

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND

7 \_\_\_\_\_  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM \_\_\_\_\_ DIVISION

10 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2001, in

11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary  
12 thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
17 hereinafter referred to as the United States, and \_\_\_\_\_, hereinafter referred  
18 to as the Contractor, a public agency of the State of California, duly organized, existing, and acting  
19 pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood  
24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other  
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
27 the San Joaquin River and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed \_\_\_\_\_,  
29 hereinafter collectively referred to as the \_\_\_\_\_ [Division/Unit] facilities, which will be  
30 used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract;  
31 and

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

34 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
35 No. \_\_\_\_\_, as amended, which established terms for the delivery to the Contractor of  
36 Central Valley Project Water from the \_\_\_\_\_ [Division/Unit] from \_\_\_\_\_ through  
37 \_\_\_\_\_; and

38 [ 5<sup>th</sup>] [FOR IRC'S] WHEREAS, the Contractor and the United States have pursuant to  
39 subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently  
40 entered into interim renewal contract(s) identified as Contract  
41 No(s).\_\_\_\_\_, the current of which is hereinafter referred to as the  
42 Existing Contract, which provided for the continued water service to the Contractor from  
43 \_\_\_\_\_ through \_\_\_\_\_; and

44 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of  
45 interim and existing long-term Central Valley Project Water service contracts following  
46 completion of appropriate environmental documentation, including a programmatic  
47 environmental impact statement (PEIS) pursuant to the National Environmental Policy Act  
48 analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the  
49 potential renewal of all existing contracts for Project Water; and

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

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

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

57 [10<sup>th</sup>] [CONTRACTOR SPECIFIC] WHEREAS, the Contractor has demonstrated to the

58 satisfaction of the Contracting Officer that the Contractor has utilized the Central Valley Project  
59 Water supplies available to it for reasonable and beneficial use and/or has demonstrated projected  
60 future demand for water use such that the Contractor has the capability<sup>1</sup> and expects to utilize  
61 fully for reasonable and beneficial use the quantity of Project Water to be made available to it  
62 pursuant to this Contract; and

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

66 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
67 including the Contractor's, depend upon the continued availability of water, including water  
68 service from the Central Valley Project; and

69 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
70 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
71 Project for all Project purposes; and

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<sup>1</sup> Contractor Specific issue - This recital may need to be modified for individual contractors who do not have the capability today to take Project Water but can demonstrate that they will have the capability to take Project Water prior to the delivery of water.

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

79 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
80 relationship in order to achieve their mutual goals; and

81 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
82 long-term renewal contract pursuant to Federal Reclamation law on the terms and conditions set  
83 forth below;

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

86 DEFINITIONS

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

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

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

94 (c) "Condition of Shortage" shall mean a condition respecting the Project  
95 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet  
96 the Contract Total;<sup>2</sup>

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

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

102 (f) "Contractor's Service Area" shall mean the area to which the Contractor  
103 is permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
104 hereto, which may be modified from time to time in accordance with Article 35 of this Contract  
105 without amendment of this Contract;<sup>3</sup>

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

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<sup>2</sup> May need to be modified for some divisions, including a definition of interruption of supply.

<sup>3</sup> Some Contractors may propose alternate language. Some Contractors may use a legal description, others may use a map.

108 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be  
109 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982  
110 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

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

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

118 (l) "Irrigation Full Cost Water Rate" shall have the same meaning as "full  
119 cost" as that term is used in paragraph (3) of Section 202 of the Reclamation Reform Act of  
120 1982;

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

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

126 (o) "Municipal and Industrial (M&I) Water"<sup>4</sup> shall mean water made available  
127 from the Project other than Irrigation Water made available to the Contractor. M&I Water shall  
128 include water used for human use and purposes such as the watering of landscaping or pasture  
129 for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land  
130 holdings operated in units of less than five (5) acres unless the Contractor establishes to the  
131 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a  
132 use described in subdivision (m) of this Article;

133 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as  
134 determined by the Contracting Officer, shall amortize the expenditures for construction allocable  
135 to Project M&I facilities in service, including, O&M deficits funded, less payments, over such  
136 periods as may be required under Federal Reclamation law with interest accruing from the dates  
137 such costs were first incurred plus the applicable rate for the O&M of such Project facilities.  
138 Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest  
139 Rate methodology contained in Section 202 (3) (B) and (C) of the RRA;

140 (q) "Operation and Maintenance" or "O&M" shall mean normal and  
141 reasonable care, control, operation, repair, replacement (other than Capital replacement), and  
142 maintenance of Project facilities;

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<sup>4</sup> Some Contractors may want to include "other water" definition in lieu of this definition. Individual Contractors with unique circumstances may negotiate a lower threshold.

143 (r) "Operating Non-Federal Entity" shall mean the \_\_\_\_\_, a  
144 Non-Federal entity which has the obligation to operate and maintain all or a portion of the  
145 \_\_\_\_\_ [Division/Unit] facilities pursuant to an agreement with the United States, and  
146 which may have funding obligations with respect thereto;

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

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

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

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

158 (w) "Recent Historic Average" shall mean the most recent five (5) -year  
159 average of the final forecast of Water Made Available to the Contractor pursuant to this Contract  
160 or its preceding contract(s);

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

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

166 (z) "Water Delivered" or "Delivered Water" shall mean Project Water  
167 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
168 Officer<sup>5</sup>;

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

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

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

177 TERM OF CONTRACT

178 2. (a) This Contract shall be effective March 1, 2001, through February 28,  
179 2026. In the event the Contractor wishes to renew the Contract beyond February 28, 2026, the

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<sup>5</sup> This language may be modified at the Contractor level.

