

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

CONTRACT BETWEEN THE UNITED STATES AND
HIGH-LOW NURSERY COMPANY, INC.,
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

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THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered into by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, made this ____ day of _____, 2004, pursuant to the applicable authority granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, including but not limited to Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, and HIGH-LOW NURSERY COMPANY, INC., hereinafter referred to as the Contractor, a corporation, acting pursuant to Sections 12003 and 12004 of the California Water Code, with its principal place of business in California;

WITNESSETH, that:

EXPLANATORY RECITALS

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[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for multiple purposes pursuant to its statutory authority; and

[2nd] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to divert for reasonable beneficial use, water from the natural flow of the Sacramento River and tributaries thereto, that would have been flowing therein if the Central Valley Project were not in existence; and

[3rd] WHEREAS, the construction and operation of the integrated and coordinated Central Valley Project has changed and will further change the regimen of the Sacramento, American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from unregulated flow to regulated flow; and

[4th] WHEREAS, the United States has rights to divert, is diverting, and will continue to divert waters from said Rivers and said Delta in connection with the operation of said Central Valley Project; and

[5th] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 7-07-20-W0006, as amended, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant to such contract; and

[6th] WHEREAS, the United States and the Contractor disagree with respect to the authority of the United States to change the quantities of Base Supply and/or Project Water

1 specified as available for diversion in this Settlement Contract from the quantities specified in
2 the Existing Contract, and other issues related thereto. That dispute was the subject of litigation
3 in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.* [Civ. No. S-
4 01-1816 GEB/JFM (E.D. Cal.)], but that litigation was dismissed, without prejudice, pursuant to
5 a stipulation of dismissal filed by the parties thereto on August 29, 2002. Notwithstanding that
6 dismissal, the Contractor and the United States enter into this Settlement Contract to renew the
7 Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and
8 the laws of the State of California; and

9 [7th] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated
10 flow of the said Rivers and the Delta, and to provide for the economical operation of the Central
11 Valley Project by, and the reimbursement to, the United States for expenditures made for said
12 Project;

13 NOW, THEREFORE, in consideration of the performance of the herein contained
14 provisions, conditions, and covenants, it is agreed as follows:

15 DEFINITIONS

16 1. When used herein, unless otherwise expressed or incompatible with the intent
17 hereof, the term:

18 (a) “Base Supply” shall mean the quantity of Surface Water established in
19 Articles 3 and 5 which may be diverted by the Contractor from the Sacramento River each month
20 during the period April through October of each Year without payment to the United States for
21 such quantities diverted;

22 (b) “Basin-Wide Water Management Plan” shall mean the mutually agreeable
23 Sacramento River Basinwide Water Management Plan, dated _____, developed by

1 Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas Central Mutual Water
2 Company, Pelger Mutual Water Company, Princeton-Codora Glenn Irrigation District, Provident
3 Irrigation District, Reclamation District 108, Sutter Mutual Water Company, Anderson-
4 Cottonwood Irrigation District, Meridian Farms Water Company, Reclamation District 1004, and
5 the U.S. Bureau of Reclamation;

6 (c) “Charges” shall mean the payments for Project Water that the Contractor
7 is required to pay to the United States in addition to the “Rates” specified in this Settlement
8 Contract. The Contracting Officer will, on an annual basis, determine the extent of these
9 Charges. The type and amount of each Charge shall be specified in Exhibit D;

10 (d) “Contract Total” shall mean the sum of the Base Supply and Project Water
11 available for diversion by the Contractor for the period April 1 through October 31;

12 (e) “Critical Year” shall mean any Year in which either of the following
13 eventualities exists:

14 (1) The forecasted full natural inflow to Shasta Lake for the current
15 Water Year, as such forecast is made by the United States on or before February 15 and reviewed
16 as frequently thereafter as conditions and information warrant, is equal to or less than 3.2 million
17 acre-feet; or

18 (2) The total accumulated actual deficiencies below 4 million acre-feet
19 in the immediately prior Water Year or series of successive prior Water Years each of which had
20 inflows of less than 4 million acre-feet, together with the forecasted deficiency for the current
21 Water Year, exceed 800,000 acre-feet.

