

AG & M&I  
 R. O. Final CVP-Wide Draft 4/19-2004  
 Corning WD Draft 7/22-2003  
 Corning WD Draft 6/26-2003  
 Corning WD Draft 6/25-2003  
 R.O. Final CVP-Wide 6/10-2003  
 Sac. Valley Division Draft 5/28-2003  
 CVP-Wide Draft 5/23-2003  
 Contract No.  
 14-06-200-6575-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
CORNING WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE SACRAMENTO RIVER DIVISION

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Exhibit A - Map of Contractor's Boundaries

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Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
CORNING WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE SACRAMENTO RIVER DIVISION

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in  
pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as  
amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2,  
1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986  
(100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all  
collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES  
OF AMERICA, hereinafter referred to as the United States, and CORNING WATER DISTRICT,  
hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,  
existing, and acting pursuant to the laws thereof;

WITNESSETH, That:

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EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed the Red Bluff Diversion Dam, and the Corning Canal and related delivery facilities including pumping plants, hereinafter collectively referred to as the Canal Facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

[4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-6575, as amended on March 9, 1962, and August 4, 1971, which established terms for the delivery to the Contractor of Central Valley Project Water from the Canal Facilities from August 1, 1957, through February 28, 1995, and under which the initial date of water delivery to the Contractor was April 15, 1961; and

[5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No(s). 14-06-200-6575-IR1, 14-06-200-6575-IR2, 14-06-200-6575-IR3, 14-06-200-6575-IR4, 14-06-200-6575-IR5, 14-06-200-6575-IR6,

43 14-06-200-6575-IR7, and 14-06-200-6575-IR8, the current of which is hereinafter referred to as  
44 the Existing Contract, which provided for the continued water service to the Contractor from  
45 March 1, 2004, through February 28, 2006; and

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

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

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

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

58 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
59 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
60 reasonable and beneficial use and, based upon a needs analysis cooperatively prepared by the  
61 Contracting Officer and the Contractor, has demonstrated projected future demand for water use  
62 that exceeds the Contract Total to be made available to it pursuant to this Contract; and

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

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

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

78 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
79 relationship in order to achieve their mutual goals; and

80 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
81 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

84 DEFINITIONS

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

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

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

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

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

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

100 (f) "Contractor's Boundaries" shall mean the area to which the Contractor is  
101 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
102 hereto, which may be modified from time to time in accordance with Article 35 of this Contract  
103 without amendment of this Contract;

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

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

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

112 (j) “Full Cost Rate” shall mean an annual rate as determined by the  
113 Contracting Officer that shall amortize the expenditures for construction properly allocable to the  
114 Project Irrigation or M&I functions, as appropriate, of facilities in service including all O&M  
115 deficits funded, less payments, over such periods as may be required under Federal Reclamation  
116 law, or applicable contract provisions. Interest will accrue on both the construction expenditures  
117 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the  
118 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated  
119 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes  
120 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules  
121 and Regulations for the RRA. The Full Cost Rate used to compute the Tiered Pricing  
122 Component defined in subdivision (y) of this Article does not include the costs associated with  
123 the Contractor’s Irrigation Water distribution works constructed by the United States. However,  
124 the Irrigation Full Cost Water Rate defined in subdivision (l) of this Article does include such  
125 costs;

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

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

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

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

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

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

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

147                   (r)     “Operating Non-Federal Entity” shall mean the Tehama-Colusa Canal  
148 Authority, its successors or assigns, a non-Federal entity which has the obligation to operate and  
149 maintain all or a portion of the Canal Facilities pursuant to an agreement with the United States,  
150 and which may have funding obligations with respect thereto;

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

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

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

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

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

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

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

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

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

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

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

181 TERM OF CONTRACT

182 2. (a) This Contract shall be effective March 1, 20\_\_\_\_, through February 28,  
183 20\_\_\_\_, and supercedes the Existing Contract. In the event the Contractor wishes to renew this  
184 Contract beyond February 28, 20\_\_\_\_, the Contractor shall submit a request for renewal in writing  
185 to the Contracting Officer no later than two years prior to the date this Contract expires. The  
186 renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the  
187 Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract  
188 insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by  
189 subdivision (c) of this Article.