180 Contractor shall submit a request for renewal in writing to the Contracting Officer no later than  
181 two (2) years prior to the date this Contract expires. The renewal of this Contract insofar as it  
182 pertains to the furnishing of Irrigation Water to the Contractor shall be governed by subdivision  
183 (b) of this Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I  
184 Water to the Contractor shall be governed by subdivision (c) of this Article.

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

190 (2) The conditions which must be met for this Contract to be renewed  
191 are: (i) the Contractor has prepared a water conservation plan that has been determined by the  
192 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and  
193 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is  
194 implementing an effective water conservation and efficiency program based on the Contractor's  
195 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is  
196 operating and maintaining all water measuring devices and implementing all water measurement  
197 methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the  
198 Contractor has reasonably and beneficially used the Project Water supplies made available to it

199 and, based on projected demands, is reasonably anticipated and expects fully to utilize for  
200 reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to  
201 such renewal; (v) the Contractor is complying with all terms and conditions of this Contract; and  
202 (vi) the Contractor has the physical and legal ability to deliver Project Water.

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

213 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the  
214 Contractor, shall be renewed for a period of twenty five (25) years and thereafter shall be  
215 renewed for successive periods of up to forty (40) years each, which periods shall be consistent  
216 with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable  
217 to the parties and consistent with federal and state law. The present Reclamation-wide policy,  
218 dated March 20, 2000, provides that the term of such contracts shall be no more than twenty five

219 (25) years each, subject to a variance to allow a longer term in appropriate circumstances. The  
220 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the  
221 proposed adoption and application of any revised Reclamation-wide policy applicable to the  
222 delivery of Project M&I Water that would limit the term of any subsequent renewal contract with  
223 the Contractor for the furnishing of M&I Water to less than twenty five (25) years.

224 (d) The Contracting Officer anticipates that by December 31, 2024, all  
225 authorized project construction expected to occur will have occurred, and on that basis the  
226 Contracting Officer agrees by that date to allocate all costs that are properly assignable to the  
227 Contractor, and agrees further that, at any time after such allocation is made, and subject to  
228 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the  
229 Contractor, be converted to a contract under subsection (d) , Section 9 of the Reclamation Project  
230 Act of 1939, subject to applicable Federal law and under stated terms and conditions mutually  
231 agreeable to the Contractor and the Contracting Officer. A condition for such conversion to  
232 occur shall be a determination by the Contracting Officer that, account being taken of the amount  
233 credited to return by the Contractor as provided for under Reclamation law, the remaining  
234 amount of construction costs assignable for ultimate return by the Contractor can probably be  
235 repaid to the United States within the term of a contract under said subsection (d). If the  
236 remaining amount of costs that are properly assignable to the Contractor cannot be determined by  
237 December 31, 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s)  
238 why such a determination could not be made. Further, the Contracting Officer shall make such a

239 determination as soon thereafter as possible so as to permit, upon request of the Contractor and  
240 satisfaction of the condition set out above, conversion to a contract under said subsection (d). In  
241 the event such determination of costs has not been made at a time which allows conversion of  
242 this Contract during the term of this Contract or the Contractor has not requested conversion of  
243 this Contract within such term, the parties shall incorporate in any subsequent renewal contract as  
244 described in subdivision (b) of this Article a provision that carries forth in substantially identical  
245 terms the provisions of this subdivision. In the event the Contracting Officer is able to make a  
246 determination of the remaining amount of costs that are properly assignable to the Contractor  
247 before December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting  
248 Officer has such ability.

249 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

250 3. **(Divisional)(a)**<sup>6</sup> During each Year, consistent with all applicable State water rights,  
251 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of  
252 this Contract, the Contracting Officer shall make available for delivery to the Contractor \_\_\_\_\_  
253 acre-feet of water for irrigation and M&I purposes. The quantity of Water Delivered to the  
254 Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the  
255 provisions of Articles 4 and 7 of this Contract.

256 (b) Because the capacity of the Central Valley Project to deliver Project Water  
\_\_\_\_\_

<sup>6</sup>Delta Export Agricultural contracts will require restructuring of this Article.

257 has been constrained in recent years and may be constrained in the future due to many factors  
258 including hydrologic conditions and implementation of Federal and State laws, the likelihood of  
259 the Contractor actually receiving the amount of Water set out in subdivision (a) of this Article in  
260 any given Year is uncertain. The Contracting Officer's most recent modeling referenced in the  
261 PEIS projected that the Contract Total set forth in this Contract will not be available to the  
262 Contractor in many years. During the most recent five (5) years, the Recent Historic Average of  
263 water made available to the Contractor was \_\_\_\_ acre-feet. Nothing in subdivision (b) of this  
264 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

267 (d) The Contractor shall make reasonable and beneficial use of all Project  
268 Water or other water furnished pursuant to this Contract. Ground-water recharge programs,  
269 ground-water banking programs, surface water storage programs, and other similar programs  
270 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
271 Contractor's Service Area which are consistent with applicable State law and result in use  
272 consistent with Reclamation law will be allowed; Provided, That any direct recharge program(s)  
273 is (are) described in the Contractor's Water Conservation Plan submitted pursuant to Article 26  
274 of this Contract; Provided, further, That such Water Conservation Plan demonstrates sufficient  
275 lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity  
276 of Delivered Water is demonstrated to be reasonable for such uses and in compliance with

277 Reclamation Law. Ground-water recharge programs, ground-water banking programs, surface  
278 water storage programs, and other similar programs utilizing Project Water or other water  
279 furnished pursuant to this Contract conducted outside the Contractor's Service Area may be  
280 permitted upon written approval of the Contracting Officer, which approval will be based upon  
281 environmental documentation, Project Water rights, and Project operational concerns. The  
282 Contracting Officer will address such concerns in regulations, policies, or guidelines.