22 For the purpose of determining a Critical Year, the computation of inflow to
23 Shasta Lake shall be performed in a manner that considers the extent of upstream development

1 above Shasta Lake during the year in question, and shall be used as the full natural flow to
2 Shasta Lake. In the event that major construction has occurred or occurs above Shasta Lake after
3 September 1, 1963, and which has materially altered or alters the regimen of the stream systems
4 contributing to Shasta Lake, the computed inflow to Shasta Lake used to define a Critical Year
5 will be adjusted to eliminate the effect of such material alterations. After consultation with the
6 State of California, the National Weather Service, and other recognized forecasting agencies, the
7 Contracting Officer will select the forecast to be used and will make the details of it available to
8 the Contractor. The same forecasts used by the United States for the operation of the Project
9 shall be used to make the forecasts hereunder;

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

12 (g) "Eligible Lands" shall mean all lands to which Project Water may be
13 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
14 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

15 (h) "Excess Lands" shall mean all lands in excess of the limitations contained
16 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
17 Reclamation law;

18 (i) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)
19 or 202(3) of the RRA, whichever is applicable;

20 (j) Omitted;

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

1 (l) “Project” shall mean the Central Valley Project owned by the United
2 States and managed by the Department of the Interior, Bureau of Reclamation;

3 (m) “Project Water” shall mean all Surface Water diverted or scheduled to be
4 diverted each month during the period April through October of each Year by the Contractor
5 from the Sacramento River which is in excess of the Base Supply. The United States recognizes
6 the right of the Contractor to make arrangements for acquisition of water from projects of others
7 than the United States for delivery through the Sacramento River and tributaries subject to
8 written agreement between Contractor and the United States as to identification of such water,
9 which water, when so identified, shall not be deemed Project Water under this Settlement
10 Contract;

11 (n) “Rates” shall mean the payments for Project Water determined annually
12 by the Contracting Officer in accordance with the then current applicable water ratesetting
13 policies for the Project, as described in subdivision (a) of Article 8 of this Settlement Contract;

14 (o) “Secretary” or “Contracting Officer” shall mean the Secretary of the
15 Interior, a duly appointed successor, or an authorized representative acting pursuant to any
16 authority of the Secretary and through any agency of the Department of the Interior;

17 (p) “Surface Water” shall mean only those waters that are considered as
18 surface water under California law;

19 (q) “Water Year” shall mean the period commencing with October 1 of 1 year
20 and extending through September 30 of the next; and

21 (r) “Year” shall mean a calendar year.

1 at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B,
2 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in
3 Exhibit A, or any revision thereof.

4 (b) No sale, transfer, exchange, or other disposal of any of the Contract Total
5 designated in Exhibit A or the right to the use thereof for use on land other than that shown on
6 Exhibit B shall be made by the Contractor without first obtaining the written consent of the
7 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be
8 rendered in a timely manner. For short-term actions that will occur within 1 year or less, the
9 decision will be rendered within 30 days after receipt of a complete written proposal. For long-
10 term actions that will occur in a period longer than 1 year, the decision will be rendered within
11 90 days after receipt of a complete written proposal. For a proposal to be deemed complete by
12 the Contracting Officer, it must comply with all provisions required by State and Federal law,
13 including information sufficient to enable the Contracting Officer to comply with the National
14 Environmental Policy Act, the Endangered Species Act, and applicable rules or regulations then
15 in effect; Provided that, such consent does not authorize the use of Federal facilities to facilitate
16 or effectuate the sale, transfer, exchange or other disposal of Base Supply. Such use of Federal
17 facilities will be the subject of a separate agreement to be entered into between the Contractor
18 and Reclamation.

19 (c) For the purpose of determining whether Section 3405(a)(1)(M) of the
20 CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting
21 Officer acknowledges that the Contractor is within a county, watershed, or other area of origin,
22 as those terms are utilized under California law, of water that constitutes the natural flow of the

1 Sacramento River and its tributaries above the confluence of the American and Sacramento
2 Rivers.

3 (d) Nothing herein contained shall prevent the Contractor from diverting
4 water during the months of November through March for beneficial use on the land shown on
5 Exhibit B or elsewhere to the extent authorized under the laws of the State of California.

6 (e) The United States assumes no responsibility for and neither it nor its
7 officers, agents, or employees shall have any liability for or on account of:

8 (1) The quality of water to be diverted by the Contractor;

9 (2) The control, carriage, handling, use, disposal, or distribution of
10 water diverted by the Contractor outside the facilities constructed and then being operated and
11 maintained by or on behalf of the United States;

12 (3) Claims of damage of any nature whatsoever, including but not
13 limited to, property loss or damage, personal injury, or death arising out of or connected with the
14 control, carriage, handling, use, disposal, or distribution of said water outside of the hereinabove
15 referred to facilities; and

16 (4) Any damage whether direct or indirect arising out of or in any
17 manner caused by a shortage of water whether such shortage be on account of errors in
18 operation, drought, or unavoidable causes.