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

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

202 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor  
203 has reasonably and beneficially used the Project Water supplies made available to it and, based  
204 on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and  
205 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal;  
206 (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the  
207 Contractor has the physical and legal ability to deliver Project Water.

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

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

224 term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to  
225 less than 40 years.

226 (d) The Contracting Officer shall make a determination ten years after the  
227 date of execution of this Contract, and every five years thereafter during the term of this  
228 Contract, of whether a conversion of the relevant portion of this Contract to a contract under said  
229 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act  
230 of July 2, 1956 (70 Stat. 483). The Contracting Officer shall also make a determination ten years  
231 after the date of execution of this Contract and every five years thereafter during the term of this  
232 Contract of whether a conversion of the relevant portion of this Contract to a contract under  
233 subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.

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

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

259 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

260 3. (a) During each Year, consistent with all applicable State water rights,  
261 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of  
262 this Contract, the Contracting Officer shall make available for delivery to the Contractor 23,000  
263 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in  
264 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of  
265 Articles 4 and 7 of this Contract.

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

270 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the  
271 PEIS projected that the Contract Total set forth in this Contract will not be available to the  
272 Contractor in many years. During the most recent five years, the Recent Historic Average of  
273 water made available to the Contractor was 21,160 acre-feet. Nothing in subdivision (b) of this  
274 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

277 (d) The Contractor shall make reasonable and beneficial use of all water  
278 furnished pursuant to this Contract. Ground-water recharge programs (direct, indirect, or in  
279 lieu), ground-water banking programs, surface water storage programs, and other similar  
280 programs utilizing Project Water or other water furnished pursuant to this Contract conducted  
281 within the Contractor's Boundaries which are consistent with applicable State law and result in  
282 use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge  
283 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to  
284 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates  
285 sufficient lawful uses exist in the Contractor's Boundaries so that using a long-term average, the  
286 quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance  
287 with Federal Reclamation law. Ground-water recharge programs, ground-water banking  
288 programs, surface water storage programs, and other similar programs utilizing Project Water or  
289 other water furnished pursuant to this Contract conducted outside the Contractor's Boundaries  
290 may be permitted upon written approval of the Contracting Officer, which approval will be based  
291 upon environmental documentation, Project Water rights, and Project operational concerns. The  
292 Contracting Officer will address such concerns in regulations, policies, or guidelines.

293                   (e)     The Contractor shall comply with requirements applicable to the  
294 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
295 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),  
296 as amended, that are within the Contractor’s legal authority to implement. The Existing  
297 Contract, which evidences in excess of 42 years of diversions for irrigation and/or M&I purposes  
298 of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be  
299 considered in developing an appropriate baseline for biological assessment(s) prepared pursuant  
300 to the ESA, and any other needed environmental review. Nothing herein shall be construed to  
301 prevent the Contractor from challenging or seeking judicial relief in a court of competent  
302 jurisdiction with respect to any biological opinion or other environmental documentation referred  
303 to in this Article.

304                   (f)     As soon as possible following each declaration of Water Made Available  
305 under Article 4 of this Contract, the Contracting Officer will make a determination whether  
306 Project Water, or other water available to the Project, can be made available to the Contractor in  
307 addition to the Contract Total under Article 3 of this Contract during the Year without adversely  
308 impacting other Project Contractors. At the request of the Contractor, the Contracting Officer  
309 will consult with the Contractor prior to making such a determination. If the Contracting Officer  
310 determines that Project Water, or other water available to the Project, can be made available to  
311 the Contractor, the Contracting Officer will announce the availability of such water and shall so  
312 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the  
313 Contractor and other Project Contractors capable of taking such water to determine the most  
314 equitable and efficient allocation of such water. If the Contractor requests the delivery of any

315 quantity of such water, the Contracting Officer shall make such water available to the Contractor  
316 in accordance with applicable statutes, regulations, guidelines, and policies.

317 (g) The Contractor may request permission to reschedule for use during the  
318 subsequent Year some or all of the Water Made Available to the Contractor during the current  
319 Year referred to as “carryover.” The Contractor may request permission to use during the  
320 current Year a quantity of Project Water which may be made available by the United States to  
321 the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s  
322 written approval may permit such uses in accordance with applicable statutes, regulations,  
323 guidelines, and policies.