283 (e) The Contractor shall comply with requirements applicable to the  
284 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
285 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as  
286 amended, that are within the Contractor's legal authority to implement. The Contractor shall  
287 comply with the limitations or requirements imposed by environmental documentation applicable  
288 to the Contractor and within its legal authority to implement regarding specific activities,  
289 including conversion of Irrigation Water to M&I Water. Nothing herein shall be construed to  
290 prevent the Contractor from challenging or seeking judicial relief in a court of

291 competent jurisdiction with respect to any biological opinion or other environmental  
292 documentation referred to in this Article.<sup>7</sup>

293 (f) Following the declaration of Water Made Available under Article 4 of this  
294 Contact, the Contracting Officer will make a determination whether Project Water, or other water  
295 available to the Project, can be made available to the Contractor in addition to the Contract Total  
296 under Article 3 of this Contract during the Year without adversely impacting other Project  
297 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
298 Contractor prior to making such a determination. If the Contracting Officer determines that  
299 Project Water, or other water available to the Project, can be made available to the Contractor,  
300 the Contracting Officer will announce the availability of such water and shall so notify the  
301 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor  
302 and other Project Contractors capable of taking such water to determine the most equitable and  
303 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such  
304 water, the Contracting Officer shall make such water available to the Contractor in accordance  
305 with applicable statutes, regulations, guidelines, and policies.

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<sup>7</sup> **Specific Contract Issue:** The concern over land use authority may be the subject of discussion with individual contractors.

306 (g) The Contractor may request permission to reschedule for use during the  
307 subsequent Year some or all of the Water Made Available to the Contractor during the current  
308 Year referred to as “carryover.”<sup>8</sup> The Contractor may request permission to use during the  
309 current Year a quantity of Project Water which may be made available by the United States to the  
310 Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s written  
311 approval may permit such uses in accordance with applicable statutes, regulations, guidelines,  
312 and policies.

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

321 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
322 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this  
323 Contract upon written approval by the Contracting Officer in accordance with the terms and

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<sup>8</sup> “Rescheduled” in some divisions.

324 conditions of such approval.

325 [DIVISIONAL ISSUE – SECTION 215 WATER]

326 (j) The Contracting Officer shall make reasonable efforts to protect the water  
327 rights necessary for the Project and to provide the water available under this Contract. The  
328 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
329 extent permitted by law, in administrative proceedings related to the Project Water rights;  
330 Provided, however, That the Contracting Officer retains the right to object to the substance of the  
331 Contractor’s position in such a proceeding.

332 TIME FOR DELIVERY OF WATER

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

341 declaration of Project operations will be expressed in terms of both Water Made Available and  
342 the Recent Historic Average.

343 (b) [DIVISIONAL / CONTRACTOR SPECIFIC ISSUE – MORE SPECIFIC  
344 INFORMATION WILL BE INCLUDED FOR SOME ] On or before each March 1 and at such  
345 other times as necessary, the Contractor shall submit to the Contracting Officer a written  
346 schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project  
347 Water to be delivered by the United States to the Contractor pursuant to this Contract for the  
348 Year commencing on such March 1. The Contracting Officer shall use all reasonable means to  
349 deliver Project Water according to the approved schedule for the Year commencing on such  
350 March 1.

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

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

360 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

361 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
362 Contract shall be delivered to the Contractor at \_\_\_\_\_ and any  
363 additional point or points of delivery either on Project facilities or another location or locations  
364 mutually agreed to in writing by the Contracting Officer and the Contractor.

365 (b) [DIVISIONAL ISSUE – FOR SOME DIVISIONS POINTS OF  
366 DELIVERY SPECIFICALLY IDENTIFIED.] The Contracting Officer, the Operating  
367 Non-Federal Entity, or other appropriate entity shall make all reasonable efforts to maintain  
368 sufficient flows and levels of water in the \_\_\_\_\_ Canal to deliver Project Water to the  
369 Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

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

374 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
375 measured and recorded with equipment furnished, installed, operated, and maintained by the  
376 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the  
377 Contracting Officer (hereafter “other appropriate entity”) at the point or points of delivery  
378 established pursuant to subdivision (a) of this Article. Upon the request of either party to this

379 Contract, the Contracting Officer shall investigate, or cause to be investigated by the responsible  
380 Operating Non-Federal Entity, the accuracy of such measurements and shall take any necessary  
381 steps to adjust any errors appearing therein. For any period of time when accurate measurements  
382 have not been made, the Contracting Officer shall consult with the Contractor and the  
383 responsible Operating Non-Federal Entity prior to making a final determination of the quantity  
384 delivered for that period of time.

385 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity  
386 shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project  
387 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified  
388 in subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,  
389 employees, agents, and assigns on account of damage or claim of damage of any nature  
390 whatsoever for which there is legal responsibility, including property damage, personal injury, or  
391 death arising out of or connected with the control, carriage, handling, use, disposal, or  
392 distribution of such Project Water beyond such delivery points, except for any damage or claim  
393 arising out of (i) acts or omissions of the Contracting Officer or any of its officers, employees,  
394 agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of  
395 creating the situation resulting in any damage or claim, (ii) willful misconduct of the Contracting  
396 Officer or any of its officers, employees, agents, or assigns, including any responsible Operating  
397 Non-Federal Entity, (iii) negligence of the Contracting Officer or any of its officers, employees,

398 agents, or assigns including any responsible Operating Non-Federal Entity, or (iv) damage or  
399 claims resulting from a malfunction of facilities owned and/or operated by the United States or  
400 responsible Operating Non-Federal Entity; Provided, That the Contractor is not the Operating  
401 Non-Federal Entity that owned or operated the malfunctioning facility(ies) from which the  
402 damage claim arose.