19 RETURN FLOW

20 4. Nothing herein shall be construed as an abandonment or a relinquishment by the
21 United States of any right it may have to the use of waste, seepage, and return flow water derived
22 from water diverted by the Contractor hereunder and which escapes or is discharged beyond the
23 boundaries of the lands shown on Exhibit B; Provided, that this shall not be construed as

1 claiming for the United States any right to such water which is recovered by the Contractor
2 pursuant to California law from within the boundaries of the lands shown on Exhibit B, and
3 which is being used pursuant to this Settlement Contract for surface irrigation or underground
4 storage for the benefit of the lands shown on Exhibit B by the Contractor.

5 CONSTRAINTS ON THE AVAILABILITY OF WATER

6 5. In a Critical Year, the Contractor shall have the option to:

7 (a) Irrigate not in excess of 75 percent of their irrigable acreage shown on
8 Exhibit A; or

9 (b) Divert from the Sacramento River not in excess of 75 percent of the
10 Contract Total shown on Exhibit A, subject to the installation of measurement equipment
11 satisfactory to the Contracting Officer. The Contractor shall install, operate, and maintain this
12 equipment at the Contractor's expense. The Contractor shall submit, by April 1 of that Critical
13 Year, a written schedule to the Contracting Officer indicating the Contract Total to be diverted
14 by the Contractor during each month of that Critical Year under this Settlement Contract.

15 (c) The amount of any overpayment by the Contractor shall, at its option, be
16 refunded or credited upon amounts to become due to the United States from the Contractor under
17 the provisions hereof in the ensuing Year. To the extent of such deficiency such adjustment of
18 overpayment shall constitute the sole remedy of the Contractor.

19 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

20 6. The Contractor and United States desire to work together to maximize the
21 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States
22 and the Contractor will work in partnership and with others within the Sacramento Valley,
23 including other Contractors, to facilitate the better integration within the Sacramento Valley of

1 all water supplies including, but not limited to, the better management and integration of surface
2 water and groundwater, the development and better utilization of surface water storage, the
3 effective utilization of waste, seepage and return flow water, and other operational and
4 management options that may be identified in the future.

5 USE OF WATER FURNISHED TO CONTRACTOR

6 7. (a) Project Water furnished to the Contractor pursuant to this Settlement
7 Contract shall not be delivered or furnished by the Contractor for any purposes other than
8 agricultural purposes without the written consent of the Contracting Officer. For purposes of this
9 Settlement Contract, “agricultural purposes” includes, but is not restricted to, the irrigation of
10 crops, the watering of livestock, incidental domestic use including related landscape irrigation, or
11 underground water replenishment.

12 (b) The Contractor shall comply with requirements applicable to the
13 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
14 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of
15 1973, as amended, that are within the Contractor’s legal authority to implement. The Contractor
16 shall comply with the limitations or requirements imposed by environmental documentation
17 applicable to the Contractor and within its legal authority to implement. The Existing Contract,
18 which evidences in excess of 40 years of diversions, for agricultural uses, of the quantities of
19 water provided for in Article 3, and the underlying water rights of the Contractor will be
20 considered in developing an appropriate base-line for the Biological Assessment prepared
21 pursuant to the Endangered Species Act, and in any other needed environmental review.

22 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial

1 relief in a court of competent jurisdiction with respect to any biological opinion or other
2 environmental documentation referred to in this Article.

3 RATE AND METHOD OF PAYMENT FOR WATER

4 8. (a) The Contractor shall make payments to the United States as provided in
5 this Article for each acre of land irrigated in each Year.

6 Such payments shall be at Rates and Charges established in accordance with: (i)
7 the Secretary's then current ratesetting policies for the Project; and (ii) applicable Reclamation
8 law and associated rules and regulations, or policies: Provided, that if the Contractor desires to
9 use Project Water for other than agricultural use the Rates and Charges set forth above will be
10 adjusted by the Contracting Officer to the applicable Rates and Charges for such use. The Rates
11 and Charges applicable to the Contractor upon execution of this Settlement Contract are set forth
12 in Exhibit D, as may be revised annually. The Secretary's ratesetting policies for the Project
13 shall be amended, modified, or superseded only through a public notice and comment procedure.

14 (b) The Contracting Officer shall notify the Contractor of the Rates and
15 Charges as follows:

16 (1) Prior to July 1 of each Year, the Contracting Officer shall provide
17 the Contractor an estimate of the Charges for Project Water that will be applied to the period
18 October 1, of the current Year, through September 30, of the following Year, and the basis for
19 such estimate. The Contractor shall be allowed not less than 2 months to review and comment
20 on such estimates. On or before September 15 of each Year, the Contracting Officer shall notify
21 the Contractor in writing of the Charges to be in effect during the period October 1 of the current
22 Year, through September 30, of the following Year, and such notification shall revise Exhibit D.