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

332 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
333 delivered for other than irrigation or M&I purposes upon written approval by the Contracting  
334 Officer in accordance with the terms and conditions of such approval.

335 (j) The Contracting Officer shall make reasonable efforts to protect the water  
336 rights necessary for the Project and to provide the water available under this Contract. The  
337 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the

338 extent permitted by law, in administrative proceedings related to the Project Water rights;  
339 Provided, That the Contracting Officer retains the right to object to the substance of the  
340 Contractor's position in such a proceeding; Provided further, That in such proceedings the  
341 Contracting Officer shall recognize the Contractor has a legal right under the terms of this  
342 Contract to use Project Water.

343 TIME FOR DELIVERY OF WATER

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

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

359 (c) The Contractor shall not schedule Project Water in excess of the quantity  
360 of Project Water the Contractor intends to put to reasonable and beneficial use within the

361 Contractor's Boundaries or to sell, transfer, or exchange pursuant to Article 9 of this Contract  
362 during any Year.

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

368 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

369 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
370 Contract shall be delivered to the Contractor at approved turnouts on the Canal Facilities and any  
371 additional point or points of delivery either on Project facilities or another location or locations  
372 mutually agreed to in writing by the Contracting Officer and the Contractor. The United States  
373 shall furnish such power as may be necessary to pump Project Water at the existing Corning  
374 Canal side pumping plants and at existing relift stations at heads and elevations sufficient to  
375 irrigate by gravity all areas within the Contractor's Boundaries below elevation 380 (MSL).

376 (b) The Contracting Officer, either directly or through its written agreement(s)  
377 with the Operating Non-Federal Entity/Entities shall make all reasonable efforts to maintain  
378 sufficient flows and levels of water in Project facilities to deliver Project Water to the Contractor  
379 at specific turnouts established pursuant to subdivision (a) of this Article. The parties  
380 acknowledge that it may be necessary from time to time to shut down some or all of Project  
381 facilities for maintenance or emergencies. Except in the case of emergency, the Contracting  
382 Officer shall consult with the Contractor to schedule the shut down at such times and for such  
383 duration as will allow for the work to be accomplished completely and efficiently, and with a

384 minimum of disruption of water service to the Contractor. In this regard, shut downs will, to the  
385 extent reasonably possible, be limited to the months of December and January.

386 (c) The Contractor shall deliver Irrigation Water in accordance with any  
387 applicable land classification provisions of Federal Reclamation law and the associated  
388 regulations. The Contractor shall not deliver Project Water to land outside the Contractor's  
389 Boundaries unless approved in advance by the Contracting Officer.

390 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
391 measured and recorded with equipment furnished, installed, operated, and maintained by the  
392 United States, or the Operating Non-Federal Entity/Entities at the point or points of delivery  
393 established pursuant to subdivision (a) of this Article. Upon the request of either party to this  
394 Contract, the Contracting Officer shall investigate, or cause to be investigated by the responsible  
395 Operating Non-Federal Entity/Entities, the accuracy of such measurements and shall take any  
396 necessary steps to adjust any errors appearing therein. For any period of time when accurate  
397 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
398 the responsible Operating Non-Federal Entity/Entities prior to making a final determination of  
399 the quantity delivered for that period of time.

400 (e) Neither the Contracting Officer nor any Operating Non-Federal  
401 Entity/Entities shall be responsible for the control, carriage, handling, use, disposal, or  
402 distribution of Water Delivered to the Contractor pursuant to this Contract beyond the delivery  
403 points specified in subdivision (a) of this Article. The Contractor shall indemnify the United  
404 States, its officers, employees, agents, and assigns on account of damage or claim of damage of  
405 any nature whatsoever for which there is legal responsibility, including property damage,  
406 personal injury, or death arising out of or connected with the control, carriage, handling, use,

407 disposal, or distribution of such Water Delivered beyond such delivery points, except for any  
408 damage or claim arising out of (i) acts or omissions of the Contracting Officer or any of its  
409 officers, employees, agents, or assigns, including Operating Non-Federal Entity/Entities, with the  
410 intent of creating the situation resulting in any damage or claim, (ii) willful misconduct of the  
411 Contracting Officer or any of its officers, employees, agents, or assigns, including Operating  
412 Non-Federal Entity/Entities, (iii) negligence of the Contracting Officer or any of its officers,  
413 employees, agents, or assigns including the Operating Non-Federal Entity/Entities, or (iv)  
414 damage or claims resulting from a malfunction of facilities owned and/or operated by the United  
415 States or responsible Operating Non-Federal Entity/Entities.