403 MEASUREMENT OF WATER WITHIN THE SERVICE AREA<sup>9</sup>

404 6.(Contractor Specific)(a) By \_\_\_\_\_ [DATE] \_\_\_\_\_, the  
405 Contractor shall ensure that, unless the Contractor establishes an alternative measurement  
406 program satisfactory to the Contracting Officer, all surface water delivered for irrigation purposes  
407 within the Contractor's Service Area is measured at each agricultural turnout and such water  
408 delivered for municipal and industrial purposes is measured at each municipal and industrial  
409 service connection. The water measuring devices or water measuring methods of comparable  
410 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible  
411 for installing, operating, and maintaining and repairing all such measuring devices and  
412 implementing all such water measuring methods at no cost to the United States. The Contractor  
413 shall use the information obtained from such water measuring devices or water measuring  
414 methods to ensure its proper management of the water, to bill water users for water delivered by  
415 the Contractor; and, if applicable, to record water delivered for municipal and industrial purposes

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<sup>9</sup> Recognize unique circumstances at Contractor level may require negotiation of different language.

416 by customer class as defined in the Contractor's water conservation plan provided for in Article  
417 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from  
418 establishing and collecting any charges, assessments, or other revenues authorized by California  
419 law. The Contractor shall include a summary of all its annual surface water deliveries in the  
420 annual report described in subdivision (c) of Article 26.

421 (b) **(Contractor Specific)** To the extent the information has not otherwise  
422 been provided, upon execution of this Contract, the Contractor shall provide to the Contracting  
423 Officer a written report describing the measurement devices or water measuring methods being  
424 used or to be used to implement subdivision (a) of this Article and identifying the agricultural  
425 turnouts and the municipal and industrial service connections or alternative measurement  
426 programs approved by the Contracting Officer, at which such measurement devices or water  
427 measuring methods are being used, and, if applicable, identifying the locations at which such  
428 devices and/or methods are not yet being used including a time schedule for implementation at  
429 such locations. The Contracting Officer shall advise the Contractor in writing within sixty (60)  
430 days as to the adequacy of, and necessary modifications, if any, of the measuring devices or water  
431 measuring methods identified in the Contractor's report and if the Contracting Officer does not  
432 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the  
433 Contractor that the measuring devices or methods are inadequate, the parties shall within sixty  
434 (60) days following the Contracting Officer's response, negotiate in good faith the earliest

435 practicable date by which the Contractor shall modify said measuring devices and/or measuring  
436 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this  
437 Article.

438 (c) All new surface water delivery systems installed within the Contractor's  
439 Service Area after the effective date of this Contract shall also<sup>10</sup> comply with the measurement  
440 provisions described in subdivision (a) of this Article.

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

444 (e) **(Contractor Specific)** The Contractor shall inform the Contracting Officer  
445 and the Operating Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each  
446 month of the quantity of Irrigation and M&I Water taken during the preceding month.

447 RATES AND METHOD OF PAYMENT FOR WATER

448 7. (a) The Contractor shall pay the United States as provided in this Article for  
449 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in  
450 accordance with (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the  
451 Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be  
452 amended, modified, or superseded only through a public notice and comment procedure; (ii)

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<sup>10</sup> Some Contractors may propose alternate date.

453 applicable Reclamation law and associated rules and regulations, or policies; and (iii) other  
454 applicable provisions of this Contract. Payments shall be made by cash transaction, wire, or any  
455 other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.  
456 The Rates, Charges, and Tiered Pricing Components applicable to the Contractor upon execution  
457 of this Contract are set forth in Exhibit "B", as may be revised annually.

458 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,  
459 and Tiered Pricing Components as follows:

460 (1) Prior to July 1 of each Calendar Year, the Contracting Officer  
461 shall provide the Contractor an estimate of the Charges for Project Water that will be applied to  
462 the period October 1, of the current Calendar Year, through September 30, of the following  
463 Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than  
464 two (2) months to review and comment on such estimates. On or before September 15 of each  
465 Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be  
466 in effect during the period October 1 of the current Calendar Year, through September 30, of the  
467 following Calendar Year, and such notification shall revise Exhibit "B."

468 (2) Prior to October 1 of each Calendar Year, the Contracting Officer  
469 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Components  
470 for Project Water for the following Year and the computations and cost allocations upon which  
471 those Rates are based. The Contractor shall be allowed not less than two (2) months to review

472 and comment on such computations and cost allocations. By December 31 of each Calendar  
473 Year, the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing  
474 Components to be in effect for the upcoming Year, and such notification shall revise Exhibit  
475 “B”.

476 (c) At the time the Contractor submits the initial schedule for the delivery of  
477 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
478 Contractor shall make an advance payment to the United States equal to the total amount payable  
479 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
480 scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of the  
481 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
482 Contractor shall make an advance payment to the United States, at the Rate(s) set under  
483 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
484 during the second month immediately following. Adjustments between advance payments for  
485 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end  
486 of the following month; Provided, That any revised schedule submitted by the Contractor  
487 pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to  
488 this Contract during any month shall be accompanied with appropriate advance payment, at the  
489 Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of  
490 such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant

491 to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no  
492 additional Project Water shall be delivered to the Contractor unless and until an advance payment  
493 at the Rates then in effect for such additional Project Water is made. Final adjustment between  
494 the advance payments for the Water Scheduled and payments for the quantities of Water  
495 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
496 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water  
497 carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by  
498 the last day of February.

499 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
500 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
501 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
502 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
503 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be  
504 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the  
505 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if  
506 there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report  
507 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component  
508 for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made  
509 through the adjustment of payments due to the United States for Charges for the next month.

510 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall  
511 be computed pursuant to Article 20 of this Contract.

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

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

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

524 (h) The Contracting Officer shall keep its accounts pertaining to the  
525 administration of the financial terms and conditions of its long-term contracts, in accordance with  
526 applicable Federal standards, so as to reflect the application of Project costs and revenues. The  
527 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a  
528 detailed accounting of all Project and Contractor expense allocations, the disposition of all

529 Project and Contractor revenues, and a summary of all water delivery information. The  
530 Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any  
531 discrepancies or disputes relating to accountings, reports, or information.