1 (2) Prior to October 1 of each Year, the Contracting Officer shall make
2 available to the Contractor an estimate of the Rates for Project Water for the following Year and
3 the computations and cost allocations upon which those Rates are based. The Contractor shall be
4 allowed not less than 2 months to review and comment on such computations and cost
5 allocations. By December 31 of each Year, the Contracting Officer shall provide the Contractor
6 with the final Rates to be in effect for the upcoming Year, and such notification shall revise
7 Exhibit D.

8 (c) The Contractor shall pay the United States for Project Water in the
9 following manner:

10 (1) With respect to Rates and Charges, on or before May 1 of each
11 Year, the Contractor shall pay the United States one-half the total amount payable pursuant to
12 subdivision (a) of this Article and the remainder shall be paid on or before July 1 or such later
13 date or dates as may be specified by the United States in a written notice to the Contractor.

14 (2) The amount to be paid on or before May 1 of each Year shall be
15 based on a written estimate, provided to the Contracting Officer by the Contractor on or before
16 April 1 of each Year, of the total area to be irrigated during the ensuing irrigation season.

17 (3) The amount to be paid on or before July 1 shall be equal to the
18 difference between the amount paid on May 1 and the total amount due for the Year, based on
19 the total area actually irrigated prior to July 1.

20 (4) If additional areas are placed under irrigation on or after July 1,
21 additional payment shall be made in advance of such additional irrigation at the Rates and
22 Charges shown in Exhibit D for each additional acre placed under irrigation.

1 (d) Payments to be made by the Contractor to the United States under this
2 Settlement Contract may be paid from any revenues available to the Contractor.

3 (1) All revenues received by the United States from the Contractor
4 relating to the delivery of Project Water or the delivery of non-Project Water through Project
5 facilities shall be allocated and applied in accordance with Federal Reclamation law and the
6 associated rules or regulations, and the then current Project ratesetting policies for irrigation
7 water.

8 (e) The Contracting Officer shall keep its accounts pertaining to the
9 administration of the financial terms and conditions of its long-term water service and Settlement
10 Contracts, in accordance with applicable Federal standards, so as to reflect the application of
11 Project costs and revenues. The Contracting Officer shall, each Year upon request of the
12 Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense
13 allocations, the disposition of all Project and Contractor revenues, and a summary of all water
14 delivery information. The Contracting Officer and the Contractor shall enter into good faith
15 negotiations to resolve any discrepancies or disputes relating to accountings, reports, or
16 information.

17 (f) The parties acknowledge and agree that the efficient administration of this
18 Settlement Contract is their mutual goal. Recognizing that experience has demonstrated that
19 mechanisms, policies, and procedures used for establishing Rates and Charges and/or for making
20 and allocating payments, other than those set forth in this Article may be in the mutual best
21 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify
22 the mechanisms, policies, and procedures for any of those purposes while this Settlement
23 Contract is in effect without amendment of this Settlement Contract.

1 (g) For the term of this Settlement Contract, Rates under the respective
2 ratesetting policies for the Project will be established to recover only reimbursable operation and
3 maintenance (including any deficits) and capital costs of the Project, as those terms are used in
4 the then-current Project ratesetting policies, and interest, where appropriate, except in instances
5 where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy.
6 Proposed changes of significance in practices which implement the ratesetting policies for the
7 Project will not be implemented until the Contracting Officer has provided the Contractor an
8 opportunity to discuss the nature, need, and impact of the proposed change. The Contractor
9 retains all rights to challenge the validity of Rates and Charges imposed pursuant to this
10 Settlement Contract, including but not limited to operation and maintenance expenses and
11 operation and maintenance deficits, in an appropriate administrative or judicial proceeding.

12 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the Rates
13 for Project Water transferred, exchanged, or otherwise disposed of, by the Contractor shall be the
14 Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any)
15 of the transferred, exchanged, or otherwise disposed of Project Water to the transferee's point of
16 delivery in accordance with the then-current ratesetting policies for the Project. Except as
17 provided in subsection 3407(d)(2)(A) of the CVPIA, the Charges for Project Water transferred,
18 exchanged, or otherwise disposed of, by the Contractor shall be the Contractor's Charges
19 specified in Exhibit D. If the Contractor is receiving lower Rates and Charges because of
20 inability to pay and is transferring, exchanging, or otherwise disposing of Project Water to
21 another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and
22 Charges for transferred, exchanged, or otherwise disposed of Project Water shall be the
23 Contractor's Rates and Charges unadjusted for ability to pay.