416 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S BOUNDARIES

417 6. (a) The Contractor has established a measuring program satisfactory to the  
418 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
419 purposes within the Contractor's Boundaries is measured at each agricultural turnout and such  
420 water delivered for M&I purposes is measured at each M&I service connection. The water  
421 measuring devices or water measuring methods of comparable effectiveness must be acceptable  
422 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
423 maintaining and repairing all such measuring devices and implementing all such water  
424 measuring methods at no cost to the United States. The Contractor shall use the information  
425 obtained from such water measuring devices or water measuring methods to ensure its proper  
426 management of the water, to bill water users for water delivered by the Contractor; and, if  
427 applicable, to record water delivered for M&I purposes by customer class as defined in the  
428 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein  
429 contained, however, shall preclude the Contractor from establishing and collecting any charges,

430 assessments, or other revenues authorized by California law. The Contractor shall include a  
431 summary of all its annual surface water deliveries in the annual report described in subdivision  
432 (c) of Article 26.

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

449           (c) All new surface water delivery systems installed within the Contractor's  
450 Boundaries after the effective date of this Contract shall also comply with the measurement  
451 provisions described in subdivision (a) of this Article.

452 (d) The Contractor shall inform the Contracting Officer and the State of  
453 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
454 within the Contractor's Boundaries during the previous Year.

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

458 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

475 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months  
476 to review and comment on such estimates. On or before September 15 of each Calendar Year,  
477 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during  
478 the period October 1 of the current Calendar Year, through September 30, of the following  
479 Calendar Year, and such notification shall revise Exhibit "B."

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

487 (c) At the time the Contractor submits the initial schedule for the delivery of  
488 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
489 Contractor shall make an advance payment to the United States equal to the total amount payable  
490 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
491 scheduled to be delivered pursuant to this Contract during the first two calendar months of the  
492 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
493 Contractor shall make an advance payment to the United States, at the Rate(s) set under  
494 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
495 during the second month immediately following. Adjustments between advance payments for  
496 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of  
497 the following month; Provided, That any revised schedule submitted by the Contractor pursuant

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

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

521 States for Charges for the next month. Any amount to be paid for past due payment of Charges  
522 and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

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

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

550                   (j)     (1)     Beginning at such time as deliveries of Project Water in a Year  
551 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
552 delivery the Contractor shall make an additional payment to the United States equal to the  
553 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
554 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
555 Contract total, shall equal one-half of the difference between the Rate established under  
556 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water  
557 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water delivered  
558 which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate  
559 established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or  
560 M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to  
561 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract  
562 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in  
563 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.  
564 Solely for the purpose of calculating the Tiered Pricing Component, the Full Cost Rate shall not  
565 include the interest component of the Contractor's water distribution system constructed by the

566 United States and covered by Repayment Contract No. 14-06-200-516-A entered into pursuant to  
567 43 USC 485h(d).

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

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

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

589 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
590 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
591 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting  
592 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in  
593 accordance with the then applicable Project ratesetting policy. If the Contractor is receiving  
594 lower Rates and Charges because of inability to pay and is transferring Project Water to another  
595 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges  
596 for transferred Project Water shall be the Contractor's Rates and Charges and will not be  
597 adjusted to reflect the Contractor's inability to pay.

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

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

612 shall be entitled to the benefit of any administrative or judicial ruling in favor of any other  
613 Project M&I contractor on any of these issues and credits for payments heretofore made,,  
614 Provided That, the basis for such ruling is applicable to the Contractor.

615 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

619 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

635 all necessary environmental documentation including, but not limited to, documents prepared  
636 pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas and the  
637 Contracting Officer shall determine whether such transfers comply with applicable law.  
638 Following the completion of the environmental documentation, such transfers addressed in such  
639 documentation shall be conducted with advance notice to the Contracting Officer, but shall not  
640 require prior written approval by the Contracting Officer. Such environmental documentation  
641 and the Contracting Officer's compliance determination shall be reviewed every five years and  
642 updated, as necessary, prior to the expiration of the then-existing five-year period. All  
643 subsequent environmental documentation shall include an alternative to evaluate not less than the  
644 quantity of Project Water historically transferred within the same geographical area.