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

539 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
540 exceed eighty (80%) percent of the Contract Total, then before the end of the month following  
541 the month of delivery the Contractor shall make an additional payment to the United States equal  
542 to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of  
543 Water Delivered in excess of eighty (80%) percent of the Contract Total, but less than or equal to  
544 ninety (90%) percent of the Contract Total, shall equal the one-half of the difference between the  
545 Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or  
546 M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the  
547 amount of Water Delivered which exceeds ninety (90%) percent of the Contract Total shall equal

548 the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the  
549 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

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

558 (3) For purposes of determining the applicability of the Tiered Pricing  
559 Components pursuant to this Article, Water Delivered shall include Project Water that the  
560 Contractor transfers to others but shall not include Project Water transferred and delivered to the  
561 Contractor.<sup>11</sup>

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<sup>11</sup> Divisions/Districts may propose alternative language.

562 (k) For the term of this Contract, Rates under the respective ratesetting  
563 policies will be established to recover only reimbursable “operation and maintenance” (including  
564 any deficits) and capital costs of the Project, as those terms are used in the then-current Project  
565 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is  
566 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in  
567 practices which implement the Contracting Officer’s ratesetting policies will not be implemented  
568 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,  
569 need, and impact of the proposed change.

570 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
571 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates  
572 adjusted upward or downward to reflect the changed costs, (if any), incurred by the Contracting  
573 Officer in the delivery of the transferred Project Water to the transferee’s point of delivery in  
574 accordance with the then applicable CVP Ratesetting Policy; If the Contractor is receiving lower  
575 Rates and Charges because of inability to pay and is transferring Project Water to another entity  
576 whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for  
577 transferred Project Water shall be the Contractor’s Rates and Charges unadjusted for ability to  
578 pay.

579 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting  
580 Officer is authorized to adjust determinations of ability to pay every five (5) years.

581                   NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

582                   8.       The Contractor and the Contracting Officer concur that, as of the effective date of  
583 this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and  
584 shall have no further liability therefor.

585                   [Or,]

586                   The Contractor and the Contracting Officer have entered into a written agreement  
587 specifying a mutually acceptable mechanism through which the Contractor will retire its  
588 outstanding non-interest bearing Operation and Maintenance deficits.

589                   SALES, TRANSFERS, OR EXCHANGES OF WATER

590                   9.       (a)     The right to receive Project Water provided for in this Contract may be  
591 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
592 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
593 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
594 Water under this Contract may take place without the prior written approval of the Contracting  
595 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or  
596 exchanges shall be approved absent compliance with appropriate environmental documentation  
597 including but not limited to the National Environmental Policy Act and the Endangered Species  
598 Act. Such environmental documentation should include, as appropriate, an analysis of

599 groundwater impacts and economic and social effects, including environmental justice, of the  
600 proposed water transfers on both the transferor and transferee.

601 (b) In order to facilitate efficient water management by means of water  
602 transfers of the type historically carried out among Project Contractors located within the same  
603 geographical area and to allow the Contractor to participate in an accelerated water transfer  
604 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,  
605 necessary environmental documentation including, but not limited to, the National  
606 Environmental Policy Act and the Endangered Species Act analyzing annual transfers within  
607 such geographical areas and the Contracting Officer shall determine whether such transfers  
608 comply with applicable law. Following the completion of the environmental documentation,  
609 such transfers addressed in such documentation shall be conducted with advance notice to the  
610 Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such  
611 environmental documentation and the Contracting Officer's compliance determination shall be  
612 reviewed every five (5) years and updated, as necessary, prior to the expiration of the then-  
613 existing five (5) -year period. All subsequent environmental documentation shall include an  
614 alternative to evaluate not less than the quantity of Project Water historically transferred within  
615 the same geographical area.

616 (c) For a water transfer to qualify under subdivision (b) of this Article, such  
617 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3)

618 years, for M&I use, ground-water recharge, water banking, or fish and wildlife resources; not  
619 lead to land conversion; and be delivered to established cropland, wildlife refuges, ground-water  
620 basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a  
621 willing seller and a willing buyer; (iv) convey water through existing facilities with no new  
622 construction or modifications to facilities and be between existing Project Contractors and/or the  
623 Contractor and the United States, Department of the Interior; and (v) comply with all applicable  
624 Federal, State, and local or tribal laws and requirements imposed for protection of the  
625 environment and Indian Trust Assets, as defined under Federal law.

626 APPLICATION OF PAYMENTS AND ADJUSTMENTS

627 10. (a) The amount of any overpayment by the Contractor of the Contractor's  
628 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current  
629 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
630 more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu  
631 of a refund, any amount of such overpayment at the option of the Contractor, may be credited  
632 against amounts to become due to the United States by the Contractor. With respect to  
633 overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or  
634 anyone having or claiming to have the right to the use of any of the Project Water supply  
635 provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
636 days of the Contracting Officer obtaining direction as to how to credit or refund such

637 overpayment in response to the notice to the Contractor that it has finalized the accounts for the  
638 Year in which the overpayment was made.

639 (b) All advances for miscellaneous costs incurred for work requested by the  
640 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs  
641 when the work has been completed. If the advances exceed the actual costs incurred, the  
642 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
643 advances, the Contractor will be billed for the additional costs pursuant to Article 25 of this  
644 Contract.

645 TEMPORARY REDUCTIONS--RETURN FLOWS

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

651 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
652 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for  
653 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the  
654 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,  
655 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the

656 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
657 of emergency, in which case no notice need be given; Provided, That the United States shall use  
658 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
659 service after such reduction or discontinuance, and if requested by the Contractor, the United  
660 States will, if possible, deliver the quantity of Project Water which would have been delivered  
661 hereunder in the absence of such discontinuance or reduction.