1 (i) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
2 Officer is authorized to adjust determinations of ability to pay every 5 years.

3 (j) Each payment to be made pursuant to subdivisions (a) and (b) of this
4 Article shall be made at the office of the Bureau of Reclamation, Mid-Pacific Region, File
5 No. 11546, P.O. Box 6000, San Francisco, California 94160-1546, or at such other place as the
6 United States may designate in a written notice to the said Contractor. Payments shall be made
7 by cash transaction, wire, or any other mechanism as may be agreed to in writing by the
8 Contractor and the Contracting Officer. In event there should be a default in the payment of the
9 amount due, the delinquent payment provisions of Article 13 shall apply. The Contractor shall
10 not be relieved of the whole or any part of its said obligation by, on account of, or
11 notwithstanding, as the case may be its failure, refusal, or neglect to divert the quantity of Project
12 Water shown on Exhibit A.

13 AGREEMENT ON WATER QUANTITIES

14 9. (a) During the term of this Settlement Contract and any renewals thereof:

15 (1) It shall constitute full agreement as between the United States and
16 the Contractor as to the quantities of water and the allocation thereof between Base Supply and
17 Project Water which may be diverted by the Contractor from the Sacramento River for beneficial
18 use on the land shown on Exhibit B which said diversion, use, and allocation shall not be
19 disturbed so long as the Contractor shall fulfill all of its obligations hereunder;

20 (2) Neither party shall claim any right against the other in conflict with
21 the provisions of Article 9(a)(1) hereof.

22 (b) Nothing herein contained is intended to or does limit rights of the
23 Contractor against others than the United States or of the United States against any person other

1 than the Contractor: Provided, however, that in the event the Contractor, the United States, or
2 any other person shall become a party to a general adjudication of rights to the use of water of
3 the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position
4 of either party hereto or of any other person and the rights of all such persons in respect to the
5 use of such water shall be determined in such proceedings the same as if this Settlement Contract
6 had not been entered into, and if final judgment in any such general adjudication shall determine
7 that the rights of the parties hereto are different from the rights as assumed herein, the parties
8 shall negotiate an amendment to give effect to such judgment. In the event the parties are unable
9 to agree on an appropriate amendment they shall, within 60 days of determining that there is an
10 impasse, employ the services of a neutral mediator, experienced in resolving water rights
11 disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A
12 failure to reach agreement on an amendment within 60 days of the end of mediation will cause
13 the immediate termination of this Settlement Contract.

14 (c) In the event that the California State Water Resources Control Board or a
15 court of competent jurisdiction issues a final decision or order modifying the terms and
16 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-
17 Delta water quality obligations, the Contractor and the United States shall promptly meet to
18 determine whether or not to modify any of the terms of this Settlement Contract to comply with
19 the final decision or order, including, but not limited to, the applicability of the rescheduling
20 charge in Article 3(c)(1) of this Settlement Contract. If within 60 days of the date of the issuance
21 of the final decision or order the parties are not able to reach agreement regarding either the need
22 to modify this Settlement Contract or the manner in which this Settlement Contract is to be
23 modified, the parties shall promptly retain a neutral mediator, experienced in resolving water

1 right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
2 shared equally. In the event that either of the parties to this Settlement Contract determines that
3 the parties will not be able to develop mutually-agreeable modification(s) to this Settlement
4 Contract even with the assistance of a mediator, either of the parties to this Settlement Contract
5 may attempt to resolve the impasse by seeking appropriate judicial relief including, but not
6 limited to, filing a general adjudication of the rights to the use of water in the Sacramento River
7 system. The foregoing provisions of this sub-article shall only apply to the incremental
8 obligations contained within a final decision or order of the State Water Resources Control
9 Board that reflects a modification to the obligations imposed in State Water Resources Control
10 Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water
11 Quality Control Plan which, taken together, will be considered the baseline for the application of
12 the provisions of this sub-article.