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

656 (d) For the purpose of determining whether Section 3405(a)(1)(M) of the CVPIA  
657 applies to the Contractor as a transferor or transferee of Project Water, the Contracting Officer

658 acknowledges that the Contractor is within a county, watershed, or other area of origin, as those  
659 terms are utilized under California law, of water that constitutes the natural flow of the  
660 Sacramento River and its tributaries above the confluence of the American and Sacramento  
661 Rivers.

662 APPLICATION OF PAYMENTS AND ADJUSTMENTS

663 10. (a) The amount of any overpayment by the Contractor of the Contractor's  
664 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current  
665 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
666 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount  
667 of such overpayment, at the option of the Contractor, may be credited against amounts to become  
668 due to the United States by the Contractor. With respect to overpayment, such refund or  
669 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to  
670 have the right to the use of any of the Project Water supply provided for herein. All credits and  
671 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining  
672 direction as to how to credit or refund such overpayment in response to the notice to the  
673 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

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

679 TEMPORARY REDUCTIONS--RETURN FLOWS

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

685 (b) The Contracting Officer or Operating Non-Federal Entity/Entities may  
686 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein  
687 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any  
688 of the Project facilities or any part thereof necessary for the delivery of Project Water to the  
689 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity will  
690 give the Contractor due notice in advance of such temporary discontinuance or reduction, except  
691 in case of emergency, in which case no notice need be given; Provided, That the United States  
692 shall use its best efforts to avoid any discontinuance or reduction in such service. Upon  
693 resumption of service after such reduction or discontinuance, and if requested by the Contractor,  
694 the United States will, if possible, deliver the quantity of Project Water which would have been  
695 delivered hereunder in the absence of such discontinuance or reduction.

696 (c) The United States reserves the right to all seepage and return flow water  
697 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
698 beyond the Contractor's Boundaries; Provided, That this shall not be construed as claiming for  
699 the United States any right to seepage or return flow being put to reasonable and beneficial use  
700 pursuant to this Contract within the Contractor's Boundaries by the Contractor or those claiming  
701 by, through, or under the Contractor.

702 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

713 (c) In any Year in which there may occur a shortage for any of the reasons  
714 specified in subdivision (b) above, the Contracting Officer shall apportion the available Project  
715 Water supply among the Contractor and others entitled, under existing contracts and future  
716 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of  
717 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the  
718 contractual obligations of the United States.

719 (d) Project Water furnished under this Contract will be allocated in  
720 accordance with the then-existing Project M&I Water Shortage Policy. Such policy shall be  
721 amended, modified, or superseded only through a public notice and comment procedure.

722 UNAVOIDABLE GROUNDWATER PERCOLATION

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

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

727 RULES AND REGULATIONS

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

733 WATER AND AIR POLLUTION CONTROL

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

738 QUALITY OF WATER

739 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant  
740 to this Contract shall be operated and maintained to enable the United States to deliver Project  
741 Water to the Contractor in accordance with the water quality standards specified in subsection  
742 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of  
743 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no  
744 obligation to construct or furnish water treatment facilities to maintain or to improve the quality  
745 of Water Delivered to the Contractor pursuant to this Contract. The United States does not  
746 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

752 or Contractor facilities or Project Water provided by the Contractor within the Contractor's  
753 Boundaries.

754 WATER ACQUIRED BY THE CONTRACTOR  
755 OTHER THAN FROM THE UNITED STATES

756 17. (a) Water or water rights now owned or hereafter acquired by the Contractor  
757 other than from the United States and Irrigation Water furnished pursuant to the terms of this  
758 Contract may be simultaneously transported through the same distribution facilities of the  
759 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water  
760 and non-Project water were constructed without funds made available pursuant to Federal  
761 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the  
762 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive  
763 Irrigation Water must be established through the certification requirements as specified in the  
764 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of  
765 Eligible Lands within the Contractor's Boundaries can be established and the quantity of  
766 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such  
767 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-  
768 Project water are/were constructed with funds made available pursuant to Federal Reclamation  
769 law, the non-Project water will be subject to the acreage limitation provisions of Federal  
770 Reclamation law, unless the Contractor pays to the United States the incremental fee described in  
771 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate  
772 annually the cost to the Federal Government, including interest, on storing or delivering non-  
773 Project water, which for purposes of this Contract shall be determined as follows: The quotient  
774 shall be the unpaid distribution system costs divided by the total irrigable acreage within the  
775 Contractor's Boundaries. The incremental fee per acre is the mathematical result of such