662 (c) The United States reserves the right to all seepage and return flow water  
663 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
664 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
665 the United States any right as seepage or return flow being put to reasonable and beneficial use  
666 pursuant to this Contract within the Contractor's Service Area<sup>12</sup> by the Contractor or those  
667 claiming by, through, or under the Contractor.

668 CONSTRAINTS ON THE AVAILABILITY OF WATER

669 12. (a) In its operation of the Project, the Contracting Officer will use all  
670 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
671 available to the Contractor pursuant to this long-term renewal Contract. In the event the

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<sup>12</sup> Divisions may propose alternate language

672 Contracting Officer determines that a Condition of Shortage appears probable, the Contracting  
673 Officer will notify the Contractor of said determination as soon as practicable.

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

679 (c) **DIVISIONAL ISSUE - APPORTIONMENT AMONG**  
680 **CONTRACTORS.**

681 (d) **DIVISIONAL ISSUE - M&I Water Service Contracts**  
682 **UNAVOIDABLE GROUNDWATER PERCOLATION**

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

687 RULES AND REGULATIONS<sup>13</sup>

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

693 WATER AND AIR POLLUTION CONTROL

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

698 QUALITY OF WATER<sup>14</sup>

699 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant  
700 to this Contract shall be operated and maintained to enable the United States to deliver Project  
701 Water to the Contractor in accordance with the water quality standards specified in subsection  
702 2(b) of the Act of August 26, 1937 (50 Stat. 850), as added by Section 101 of the Act of  
703 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no

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<sup>13</sup> Contractor Specific Issue - This may need to be modified on an individual contractor basis. Some contractors may be precluded by law to agreeing to all or part of this Article.

<sup>14</sup> Some Contractors may request tailored language regarding water quality.

704 obligation to construct or furnish water treatment facilities to maintain or to improve the quality  
705 of Water Delivered to the Contractor pursuant to this Contract. The United States does not  
706 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

707 (b) The Operation and Maintenance of Project facilities shall be performed in  
708 such manner as is practicable to maintain the quality of raw water made available through such  
709 facilities at the highest level reasonably attainable as determined by the Contracting Officer. The  
710 Contractor shall be responsible for compliance with all State and Federal water quality standards  
711 applicable to surface and subsurface agricultural drainage discharges generated through the use of  
712 Federal or Contractor facilities or Project Water provided by the Contractor within the  
713 Contractor's Service Area.

714 (c) [DIVISIONAL ISSUE – DRAINAGE, WHERE APPLICABLE]

715 WATER ACQUIRED BY THE CONTRACTOR  
716 OTHER THAN FROM THE UNITED STATES

717 17. (a) Water or water rights now owned or hereafter acquired by the Contractor  
718 other than from the United States and Irrigation Water furnished pursuant to the terms of this  
719 Contract may be simultaneously transported through the same distribution facilities of the  
720 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water  
721 and non-project water were constructed without funds made available pursuant to Federal  
722 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the  
723 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive

724 Irrigation Water must be established through the certification requirements as specified in the  
725 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of  
726 Eligible Lands within the Contractor's Service Area can be established and the quantity of  
727 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such  
728 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-project  
729 water are/were constructed with funds made available pursuant to Federal Reclamation law, the  
730 non-project water will be subject to the acreage limitation provisions of Federal Reclamation  
731 law, unless the Contractor pays to the United States the incremental fee described in 43 CFR  
732 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the  
733 cost to the Federal Government, including interest of storing or delivering non-project water,  
734 which for purposes of this Contract shall be determined as follows: The quotient shall be the  
735 unpaid distribution system costs divided by the total irrigable acreage within the Contractor's  
736 Service Area. The incremental fee per acre is the mathematical result of such quotient times the  
737 interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263).  
738 Such incremental fee will be charged to each acre of excess or full cost land within the  
739 Contractor's Service Area that receives non-project water through Federally financed or  
740 constructed facilities. The incremental fee calculation methodology will continue during the  
741 term of this Contract absent the promulgation of a contrary Reclamation- wide rule, regulation or  
742 policy adopted after the Contractor has been afforded the opportunity to review and comment on

743 the proposed rule, regulation or policy. If such rule, regulation or policy is adopted it shall  
744 supersede this provision.

745 (b) Water or water rights now owned or hereafter acquired by the Contractor,  
746 other than from the United States or adverse to the Project or its contractors (i.e. non-project  
747 water), may be stored, conveyed and/or diverted through Project facilities, subject to the  
748 completion of appropriate environmental documentation, with the approval of the Contracting  
749 Officer and the execution of any contract determined by the Contracting Officer to be necessary,  
750 consistent with the following provisions:

751 (1) The Contractor may introduce non-project water into Project  
752 facilities and deliver said water to lands within the Contractor's Service Area, including  
753 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-  
754 Federal Entity of an appropriate rate as determined by the CVP Ratesetting Policy and the  
755 Reclamation Reform Act of 1982, each as amended, modified or superceded from time to time.  
756 In addition, if electrical power is required to pump non-project water through the facilities, the  
757 Contractor shall be responsible for obtaining the necessary power and paying the necessary  
758 charges therefor.

759                   (2)     Delivery of such non-project water in and through Project facilities  
760 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes  
761 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to  
762 other Project water service contractors; (iii) interfere with the delivery of contractual water  
763 entitlements to any other Project water service contractors; or (iv) interfere with the physical  
764 maintenance of the Project facilities.

765                   (3)     Neither the United States nor the Operating Non-Federal Entity  
766 shall be responsible for control, care or distribution of the non-project water before it is  
767 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
768 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
769 their respective officers, agents, and employees, from any claim for damage to persons or  
770 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project  
771 water from any source.