13 (d) In the event this Settlement Contract terminates, the rights of the parties to
14 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;
15 and the fact that as a compromise settlement of a controversy as to the respective rights of the
16 parties to divert and use water and the yield of such rights during the term hereof, this Settlement
17 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the
18 Settlement Contract term and segregates it into Base Supply and Project Water shall not
19 jeopardize the rights or position of either party with respect to its water rights or the yield thereof
20 at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all
21 times will first use water to the use of which it is entitled by virtue of its own water rights, and
22 neither the provisions of this Settlement Contract, action taken thereunder, nor payments made
23 thereunder to the United States by the Contractor shall be construed as an admission that any part

1 of the water used by the Contractor during the term of this Settlement Contract was in fact water
2 to which it would not have been entitled under water rights owned by it nor shall receipt of
3 payments thereunder by the United States from the Contractor be construed as an admission that
4 any part of the water used by the Contractor during the term of this Settlement Contract was in
5 fact water to which it would have been entitled under water rights owned by it.

6 MEASUREMENT OF WATER

7 10. (a) All water diverted by the Contractor from the Sacramento River will be
8 diverted at the existing point or points of diversion shown on Exhibit A or at such other points as
9 may be mutually agreed upon in writing by the Contracting Officer and the Contractor.

10 (b) The right of ingress to and egress from all points of diversion is hereby
11 granted to all authorized employees of the United States. The Contractor also hereby grants to
12 the United States the right to install, operate, maintain, and replace measuring equipment on
13 diversion or carriage facilities at each point of diversion as the Contracting Officer deems
14 necessary.

15 (c) The Contractor shall not modify, alter, remove, or replace diversion
16 facilities or do any other act which would alter the effectiveness or accuracy of the measuring
17 equipment installed by the United States or its representatives unless and until the Contracting
18 Officer has been notified with due diligence and has been given an opportunity to modify such
19 measuring equipment in such manner as may be necessary or appropriate. In the event of an
20 emergency the Contractor shall notify the United States within a reasonable time thereafter as to
21 the existence of the emergency and the nature and extent of such modification, alteration,
22 removal, or replacement of diversion facilities.

1 (d) The Contractor shall pay the United States for the costs to repair, relocate,
2 or replace measurement equipment when the Contractor modifies, alters, removes, or replaces
3 diversion or carriage facilities.

4 RULES AND REGULATIONS

5 11. The parties agree that the delivery of Project Water for irrigation use or use of
6 Federal facilities pursuant to this Settlement Contract is subject to Federal Reclamation law,
7 including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as
8 amended and supplemented, and the rules and regulations promulgated by the Secretary of the
9 Interior under Federal Reclamation law.

10 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

11 12. (a) The obligation of the Contractor to pay the United States as provided in
12 this Settlement Contract is a general obligation of the Contractor notwithstanding the manner in
13 which the obligation may be distributed among the Contractor's water users and notwithstanding
14 the default of individual water users in their obligations to the Contractor.

15 (b) The payment of Charges becoming due hereunder is a condition precedent
16 to receiving benefits under this Settlement Contract. The United States shall not make water
17 available to the Contractor through Project facilities during any period in which the Contractor
18 may be in arrears in the advance payment of water Rates due the United States. The Contractor
19 shall not furnish water made available pursuant to this Settlement Contract for lands or parties
20 which are in arrears in the advance payment of water rates levied or established by the
21 Contractor.

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

24 CHARGES FOR DELINQUENT PAYMENTS

25 13. (a) The Contractor shall be subject to interest, administrative and penalty
26 charges on delinquent installments or payments. When a payment is not received by the due
27 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
28 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an
29 administrative charge to cover additional costs of billing and processing the delinquent payment.
30 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty
31 charge of six percent per year for each day the payment is delinquent beyond the due date.

1 Further, the Contractor shall pay any fees incurred for debt collection services associated with a
2 delinquent payment.

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

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

11 QUALITY OF WATER

12 14. The operation and maintenance of Project facilities shall be performed in such
13 manner as is practicable to maintain the quality of raw water made available through such
14 facilities at the highest level reasonably attainable as determined by the Contracting Officer. The
15 United States does not warrant the quality of water and is under no obligation to construct or
16 furnish water treatment facilities to maintain or better the quality of water.

17 WATER AND AIR POLLUTION CONTROL

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

22 EQUAL OPPORTUNITY

23 16. During the performance of this Settlement Contract, the Contractor agrees as
24 follows:

25 (a) The Contractor will not discriminate against any employee or applicant for
26 employment because of race, color, religion, sex, or national origin. The Contractor will take
27 affirmative action to ensure that applicants are employed, and that employees are treated during
28 employment, without regard to their race, color, religion, sex, or national origin. Such action
29 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
30 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other

1 forms of compensation; and selection for training, including apprenticeship. The Contractor
2 agrees to post in conspicuous places, available to employees and applicants for employment,
3 notices to be provided by the Contracting Officer setting forth the provisions of this
4 nondiscrimination clause.

