(s) shall make an additional payment to the United States equal to the
598 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
599 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
600 Contract Total, shall equal one-half of the difference between the Rate established under
601 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
602 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
603 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established
604 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
605 Water Rate, whichever is applicable.

606 (2) Subject to the Contracting Officer's written approval, the
607 Contractor(s) may request and receive an exemption from such Tiered Pricing Component for
608 Project Water delivered to produce a crop which the Contracting Officer determines will provide
609 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
610 crops are produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation

611 Water shall apply only if such habitat values can be assured consistent with the purposes of the
612 CVPIA through binding agreements executed with or approved by the Contracting Officer prior to
613 use of such water.

614 (3) For purposes of determining the applicability of the Tiered Pricing
615 Component pursuant to this Article, Water Delivered shall include Project Water that the
616 Contractor(s) transfer(s) to others but shall not include Project Water transferred to the
617 Contractor(s), nor shall it include the additional water provided to the Contractor(s) under the
618 provisions of subdivision (f) of Article 3 of this Contract.

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

627 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
628 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
629 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect
630 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred
631 Project Water to the transferee's point of delivery. If any Contractor is receiving lower Rates and
632 Charges because of inability to pay and is transferring Project Water to another entity whose Rates

633 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project
634 Water shall not be adjusted to reflect the Contractor's inability to pay.

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

637 (n) With respect to the Rates for M&I Water, each Contractor asserts that it is
638 not legally obligated to pay any Project deficits claimed by the United States to have accrued as of
639 the date of this Contract or deficit-related interest charges thereon. By entering into this Contract,
640 each Contractor does not waive any legal rights or remedies that it may have with respect to such
641 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder,
642 each Contractor may challenge in the appropriate administrative or judicial forums; (1) the
643 existence, computation, or imposition of any deficit charges accruing during the term of the
644 Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing
645 on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the
646 application by the United States of payments made by the Contractor under its Existing Contract
647 and any preceding interim renewal contracts if applicable; and (5) the application of such payments
648 in the Rates. The Contracting Officer agrees that each Contractor shall be entitled to the benefit of
649 any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues,
650 and credits for payments heretofore made, provided that the basis for such ruling is applicable to
651 that Contractor.¹

¹ Additional language may be included for SCVWD pending settlement negotiations

652 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

653 8. Each Contractor and the Contracting Officer concur that, as of the effective date of
654 this Contract, that Contractor does not have a non-interest bearing O&M deficits under this Contract
655 and shall have no further liability therefore.

656 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

692 APPLICATION OF PAYMENTS AND ADJUSTMENTS

693 10. (a) The amount of any overpayment by a Contractor of the Contractor's O&M,
694 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
695 that Contractor arising out of this Contract then due and payable. Overpayments of more than
696 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
697 overpayment at the option of that Contractor may be credited against amounts to become due to the

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

704 (b) All advances for miscellaneous costs incurred for work requested by a
705 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when
706 the work has been completed. If the advances exceed the actual costs incurred, the difference will
707 be refunded to the requesting Contractor. If the actual costs exceed that Contractor's advances, that
708 Contractor will be billed for the additional costs pursuant to Article 25.

709 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

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

732 CONSTRAINTS ON THE AVAILABILITY OF WATER

733 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
734 means to guard against a Condition of Shortage in the quantity of water to be made available to the
735 Contractor(s) pursuant to this Contract. In the event the Contracting Officer determines that a
736 Condition of Shortage appears probable, the Contracting Officer will notify the Contractors of said
737 determination as soon as practicable.

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

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

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

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

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

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

774 (d) By entering into this Contract, no Contractor waives any legal rights or
775 remedies it may have to file or participate in any administrative or judicial proceeding contesting (i)
776 the sufficiency of the Central Valley Project M&I Water Shortage Policy (ii) the substance of such a
777 policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
778 implemented in order to allocate Project Water between municipal and industrial and irrigation
779 purposes; Provided, that any Contractor seeking to do so has commenced any such judicial
780 challenge or any administrative procedures necessary to institute any judicial challenge within six
781 months of the policy becoming final. By agreeing to the foregoing, the Contracting Officer does not
782 waive any legal defenses or remedies that it may have to assert in such a proceeding. Nothing
783 contained herein shall be interpreted to validate or invalidate the Central Valley Project M&I Water
784 Shortage Policy.