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

775                   (5)     After Project purposes are met, as determined by the Contracting  
776 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
777 of the facilities declared to be available by the Contracting Officer for conveyance and

778 transportation of non-project water prior to any such remaining capacity being made available to  
779 non-Project contractors.[DIVISIONAL ISSUE – DIVISIONS MAY SEEK LANGUAGE  
780 PROVIDING FOR WHEELING AND NON-PROJECT WATER PURSUANT TO CVPIA  
781 SECTION 3408(c), ETC.]

782 OPINIONS AND DETERMINATIONS

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

793 (b) The Contracting Officer shall have the right to make determinations  
794 necessary to administer this Contract that are consistent with the provisions of this Contract, the  
795 laws of the United States and of the State of California, and the rules and regulations

796 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation  
797 with the Contractor to the extent reasonably practicable.

798 COORDINATION AND COOPERATION

799 19. (a) In order to further their mutual goals and objectives, the Contracting  
800 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and  
801 with other affected Project Contractors, in order to improve the operation and management of the  
802 Project. The communication, coordination, and cooperation regarding operations and  
803 management shall include, but not be limited to, any action which will or may materially affect  
804 the quantity or quality of Project Water supply, the allocation of Project Water supply, and  
805 Project financial matters including, but not limited to, budget issues. The communication,  
806 coordination, and cooperation provided for hereunder shall extend to all provisions of this  
807 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,  
808 and determinations to be made by the respective party.

809 (b) Within one hundred twenty (120) days following the effective date of this  
810 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall  
811 arrange to meet with interested Project Contractors to develop a mutually agreeable, written  
812 Project-wide process, which may be amended as necessary separate and apart from this Contract.  
813 The goal of this process shall be to provide, to the extent practicable, the means of mutual

814 communication and interaction regarding significant decisions concerning Project operation and  
815 management on a real-time basis.

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

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

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

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

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

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

833 (d) Without limiting the contractual obligations of the Contracting Officer  
834 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting  
835 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
836 interested stakeholders or to make decisions in a timely fashion as needed to protect health,  
837 safety, physical integrity of structures or facilities, or the Contracting Officer's ability to comply  
838 with applicable laws.

839 CHARGES FOR DELINQUENT PAYMENTS

840 20. (a) The Contractor shall be subject to interest, administrative and penalty  
841 charges on delinquent installments or payments. When a payment is not received by the due  
842 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
843 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
844 administrative charge to cover additional costs of billing and processing the delinquent payment.  
845 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
846 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the  
847 due date. Further, the Contractor shall pay any fees incurred for debt collection services  
848 associated with a delinquent payment.

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

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

EQUAL OPPORTUNITY

857

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

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

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

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

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

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

887                   (f)     In the event of the Contractor's noncompliance with the nondiscrimination

888 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
889 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared  
890 ineligible for further Government contracts in accordance with procedures authorized in said  
891 amended Executive Order, and such other sanctions may be imposed and remedies invoked as  
892 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as  
893 otherwise provided by law.

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

903 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

916 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

917 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
918 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
919 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
920 laws, as well as with their respective implementing regulations and guidelines imposed by the  
921 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

936 PRIVACY ACT COMPLIANCE

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

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

946 (c) The Contracting Officer or a designated representative shall provide the

947 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau  
948 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--  
949 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of  
950 information contained in the Landholder's certification and reporting records.

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

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

962 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

963 25. In addition to all other payments to be made by the Contractor pursuant to this  
964 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a  
965 bill and detailed statement submitted by the Contracting Officer to the Contractor for such  
966 specific items of direct cost incurred by the United States for work requested by the Contractor  
967 associated with this Contract plus indirect costs in accordance with applicable Bureau of  
968 Reclamation policies and procedures. All such amounts referred to in this Article shall not  
969 exceed the amount agreed to in writing in advance by the Contractor. This Article shall not apply  
970 to costs for routine contract administration.

971 WATER CONSERVATION

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

989 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of

990 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor  
991 shall implement the Best Management Practices identified by the time frames issued by the  
992 California Urban Water Conservation Council for such M&I Water unless any such practice is  
993 determined by the Contracting Officer to be inappropriate for the Contractor.

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

997 (d) At five (5)-year intervals, the Contractor shall revise its water conservation  
998 plan to reflect the then current conservation and efficiency criteria for evaluating water  
999 conservation plans established under Federal law and submit such revised water management  
1000 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then  
1001 determine if the water conservation plan meets Reclamation's then current conservation and  
1002 efficiency criteria for evaluating water conservation plans established under Federal law.

1003 (e) If the Contractor is engaged in direct ground-water recharge, such activity  
1004 shall be described in the Contractor's water conservation plan.

1005 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1006 27. Except as specifically provided in Article 17 of this Contract, the provisions of  
1007 this Contract shall not be applicable to or affect non-project water or water rights now owned or

1008 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1009 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1010 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1011 any water user within the Contractor's Service Area acquires or has available under any other  
1012 contract pursuant to Federal Reclamation law.

1013 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY<sup>15</sup>

1014 28. (a) The Operation and Maintenance of a portion of the Project facilities which  
1015 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and  
1016 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement  
1017 between the United States and the Operating Non-Federal Entity. That separate agreement shall  
1018 not interfere with or affect the rights or obligations of the Contractor or the United States  
1019 hereunder.

1020 (b) The Contracting Officer has previously notified the Contractor in writing  
1021 that the Operation and Maintenance of a portion of the Project facilities which serve the  
1022 Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the  
1023 Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved  
1024 by the Contracting Officer under the terms and conditions of the separate agreement between the

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<sup>15</sup> Include where applicable.

1025 United States and the Operating Non-Federal Entity described in subdivision (a) of this Article,  
1026 all rates, charges, or assessments of any kind, including any assessment for reserve funds, which  
1027 the Operating Non-Federal Entity or such successor determines, sets, or establishes for the  
1028 Operation and Maintenance of the portion of the Project facilities operated and maintained by the  
1029 Operating Non-Federal Entity or such successor. Such direct payments to the Operating  
1030 Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay  
1031 directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered  
1032 Pricing Components except to the extent the Operating Non-Federal Entity collects payments on  
1033 behalf of the United States in accordance with the separate agreement identified in subdivision  
1034 (a) of this Article.