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

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

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

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

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

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

1 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

2 17. Omitted.

3 MINGLING OF CONTRACTOR’S PROJECT AND NON-PROJECT WATER

4 18. Omitted.

5 BOOKS, RECORDS, AND REPORTS

6 19. The Contractor shall establish and maintain accounts and other books and records
7 pertaining to administration of the terms and conditions of this Settlement Contract, including:
8 the Contractor's financial transactions, water supply data, and Project land and right-of-way
9 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
10 data; and other matters that the Contracting Officer may require. Reports thereon shall be
11 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
12 Officer may require. Subject to applicable Federal laws and regulations, each party to this
13 Settlement Contract shall have the right during office hours to examine and make copies of each
14 other’s books and official records relating to matters covered by this Settlement Contract.

15 CHANGE OF PLACE OF USE

16 20. Unless the written consent of the United States is first obtained no change shall be
17 made in the place of water use shown on Exhibit B.

18 CONSOLIDATION OF CONTRACTING ENTITIES

19 21. Omitted

20 NOTICES

21 22. Any notice, demand, or request authorized or required by this Settlement Contract
22 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,
23 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,
24 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United
25 States, when mailed, postage prepaid, or delivered to High Low Nursery Company, Inc., P.O.
26 Box 990687, Redding, California 96099-0687. The designation of the addressee or the address
27 may be changed by notice given in the same manner as provided in this Article for other notices.

28 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

4 (c) The Contracting Officer shall not unreasonably condition or withhold his
5 approval of any proposed assignment.

6 OFFICIALS NOT TO BENEFIT

7 24. No Member of or Delegate to Congress, Resident Commissioner, or official of the
8 Contractor shall benefit from this Settlement Contract other than as a water user or landowner in
9 the same manner as other water users or landowners.

10 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

11 25. The expenditure or advance of any money or the performance of any obligation of
12 the United States under this Settlement Contract shall be contingent upon appropriation or
13 allotment of funds. Absence of appropriation or allotment of funds shall not relieve the
14 Contractor from any obligations under this Settlement Contract. No liability shall accrue to the
15 United States in case funds are not appropriated or allotted.

16 CONFIRMATION OF SETTLEMENT CONTRACT

17 26. The Contractor, after the execution of this Settlement Contract, shall promptly
18 seek to secure a decree of a court of competent jurisdiction of the State of California, if
19 appropriate, confirming the execution of this Settlement Contract. The Contractor shall furnish
20 the United States a certified copy of the final decree, the validation proceedings, and all pertinent
21 supporting records of the court approving and confirming this Settlement Contract, and
22 decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This Settlement
23 Contract shall not be binding on the United States until such final decree has been secured.

24 UNAVOIDABLE GROUNDWATER PERCOLATION

25 27. Omitted

26 PRIVACY ACT COMPLIANCE

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

32 (b) With respect to the application and administration of the criminal penalty
33 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees

1 responsible for maintaining the certification and reporting records referenced in (a) above are
2 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

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

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

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

19 WATER CONSERVATION

20 29. (a) Prior to the diversion of Project Water, the Contractor shall be
21 implementing an effective water conservation and efficiency program based on the Basin-Wide
22 Water Management Plan and/or Contractor's water conservation plan that has been determined
23 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water
24 conservation plans established under Federal law. The water conservation and efficiency
25 program shall contain definite water conservation objectives, appropriate economically feasible
26 water conservation measures, and time schedules for meeting those objectives. Continued
27 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the
28 Contractor's continued implementation of such water conservation program. In the event the
29 Contractor's water conservation plan or any revised water conservation plan completed pursuant
30 to subdivision (d) of Article 29 of this Settlement Contract have not yet been determined by the

1 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer
2 determines are beyond the control of the Contractor, Project Water deliveries shall be made
3 under this Settlement Contract so long as the Contractor diligently works with the Contracting
4 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
5 immediately begins implementing its water conservation and efficiency program in accordance
6 with the time schedules therein.

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

10 (c) At 5-year intervals, the Contractor shall revise its water conservation plan
11 to reflect the then current conservation and efficiency criteria for evaluating water conservation
12 plans established under Federal law and submit such revised water management plan to the
13 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
14 the water conservation plan meets Reclamation's then current conservation and efficiency
15 criteria for evaluating water conservation plans established under Federal law.

16 (d) If the Contractor is engaged in direct ground-water recharge, such activity
17 shall be described in the Contractor's water conservation plan.