776 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982  
777 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land  
778 within the Contractor's Boundaries that receives non-Project water through Federally financed or  
779 constructed facilities. The incremental fee calculation methodology will continue during the  
780 term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or  
781 policy adopted after the Contractor has been afforded the opportunity to review and comment on  
782 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall  
783 supercede this provision.

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

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

795 (2) Delivery of such non-Project water in and through Project facilities  
796 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project  
797 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
798 available to other Project Contractors; (iii) interfere with the delivery of contractual water

799 entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of  
800 the Project facilities.

801 (3) Neither the United States nor the Operating Non-Federal Entity  
802 shall be responsible for control, care, or distribution of the non-Project water before it is  
803 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases  
804 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and  
805 their respective officers, agents, and employees, from any claim for damage to persons or  
806 property, direct or indirect, resulting from the acts of the Contractor, its officers', employees',  
807 agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii)  
808 diverting such non-Project water into Project facilities.

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

812 (5) After Project purposes are met, as determined by the Contracting  
813 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
814 of the facilities declared to be available by the Contracting Officer for conveyance and  
815 transportation of non-Project water prior to any such remaining capacity being made available to  
816 non-Project contractors.

817 OPINIONS AND DETERMINATIONS

818 18. (a) Where the terms of this Contract provide for actions to be based upon the  
819 opinion or determination of either party to this Contract, said terms shall not be construed as  
820 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
821 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

822 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
823 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
824 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is  
825 intended to or shall affect or alter the standard of judicial review applicable under Federal law to  
826 any opinion or determination implementing a specific provision of Federal law embodied in  
827 statute or regulation.

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

833 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

873 CHARGES FOR DELINQUENT PAYMENTS

874 20. (a) The Contractor shall be subject to interest, administrative and penalty  
875 charges on delinquent installments or payments. When a payment is not received by the due  
876 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
877 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
878 administrative charge to cover additional costs of billing and processing the delinquent payment.  
879 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
880 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the  
881 due date. Further, the Contractor shall pay any fees incurred for debt collection services  
882 associated with a delinquent payment.

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

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

891 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

937                    GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

950                    COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

951                    23.     (a)     The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
952 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
953 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights  
954 laws, as well as with their respective implementing regulations and guidelines imposed by the  
955 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

970                    PRIVACY ACT COMPLIANCE

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

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

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

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

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

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

#### 996 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

997 25. In addition to all other payments to be made by the Contractor pursuant to this  
998 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
999 detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1000 of direct cost incurred by the United States for work requested by the Contractor associated with  
1001 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies  
1002 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed  
1003 to in writing in advance by the Contractor. This Article shall not apply to costs for routine  
1004 contract administration.

#### 1005 WATER CONSERVATION

1006 26. (a) Prior to the delivery of water provided from or conveyed through  
1007 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor

1008 shall be implementing an effective water conservation and efficiency program based on the  
1009 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
1010 the conservation and efficiency criteria for evaluating water conservation plans established under  
1011 Federal law. The water conservation and efficiency program shall contain definite water  
1012 conservation objectives, appropriate economically feasible water conservation measures, and  
1013 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1014 Contract shall be contingent upon the Contractor's continued implementation of such water  
1015 conservation program. In the event the Contractor's water conservation plan or any revised water  
1016 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not  
1017 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which  
1018 the Contracting Officer determines are beyond the control of the Contractor, water deliveries  
1019 shall be made under this Contract so long as the Contractor diligently works with the Contracting  
1020 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor  
1021 immediately begins implementing its water conservation and efficiency program in accordance  
1022 with the time schedules therein.