1035 (c) For so long as the Operation and Maintenance of any portion of the Project  
1036 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any  
1037 successor thereto, the Contracting Officer shall adjust those components of the Rates for Water  
1038 Delivered under this Contract representing the cost associated with the activity being performed  
1039 by the Operating Non-Federal Entity or its successor.

1040 (d) In the event the Operation and Maintenance of the Project facilities  
1041 operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States  
1042 during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing,  
1043 and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates

1044 to be paid by the Contractor for Project Water under this Contract representing the Operation and  
1045 Maintenance costs of the portion of such Project facilities which have been re-assumed. The  
1046 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to  
1047 the contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised  
1048 Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1049 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1050 29. The expenditure or advance of any money or the performance of any obligation of  
1051 the United States under this Contract shall be contingent upon appropriation or allotment of  
1052 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1053 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1054 not appropriated or allotted.

1055 BOOKS, RECORDS, AND REPORTS

1056 30. (a) The Contractor shall establish and maintain accounts and other books and  
1057 records pertaining to administration of the terms and conditions of this Contract, including: the  
1058 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1059 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1060 data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1061 furnished to the Contracting Officer in such form and on such date or dates as the Contracting  
1062 Officer may require. Subject to applicable Federal laws and regulations, each party to this  
1063 Contract shall have the right during office hours to examine and make copies of the other party's  
1064 books and records relating to matters covered by this Contract.

1065 (b) Notwithstanding the provisions of subdivision (a) of this Article, no  
1066 books, records, or other information shall be requested from the Contractor by the Contracting  
1067 Officer unless such books, records, or information are reasonably related to the administration or

1068 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1069 time within which to provide the requested books, records, or information.

1070 (c) At such time as the Contractor provides information to the Contracting  
1071 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to  
1072 the Operating Non-Federal Entity.

1073 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1074 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1075 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1076 therein shall be valid until approved in writing by the Contracting Officer.

1077 (b) The assignment of any right or interest in this Contract by either party shall  
1078 not interfere with the rights or obligations of the other party to this Contract absent the written  
1079 concurrence of said other party.

1080 (c) The Contracting Officer shall not unreasonably condition or withhold his  
1081 approval of any proposed assignment.

1082 SEVERABILITY

1083 32. In the event that a person or entity who is neither (i) a party to a Project contract,  
1084 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)  
1085 an association or other form of organization whose primary function is to represent parties to  
1086 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1087 enforceability of a provision included in this Contract and said person, entity, association, or  
1088 organization obtains a final court decision holding that such provision is legally invalid or

1089 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1090 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of  
1091 such final court decision identify by mutual agreement the provisions in this Contract which must  
1092 be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate  
1093 revision(s). The time periods specified above may be extended by mutual agreement of the  
1094 parties. Pending the completion of the actions designated above, to the extent it can do so  
1095 without violating any applicable provisions of law, the United States shall continue to make the  
1096 quantities of Project Water specified in this Contract available to the Contractor pursuant to the  
1097 provisions of this Contract which were not found to be legally invalid or unenforceable in the  
1098 final court decision.

1099 RESOLUTION OF DISPUTES

1100 33. Should any dispute arise concerning any provisions of this Contract, or the  
1101 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1102 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1103 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1104 thirty (30) days' written notice of the intent to take such action; Provided, That such notice shall  
1105 not be required where a delay in commencing an action would prejudice the interests of the party  
1106 that intends to file suit. During the thirty (30)-day notice period, the Contractor and the

1107 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1108 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the  
1109 Contractor or the United States may have.

1110 OFFICIALS NOT TO BENEFIT

1111 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1112 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1113 manner as other water users or landowners.

1114 CHANGES IN CONTRACTOR'S SERVICE AREA

1115 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1116 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation,  
1117 merger, or otherwise, except upon the Contracting Officer's written consent.

1118 (b) Within thirty (30) days of receipt of a request for such a change, the  
1119 Contracting Officer will notify the Contractor of any additional information required by the  
1120 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1121 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1122 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1123 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1124 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible;  
1125 and (iii) have an impact on any Project Water rights applications, permits, or licenses. In  
1126 addition, the Contracting Officer shall comply with the National Environmental Policy Act and  
1127 the Endangered Species Act. The Contractor will be responsible for all costs incurred by the

1128 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of  
1129 this Contract.

1130 FEDERAL LAWS

1131 36. By entering into this Contract, the Contractor does not waive its rights to contest  
1132 the validity or application in connection with the performance of the terms and conditions of this  
1133 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1134 the terms and conditions of this Contract unless and until relief from application of such Federal  
1135 law or regulation to the implementing provision of the Contract is granted by a court of  
1136 competent jurisdiction.

1137 NOTICES

1138 37. Any notice, demand, or request authorized or required by this Contract shall be  
1139 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1140 delivered to the Area Manager \_\_\_\_\_, and on  
1141 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of  
1142 Directors/City Council of the \_\_\_\_\_. The designation of the  
1143 addressee or the address may be changed by notice given in the same manner as provided in this  
1144 Article for other notices.

1145 CONFIRMATION OF CONTRACT



1 By: \_\_\_\_\_  
2 Secretary of the Board of Directors

R.O. Draft 11/01-2000  
CVP-Wide Form 11-05  
Contract No. \_\_\_\_\_ - LTR1

**EXHIBIT A**

[Map or Description of Service Area]

R.O. Draft 11/01-2000  
CVP-Wide Form 11-05  
Contract No. \_\_\_\_\_ - LTR1

**EXHIBIT B**  
[Initial Rates and Charges]

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