18 OPINIONS AND DETERMINATIONS

19 30. (a) Where the terms of this Settlement Contract provide for actions to be
20 based upon the opinion or determination of either party to this Settlement Contract, said terms
21 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or
22 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of
23 this Settlement Contract, expressly reserve the right to seek relief from and appropriate

1 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
2 opinion or determination by either party shall be provided in a timely manner. Nothing in
3 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the
4 standard of judicial review applicable under federal law to any opinion or determination
5 implementing a specific provision of federal law embodied in statute or regulation.

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

11 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

12 31. (a) In addition to all other payments to be made by the Contractor pursuant to
13 this Settlement Contract, the Contractor shall pay to the United States, within 60 days after
14 receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for
15 such specific items of direct cost incurred by the United States for work requested by the
16 Contractor associated with this Settlement Contract plus indirect costs in accordance with
17 applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this
18 Article shall not exceed the amount agreed to in writing in advance by the Contractor. This
19 Article shall not apply to costs for routine contract administration.

20 (b) All advances for miscellaneous costs incurred for work requested by the
21 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the
22 actual costs when the work has been completed. If the advances exceed the actual costs incurred,
23 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's

1 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this
2 Settlement Contract.

3 WAIVER OF DEFAULT

4 32. The waiver by either party to this Settlement Contract as to any default shall not
5 be construed as a waiver of any other default or as authority of the other party to continue such
6 default or to make, do, or perform, or not to make, do, or perform, as the case may be, any act or
7 thing which would constitute a default.

8 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

9 33. (a) The rights and obligations of the Contractors may be transferred in
10 connection with the transfer of title to the land or any portion thereof delineated on Exhibit B on
11 the following terms and conditions:

12 (1) A voluntary inter vivos transfer may be made, upon mutual
13 agreement of the United States and the Contractors, to a person eligible to hold title to the land as
14 a nonexcess landowner; and

15 (2) In the event the title of the Contractors to such land, or any portion
16 thereof, is transferred by operation of law, such as by conveyance in satisfaction of a mortgage,
17 by inheritance, or by device, the rights and obligations of the Contractors shall pass with the title
18 and the land shall be subject to provisions of Reclamation law pertaining to such transfers. Any
19 transfer of the rights and obligations of this Settlement Contract by the person acquiring title by
20 operation of law shall be in accordance with provisions of subsection (1) above.

21 (b) The Contractors shall notify the Contracting Officer in writing of any
22 proposed transfer of this Settlement Contract. In addition, in the case of a partial assignment the
23 Contractors shall:

1 IN WITNESS WHEREOF, the parties hereto have executed this Settlement
2 Contract as of the day and year first hereinabove written.

3 THE UNITED STATES OF AMERICA

4 By: _____
5 Regional Director, Mid-Pacific Region
6 Bureau of Reclamation

7 (SEAL)

8 HIGH-LOW NURSERY COMPANY, INC.

9 By: _____
10 President

11 (I:\Sac River Drafts\10-21-03 High Low Nursery, Inc., Final Draft Contract with exhibits.doc)

Exhibit A

High-Low Nursery Company, Inc.
Sacramento River

SCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Total</u> (acre-feet)
April	<u>10</u>	<u>0</u>	<u>10</u>
May	<u>30</u>	<u>0</u>	<u>30</u>
June	<u>25</u>	<u>20</u>	<u>45</u>
July	<u>0</u>	<u>50</u>	<u>50</u>
August	<u>0</u>	<u>45</u>	<u>45</u>
September	<u>0</u>	<u>20</u>	<u>20</u>
October	<u>5</u>	<u>0</u>	<u>5</u>
Total	70	135	205

Irrigable Acres: 73

Points of Diversion: 240.2L

Dated:

Exhibit B

(Map to be inserted to identify area covered by contract)

High-Low Nursery Company, Inc.

Sacramento River

Exhibit C

Omitted

Exhibit D
High-Low Nursery Company, Inc.
 Sacramento River
WATER RATES AND CHARGES

Note: Rates and Charges shown are 2003 rates. This exhibit will be updated prior to execution of the contract to reflect the Rates and Charges for 2004.

COST OF SERVICE RATES:	<u>Per Irrigated Acre</u>
Capital Rates	
Storage	\$6.20
O&M Rates:	
Water Marketing	\$11.61
Storage	\$10.30
Deficit Rates:	
Interest Bearing	\$6.38
CFO/PFR Adjustment Rate 1/	<u>\$0.00</u>
 TOTAL	 \$34.49

FULL-COST RATES:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$45.14
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Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$50.26
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CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 2/

Restoration Payments (3407(d)(2)(A))	\$14.22
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1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

2/ 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).