785 UNAVOIDABLE GROUNDWATER PERCOLATION

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

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

790 RULES AND REGULATIONS

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

795 WATER AND AIR POLLUTION CONTROL

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

799 QUALITY OF WATER

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

808 (b) The O&M of Project facilities shall be performed in such manner as is
809 practicable to maintain the quality of raw water made available through such facilities at the highest
810 level reasonably attainable as determined by the Contracting Officer. Each Contractor shall be
811 responsible for compliance with all State and Federal water quality standards applicable to surface
812 and subsurface agricultural drainage discharges generated through the use of Federal or that

813 Contractor's facilities or Project Water provided by that Contractor within the Contractor's Service
814 Area.

815 (c) Omitted.

816 WATER ACQUIRED BY THE CONTRACTOR
817 OTHER THAN FROM THE UNITED STATES

818 17. (a) Water or water rights now owned or hereafter acquired by any Contractor
819 other than from the United States and Irrigation Water furnished pursuant to the terms of this
820 Contract may be simultaneously transported through the same distribution facilities of the
821 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
822 and non-Project water were constructed without funds made available pursuant to Federal
823 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
824 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation
825 Water must be established through the certification requirements as specified in the Acreage
826 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands
827 within that Contractor's Service Area can be established and the quantity of Irrigation Water to be
828 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the
829 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with
830 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to
831 the acreage limitation provisions of Federal Reclamation law, unless that Contractor pays to the
832 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,
833 the Contracting Officer will calculate annually the cost to the Federal Government, including
834 interest of storing or delivering non-Project water, which for purposes of this Contract shall be
835 determined as follows: The quotient shall be the unpaid distribution system costs divided by the

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

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

850 (1) A Contractor may introduce non-Project water into Project facilities
851 and deliver said water to lands within that Contractor's Service Area, including Ineligible Lands,
852 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
853 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
854 use power policy, if such Project use power policy is applicable, each as amended, modified or
855 superseded from time to time.

856 (2) Delivery of such non-Project water in and through Project facilities
857 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes
858 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to

859 other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any
860 other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

861 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
862 shall be responsible for control, care or distribution of the non-Project water before it is introduced
863 into or after it is delivered from the Project facilities. Each Contractor hereby releases and agrees to
864 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
865 respective officers, agents, and employees, from any claim for damage to persons or property, direct
866 or indirect, resulting from the act(s) of the respective Contractor's, its officers, employees, agents,
867 or assigns, in (i) extracting or diverting non-Project water from any source, or (ii) diverting such
868 non-Project water into Project facilities.

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

872 (5) After Project purposes are met, as determined by the Contracting
873 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
874 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
875 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
876 any such remaining capacity being made available to non-Project contractors. Other Project
877 Contractors shall have a second priority to any remaining capacity of facilities declared to be
878 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
879 any such remaining capacity being made available to non-Project contractors.

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OPINIONS AND DETERMINATIONS

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

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

COORDINATION AND COOPERATION

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

903 provided for hereunder shall extend to all provisions of this Contract. Each party shall retain
904 exclusive decision making authority for all actions, opinions, and determinations to be made by the
905 respective party.

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

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

915 (1) The Contracting Officer will, at the request of any Contractor, assist
916 in the development of integrated resource management plans for the requesting Contractor. Further,
917 the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships
918 to improve water supply, water quality, and reliability.

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

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

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

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

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

934 CHARGES FOR DELINQUENT PAYMENTS

935 20. (a) Each Contractor shall be subject to interest, administrative and penalty
936 charges on delinquent installments or payments. When a payment is not received by the due date,
937 the late Contractor shall pay an interest charge for each day the payment is delinquent beyond the
938 due date. When a payment becomes sixty (60) days delinquent, the late Contractor shall pay an
939 administrative charge to cover additional costs of billing and processing the delinquent payment.
940 When a payment is delinquent ninety (90) days or more, the late Contractor shall pay an additional
941 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due
942 date. Further, the late Contractor shall pay any fees incurred for debt collection services associated
943 with a delinquent payment.

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

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

952 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

981 (f) In the event of a Contractor's noncompliance with the nondiscrimination
982 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract, as to the
983 non-complying Contractor, may be canceled, terminated, or suspended, in whole or in part, and that
984 Contractor may be declared ineligible for further Government contracts in accordance with
985 procedures authorized in said amended Executive Order, and such other sanctions may be imposed
986 and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the
987 Secretary of Labor, or as otherwise provided by law.