1023 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1024 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall  
1025 implement the Best Management Practices identified by the time frames issued by the California  
1026 Urban Water Conservation Council for such M&I Water unless any such practice is determined  
1027 by the Contracting Officer to be inappropriate for the Contractor.

1028 (c) The Contractor shall submit to the Contracting Officer a report on the  
1029 status of its implementation of the water conservation plan on the reporting dates specified in the  
1030 then existing conservation and efficiency criteria established under Federal law.

1031 (d) At five-year intervals, the Contractor shall revise its water conservation  
1032 plan to reflect the then-current conservation and efficiency criteria for evaluating water  
1033 conservation plans established under Federal law and submit such revised water management

1034 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then  
1035 determine if the water conservation plan meets Reclamation's then-current conservation and  
1036 efficiency criteria for evaluating water conservation plans established under Federal law.

1037 (e) If the Contractor is engaged in direct ground-water recharge, such activity  
1038 shall be described in the Contractor's water conservation plan.

1039 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1040 27. Except as specifically provided in Article 17 of this Contract, the provisions of  
1041 this Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1042 hereafter acquired by the Contractor or any user of such water within the Contractor's  
1043 Boundaries. Any such water shall not be considered Project Water under this Contract. In  
1044 addition, this Contract shall not be construed as limiting or curtailing any rights which the  
1045 Contractor or any water user within the Contractor's Boundaries acquires or has available under  
1046 any other contract pursuant to Federal Reclamation law.

1047 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1048 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1049 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1050 Operating Non-Federal Entity by separate agreement between the United States and the  
1051 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the  
1052 rights or obligations of the Contractor or the United States hereunder.

1053 (b) The Contracting Officer has previously notified the Contractor in writing  
1054 that the O&M of a portion of the Project facilities which serve the Contractor has been  
1055 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1056 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer  
1057 under the terms and conditions of the separate agreement between the United States and the  
1058 Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or  
1059 assessments of any kind, including any assessment for reserve funds, which the Operating

1060 Non-Federal Entity or such successor determines, sets, or establishes for the O&M of the portion  
1061 of the Project facilities operated and maintained by the Operating Non-Federal Entity or such  
1062 successor. Such direct payments to the Operating Non-Federal Entity or such successor shall not  
1063 relieve the Contractor of its obligation to pay directly to the United States the Contractor's share  
1064 of the Project Rates, Charges, and Tiered Pricing Component (s) except to the extent the  
1065 Operating Non-Federal Entity collects payments on behalf of the United States in accordance  
1066 with the separate agreement identified in subdivision (a) of this Article.

1067 (c) For so long as the O&M of any portion of the Project facilities serving the  
1068 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1069 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1070 Contract representing the cost associated with the activity being performed by the Operating  
1071 Non-Federal Entity or its successor.

1072 (d) In the event the O&M of the Project facilities operated and maintained by  
1073 the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1074 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the  
1075 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the  
1076 Contractor for Project Water under this Contract representing the O&M costs of the portion of  
1077 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the  
1078 absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1079 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the  
1080 United States in compliance with Article 7 of this Contract.

1081 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1082 29. The expenditure or advance of any money or the performance of any obligation of  
1083 the United States under this Contract shall be contingent upon appropriation or allotment of  
1084 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1085 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1086 not appropriated or allotted.

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BOOKS, RECORDS, AND REPORTS

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

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

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

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ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

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SEVERABILITY

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32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to

1118 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1119 enforceability of a provision included in this Contract and said person, entity, association, or  
1120 organization obtains a final court decision holding that such provision is legally invalid or  
1121 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1122 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such  
1123 final court decision identify by mutual agreement the provisions in this Contract which must be  
1124 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).  
1125 The time periods specified above may be extended by mutual agreement of the parties. Pending  
1126 the completion of the actions designated above, to the extent it can do so without violating any  
1127 applicable provisions of law, the United States shall continue to make the quantities of Project  
1128 Water specified in this Contract available to the Contractor pursuant to the provisions of this  
1129 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1130 RESOLUTION OF DISPUTES

1131 33. Should any dispute arise concerning any provisions of this Contract, or the  
1132 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1133 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1134 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1135 30 days' written notice of the intent to take such action; Provided, That such notice shall not be  
1136 required where a delay in commencing an action would prejudice the interests of the party that  
1137 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer  
1138 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,  
1139 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the  
1140 United States may have.

1141 OFFICIALS NOT TO BENEFIT

1142 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1143 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1144 manner as other water users or landowners.

1145

CHANGES IN CONTRACTOR'S BOUNDARIES

1146  
1147  
1148

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

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(b) Within 30 days of receipt of a request for such a change, the Contracting

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Officer will notify the Contractor of any additional information required by the Contracting

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Officer for processing said request, and both parties will meet to establish a mutually agreeable

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schedule for timely completion of the process. Such process will analyze whether the proposed

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change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;

1154

(ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or

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to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)

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have an impact on any Project Water rights applications, permits, or licenses. In addition, the

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Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be

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responsible for all costs incurred by the Contracting Officer in this process, and such costs will

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be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

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36. By entering into this Contract, the Contractor does not waive its rights to contest

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the validity or application in connection with the performance of the terms and conditions of this

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Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with

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the terms and conditions of this Contract unless and until relief from application of such Federal

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law or regulation to the implementing provision of the Contract is granted by a court of

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competent jurisdiction.

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NOTICES

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37. Any notice, demand, or request authorized or required by this Contract shall be

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deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or

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delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349

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Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when

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mailed, postage prepaid, or delivered to the Board of Directors of the Corning Water District,

1173 P. O. Box 738, 22240 Gallagher Avenue, Corning, California 96021. The designation of the  
1174 addressee or the address may be changed by notice given in the same manner as provided in this  
1175 Article for other notices.

1176 CONFIRMATION OF CONTRACT

1177 38. The Contractor, after the execution of this Contract, shall promptly seek to secure  
1178 a decree of a court of competent jurisdiction of the State of California, confirming the execution  
1179 of this Contract. The Contractor shall furnish the United States a certified copy of the final  
1180 decree, the validation proceedings, and all pertinent supporting records of the court approving  
1181 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on  
1182 the Contractor.

1183 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of  
1184  
1185 the day and year first above written.

1186 THE UNITED STATES OF AMERICA

1187 By: \_\_\_\_\_  
1188 Regional Director, Mid-Pacific Region  
1189 Bureau of Reclamation

1190 CORNING WATER DISTRICT

1191 By: \_\_\_\_\_  
1192 President of the Board of Directors

1193 Attest:

1194 By: \_\_\_\_\_  
1195 Secretary of the Board of Directors

1196 (I:\LTRC\LTRC Drafts\04-19-2004-01 Corning WD Final LTRC Draft.doc)

EXHIBIT A

[Map or Description of Boundaries]

EXHIBIT B  
Rates and Charges  
CORNING WATER DISTRICT

	2003 Rates Per Acre-Foot	
	<u>Irrigation</u>	<u>M&amp;I</u>
CONTRACT RATE *	\$16.61	
(1 <sup>st</sup> Tier - ≤80% of Contract Total)		
2 <sup>ND</sup> TIER [>80% ≤90% of Contract Total]	\$33.35	
(Sec. 202(3) Full Cost Rate + Contract Rate/ 2) **		
3 <sup>RD</sup> TIER [> 90% of Contract Total]	\$50.08	
(Sec. 202(3) Full Cost Rate) **		
FULL-COST RATES: **		
RRA Section 202(3) rate is applicable to Qualified Recipients or to Limited Recipients receiving irrigation water on or before October 1, 1981.	\$64.34	
RRA Section 205(a)(3) rate is applicable to Limited Recipients that did <u>not</u> receive irrigation water on or before October 1, 1981.	\$84.44	
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND***		
Restoration Payments [3407(d)(2)(A)]	\$0.00	

\* Capital component of cost-of-service rate is not included in Contract Rate due to ability to pay relief for Contractor established pursuant to the results of the Payment Capacity Analysis for the Tehama-Colusa Water Users Association Service Area as announced by letter dated February 10, 1995.

\*\* Contractors with 9(d) distribution systems do not have the 9(d) Full Cost component included for tiered pricing calculations. See Article 1(j).

\*\*\* These surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1 -9/30). Contractors with ability to pay relief do not pay Restoration Fund charges for irrigation water.

Note: Additional detail of rate components is available on the Internet at  
<http://www.mp.usbr.gov/cvpwaterrates/>.