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

997 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

998 22. (a) The obligation of each Contractor to pay the United States as provided in this
999 Contract is a general obligation of that Contractor notwithstanding the manner in which the
1000 obligation may be distributed among the Contractor's water users and notwithstanding the default of
1001 individual water users in their obligations to that Contractor.

1002 (b) The payment of charges becoming due hereunder is a condition precedent to
1003 receiving benefits under this Contract. The United States shall not make water available to a
1004 Contractor through Project facilities during any period in which that Contractor may be in arrears in
1005 the advance payment of water rates due the United States. Each Contractor shall not furnish water
1006 made available pursuant to this Contract for lands or parties which are in arrears in the advance
1007 payment of water rates levied or established by that Contractor.

1008 (c) With respect to subdivision (b) of this Article, each Contractor shall have no
1009 obligation to require advance payment for water rates which it levies.

1010 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1011 23. (a) Each Contractor shall comply with Title VI of the Civil Rights Act of 1964
1012 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
1013 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
1014 as well as with their respective implementing regulations and guidelines imposed by the U.S.
1015 Department of the Interior and/or Bureau of Reclamation.

1016 (b) These statutes require that no person in the United States shall, on the
1017 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1018 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1019 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, each
1020 Contractor agrees to immediately take any measures necessary to implement this obligation,
1021 including permitting officials of the United States to inspect premises, programs, and documents.

1022 (c) Each Contractor makes this agreement in consideration of and for the purpose
1023 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
1024 financial assistance extended after the date hereof to that Contractor by the Bureau of Reclamation,
1025 including installment payments after such date on account of arrangements for Federal financial
1026 assistance which were approved before such date. Each Contractor recognizes and agrees that such
1027 Federal assistance will be extended in reliance on the representations and agreements made in this
1028 Article, and that the United States reserves the right to seek judicial enforcement thereof.

1029 PRIVACY ACT COMPLIANCE

1030 24. (a) Each Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1031 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1032 seq.) in maintaining Landholder acreage certification and reporting records, required to be

1033 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform
1034 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1035 (b) With respect to the application and administration of the criminal penalty
1036 provisions of the Act (5 U.S.C. 552a(i)), each Contractor and the Contractor's employees
1037 responsible for maintaining the certification and reporting records referenced in (a) above are
1038 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1039 (c) The Contracting Officer or a designated representative shall provide each
1040 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1041 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1042 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1043 contained in the Landholder's certification and reporting records.

1044 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1045 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1046 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. Each Contractor
1047 is authorized to grant requests by individuals for access to its own records.

1048 (e) Each Contractor shall forward promptly to the System Manager each
1049 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1050 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1051 Manager with information and records necessary to prepare an appropriate response to the
1052 requester. These requirements do not apply to individuals seeking access to their own certification
1053 and reporting forms filed with a Contractor pursuant to 43 CFR 426.18, unless the requester elects
1054 to cite the Privacy Act as a basis for the request.

1055 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1056 25. In addition to all other payments to be made by each Contractor pursuant to this
1057 Contract, each Contractor shall pay to the United States, within 60 days after receipt of a bill and
1058 detailed statement submitted by the Contracting Officer to that Contractor for such specific items of
1059 direct cost incurred by the United States for work requested by that Contractor associated with this
1060 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1061 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1062 writing in advance by that Contractor. This Article shall not apply to costs for routine contract
1063 administration.

1064 WATER CONSERVATION

1065 26. (a) Prior to the delivery of water to a Contractor provided from or conveyed
1066 through Federally constructed or Federally financed facilities pursuant to this Contract, that
1067 Contractor shall be implementing an effective water conservation and efficiency program based on
1068 the Contractor's water conservation plan that has been determined by the Contracting Officer to
1069 meet the conservation and efficiency criteria for evaluating water conservation plans established
1070 under Federal law. The water conservation and efficiency program shall contain definite water
1071 conservation objectives, appropriate economically feasible water conservation measures, and time
1072 schedules for meeting those objectives. Continued Project Water delivery to that Contractor
1073 pursuant to this Contract shall be contingent upon that Contractor's continued implementation of
1074 such water conservation program. In the event a Contractor's water conservation plan or any
1075 revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract
1076 has not yet been determined by the Contracting Officer to meet such criteria, due to circumstances
1077 which the Contracting Officer determines are beyond the control of that Contractor, water deliveries
1078 shall be made under this Contract so long as that Contractor diligently works with the Contracting
1079 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
1080 immediately begins implementing its water conservation and efficiency program in accordance with
1081 the time schedules therein.

1082 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1083 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor receiving M&I
1084 water shall implement the Best Management Practices identified by the time frames issued by the
1085 California Urban Water Conservation Council for such M&I Water unless any such practice is
1086 determined by the Contracting Officer to be inappropriate for that Contractor.

1087 (c) Each Contractor shall submit to the Contracting Officer a report on the status
1088 of its implementation of the water conservation plan on the reporting dates specified in the then
1089 existing conservation and efficiency criteria established under Federal law.

1090 (d) At five-year intervals, each Contractor shall revise its water conservation plan
1091 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1092 plans established under Federal law and submit such revised water management plan to the
1093 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1094 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1095 evaluating water conservation plans established under Federal law.

1096 (e) If a Contractor is engaged in direct groundwater recharge, such activity shall
1097 be described in the Contractor's water conservation plan.

1098 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1099 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1100 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1101 hereafter acquired by each Contractor or any user of such water within any Contractor's Service
1102 Area. Any such water shall not be considered Project Water under this Contract. In addition, this
1103 Contract shall not be construed as limiting or curtailing any rights which any Contractor or any
1104 water user within the Contractor's Service Area acquires or has available under any other contract
1105 pursuant to Federal Reclamation law.

1106 OPERATION AND MAINTENANCE BY THE
1107 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1108 28. (a) The O&M of a portion of the Project facilities which serve each Contractor,
1109 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San
1110 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement

1111 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &
1112 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the
1113 rights or obligations of each Contractor or the United States hereunder.

1114 (b) The Contracting Officer has previously notified the Contractor in writing that
1115 the O&M of a portion of the Project facilities which serve each Contractor has been transferred to
1116 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, each
1117 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1118 Authority, or to any successor approved by the Contracting Officer under the terms and conditions
1119 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis
1120 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or
1121 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1122 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or
1123 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1124 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such
1125 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1126 such successor shall not relieve any Contractor of its obligation to pay directly to the United States
1127 that Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the
1128 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1129 payments on behalf of the United States in accordance with subdivision (a) of this Article.

1130 (c) For so long as the O&M of any portion of the Project facilities serving the
1131 Contractor(s) is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1132 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1133 Rates for Water Delivered under this Contract representing the cost associated with the activity

1134 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1135 or its successor.

1136 (d) In the event the O&M of the Project facilities operated and maintained by the
1137 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1138 United States during the term of this Contract, the Contracting Officer shall so notify the
1139 Contractor(s), in writing, and present to each Contractor a revised Exhibit "B" which shall include
1140 the portion of the Rates to be paid by each Contractor for Project Water under this Contract
1141 representing the O&M costs of the portion of such Project facilities which have been re-assumed.
1142 Each Contractor shall, thereafter, in the absence of written notification from the Contracting Officer
1143 to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised
1144 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1145 OPERATION AND MAINTENANCE BY THE
1146 CALIFORNIA DEPARTMENT OF WATER RESOURCES

1147 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor,
1148 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1149 California Department of Water Resources, an Operating Non-Federal Entity by a separate
1150 agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity
1151 California Department of Water Resources. This separate agreement shall not interfere with or
1152 affect the rights or obligations of the Contractor or the United States hereunder.

1153 (b) The Contracting Officer has previously notified the Contractor in writing that
1154 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1155 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1156 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1157 successor approved by the Contracting Officer under the terms and conditions of the separate

1158 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1159 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1160 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1161 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1162 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1163 Federal Entity California Department of Water Resources, or such successor. Such direct
1164 payments to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such
1165 successor shall not relieve the Contractor of its obligation to pay directly to the United States the
1166 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the
1167 extent the Operating Non-Federal Entity collects payments on behalf of the United States in
1168 accordance with subdivision (a) of Article 28 of this Contract.

1169 (c) For so long as the O&M of any portion of the Project facilities serving the
1170 Contractor(s) is performed by Operating Non-Federal Entity California Department of Water
1171 Resources, or any successor thereto, the Contracting Officer shall adjust those components of the
1172 Rates for Water Delivered under this Contract representing the cost associated with the activity
1173 being performed by Operating Non-Federal Entity California Department of Water Resources, or its
1174 successor.

1175 (d) In the event the O&M of the Project facilities operated and maintained by
1176 Operating Non-Federal Entity California Department of Water Resources, is re-assumed by the
1177 United States during the term of this Contract, the Contracting Officer shall so notify the
1178 Contractor(s), in writing, and present to each Contractor a revised Exhibit "B" which shall include
1179 the portion of the Rates, Charges, and Tiered Pricing Component to be paid by the Contractor for
1180 Project Water under this Contract representing the O&M costs of the portion of such Project

1181 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written
1182 notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing
1183 Component specified in the revised Exhibit “B” directly to the United States in compliance with
1184 Article 7 of this Contract.

1185 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1186 29. The expenditure or advance of any money or the performance of any obligation of
1187 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1188 Absence of appropriation or allotment of funds shall not relieve any Contractor from any
1189 obligations under this Contract. No liability shall accrue to the United States in case funds are not
1190 appropriated or allotted.

1191 BOOKS, RECORDS, AND REPORTS

1192 30. (a) Each Contractor shall establish and maintain accounts and other books and
1193 records pertaining to administration of the terms and conditions of this Contract, including: each
1194 Contractor's financial transactions, water supply data, and Project land and right-of-way
1195 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1196 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1197 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1198 require. Subject to applicable Federal laws and regulations, the Contractor(s) and the United States
1199 shall have the right during office hours to examine and make copies of the other party's books and
1200 records relating to matters covered by this Contract.

1201 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1202 records, or other information shall be requested from any Contractor by the Contracting Officer
1203 unless such books, records, or information are reasonably related to the administration or
1204 performance of this Contract. Any such request shall allow the Contractor to which the request is
1205 made a reasonable period of time within which to provide the requested books, records, or
1206 information.

1207 (c) At such time as the Contractor to which the request is made provides
1208 information to the Contracting Officer pursuant to subdivision (a) of this Article, a copy of such
1209 information shall be provided to the Operating Non-Federal Entity(ies).

1210 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1211 31. (a) The provisions of this Contract shall apply to and bind the successors and
1212 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1213 therein shall be valid until approved in writing by the Contracting Officer.

1214 (b) The assignment of any right or interest in this Contract by the Contractor(s)
1215 or the United States shall not interfere with the rights or obligations of the other party to this
1216 Contract absent the written concurrence of said other party.

1217 (c) The Contracting Officer shall not unreasonably condition or withhold
1218 approval of any proposed assignment.

1219 SEVERABILITY

1220 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1221 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1222 association or other form of organization whose primary function is to represent parties to Project
1223 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1224 enforceability of a provision included in this Contract and said person, entity, association, or
1225 organization obtains a final court decision holding that such provision is legally invalid or
1226 unenforceable and any Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1227 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1228 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1229 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1230 specified above may be extended by mutual agreement of the parties. Pending the completion of
1231 the actions designated above, to the extent it can do so without violating any applicable provisions
1232 of law, the United States shall continue to make the quantities of Project Water specified in this

1233 Contract available to each Contractor pursuant to the provisions of this Contract which were not
1234 found to be legally invalid or unenforceable in the final court decision.

1235 RESOLUTION OF DISPUTES

1236 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1237 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1238 dispute. Prior to any Contractor commencing any legal action, or the Contracting Officer referring
1239 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1240 notice of the intent to take such action; Provided, That such notice shall not be required where a
1241 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1242 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1243 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1244 waive or abridge any right or remedy that any Contractor or the United States may have.

1245 OFFICIALS NOT TO BENEFIT

1246 34. No Member of or Delegate to Congress, Resident Commissioner, or official of any
1247 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1248 manner as other water users or landowners.

1249 CHANGES IN CONTRACTOR'S SERVICE AREA

1250 35. (a) While this Contract is in effect, no change may be made in any Contractor's
1251 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1252 except upon the Contracting Officer's written consent.

1253 (b) Within 30 days of receipt of a request for such a change, the Contracting
1254 Officer will notify each Contractor of any additional information required by the Contracting
1255 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1256 schedule for timely completion of the process. Such process will analyze whether the proposed
1257 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii)

1258 impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay
1259 for any Federally-constructed facilities for which the Contractor are responsible; and (iii) have an
1260 impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting
1261 Officer shall comply with the NEPA and the ESA. The Contractor will be responsible for all costs
1262 incurred by the Contracting Officer in this process, and such costs will be paid in accordance with
1263 Article 25 of this Contract.

1264 FEDERAL LAWS

1265 36. By entering into this Contract, no Contractor waives its right to contest the validity
1266 or application in connection with the performance of the terms and conditions of this Contract of
1267 any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and
1268 conditions of this Contract unless and until relief from application of such Federal law or regulation
1269 to the implementing provision of the Contract is granted by a court of competent jurisdiction.

1270 NOTICES

1271 37. Any notice, demand, or request authorized or required by this Contract shall be
1272 deemed to have been given, on behalf of the Contractor, when mailed by that Contractor, postage
1273 prepaid, or delivered by that Contractor to the Area Manager, South-Central California Area Office,
1274 1243 N Street, Fresno, California 93721, and on behalf of the United States, when mailed, postage
1275 prepaid, or delivered to the Board of Directors/City Council of the Pajaro Valley Water
1276 Management Agency, 36 Brennan Street, Watsonville, California 95076; Santa Clara Valley Water
1277 District, 570 Almaden Expressway, San Jose, California 95118-3686; and Westlands Water District
1278 Distribution District No. 1, P. O. Box 6065, Fresno, California 93703-6065. The designation of the
1279 addressee or the address may be changed by notice given in the same manner as provided in this
1280 Article for other notices.

1281 CONFIRMATION OF CONTRACT

1282 38. (a) Each Contractor, after the execution of this Contract, shall promptly seek to
1283 secure a decree of a court of competent jurisdiction of the State of California, confirming the
1284 execution of this Contract. The Contractor shall furnish the United States a certified copy of the
1285 final decree, the validation proceedings, and all pertinent supporting records of the court approving

1286 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the
1287 Contractor.

1288 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1289 year first above written.

1290 THE UNITED STATES OF AMERICA

1291 By: _____
1292 Regional Director, Mid-Pacific Region
1293 Bureau of Reclamation

1294 (SEAL)

1295 PAJARO VALLEY WATER
1296 MANAGEMENT AGENCY

1297 By: _____
1298 President of the Board of Directors

1299 Attest:

1300 By: _____
1301 Secretary of the Board of Directors

1302
1303

SANTA CLARA VALLEY WATER
DISTRICT

1304
1305

By: _____
President of the Board of Directors

1306 Attest:

1307 By: _____
1308 Secretary of the Board of Directors

1309
1310

WESTLANDS WATER DISTRICT
DISTRIBUTION DISTRICT NO. 1

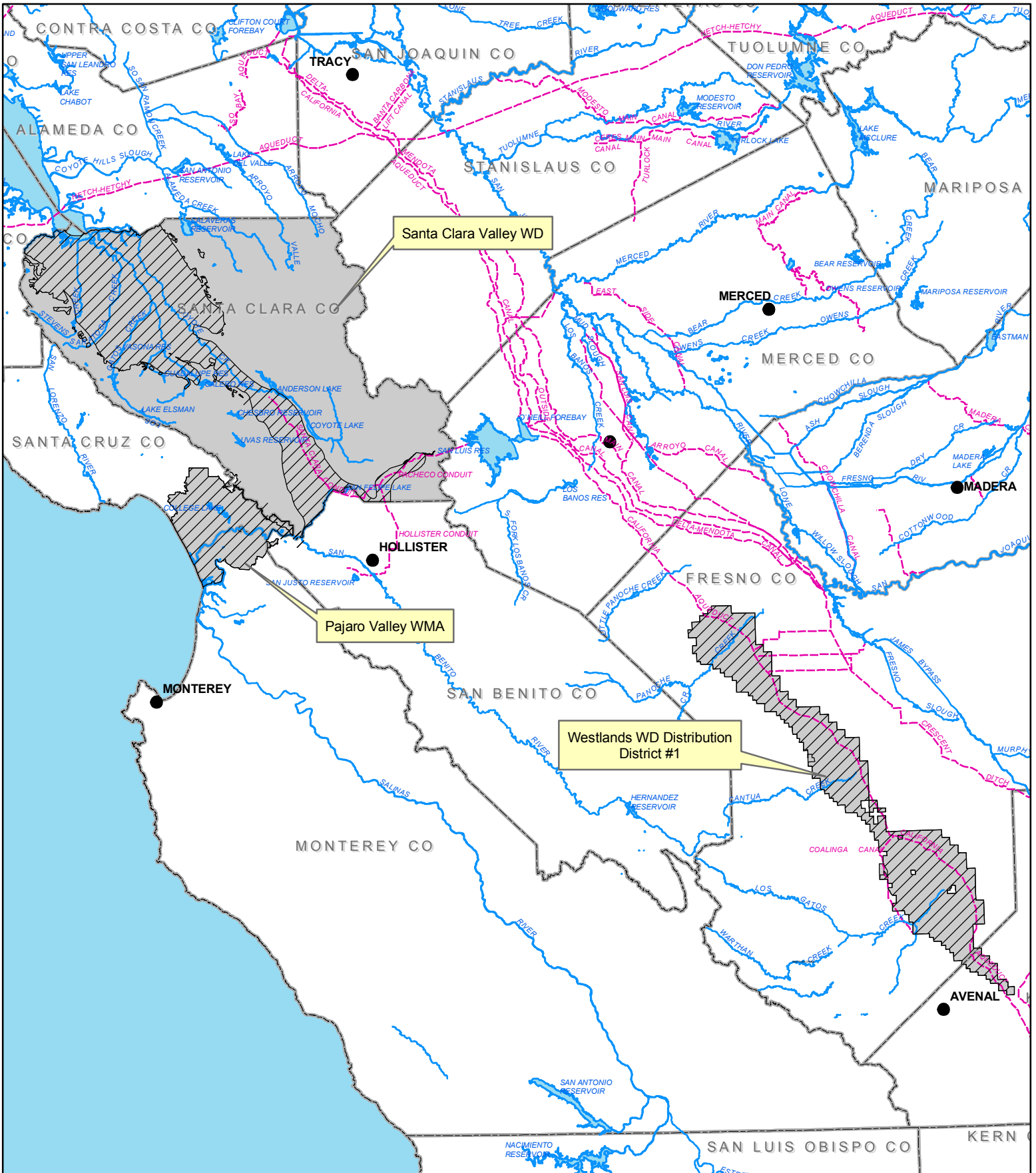
1311
1312

By: _____
President of the Board of Directors

1313 Attest:


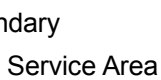
1314 By: _____
1315 Secretary of the Board of Directors

1316 (H:\LTRC\Final Draft LTRC's – Fresno, Tracy\11-29-04 Pajaro. SCWD, WWDDD1 Final Draft
1317 LTRC with exhibits.doc)



**Pajaro Valley W.M.A. - Santa Clara Valley W.D.
Westlands W.D. Distribution District #1**

Contract No. 14-06-200-3365A-B-LTR1
Exhibit A

 District Boundary
 Contractor's Service Area

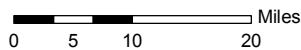


EXHIBIT B
PAJARO VALLEY WATER MANAGEMENT AGENCY, SANTA CLARA VALLEY WATER
DISTRICT, AND WESTLANDS WATER DISTRICT DISTRICT NO. 1
Water Rates and Charges

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>2004 Rates per Acre-Foot</u>		<u>M&I Water</u> 1/
	<u>Irrigation Water</u>	<u>Westlands</u>	
Capital Rates	\$15.69	\$ 8.57	
O&M Rates:			
Water Marketing	7.59	7.59	
Storage	5.83	5.62	
San Luis Drain	.71		
Direct Pumping	1.46	6.86	
Conveyance			
Conveyance Pumping			
Deficit Rates:			
Non-Interest Bearing			
Interest Bearing			
CFO/PFR Adj. Rate 2/	—	4.27	
TOTAL COST-OF-SERVICE-RATES	<u>\$31.27</u>	<u>\$32.91</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>\$55.32</u>	<u>\$48.52</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>\$70.24</u>	<u>\$57.13</u>	
<u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND</u> 3/			
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$ 7.82</u>	<u>\$15.64</u>

1/ To be provided as needed.

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).