

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 CENTRAL VALLEY PROJECT, CALIFORNIA

LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
 AND THE COUNTY OF FRESNO
 PROVIDING FOR PROJECT WATER SERVICE

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

Rev. R. O. Draft 10/20-2004
Rev. SCCAO Draft 10/17-2004
Rev. SCCAO Draft 03/19-2004
Rev SCCAO Draft 09/22-2003
Rev. R. O. Draft 02/06-2002
SCCAO Draft 11/16-2000
Contract No.
14-06-200-8292A-LTR1

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 CENTRAL VALLEY PROJECT, CALIFORNIA

5 LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
6 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
7 AND THE COUNTY OF FRESNO
8 PROVIDING FOR PROJECT WATER SERVICE

9 THIS CONTRACT, made this _____ day of _____, 2005, in pursuance
10 generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary thereto,
11 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
12 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
13 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
14 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law and pursuant to the California Central Valley
16 Project Act [Part 3, Division 6 (commencing at Section 11100) of the California Water Code] and the
17 California Water Resources Development Bond Act [Chapter 8, Part 6, Division 6 (commencing at
18 Section 12930) of the California Water Code,] and all acts of the California legislature amendatory
19 thereto or supplementary thereof, among THE UNITED STATES OF AMERICA, hereinafter
20 referred to as the United States, the DEPARTMENT OF WATER RESOURCES OF THE STATE
21 OF CALIFORNIA, hereinafter referred to as DWR, and the COUNTY OF FRESNO, hereinafter

22 referred to as the Contractor, a public agency of the State of California, duly organized, existing,
23 and acting pursuant to the laws thereof;

24 WITNESSETH, That:

25 EXPLANATORY RECITALS

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

32 [2nd] WHEREAS, the United States constructed the Project facilities, which will be used
33 in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

34 [2.2] WHEREAS, as provided herein, Project Water may be made available to the
35 Contractor from the Sacramento-San Joaquin Delta and/or the Friant Division and delivered to the
36 Contractor through appropriate federal, state and/or local facilities; and

37 [2.3] WHEREAS, DWR is engaged in the operation of the State Water Resources
38 Development System pursuant to the laws of the State of California involving the development,
39 transportation, and delivery of water supplies to public agencies throughout the State of
40 California; and

41 [2.4] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the
42 Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost to
43 either the United States or DWR; and

44 [2.5] WHEREAS, the Contractor has the right to use the Cross Valley Canal for
45 conveyance of the Project Water furnished hereunder; and

46 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
47 pursuant to California law for operation of the Project; and

48 [4th] WHEREAS, the Contractor and the United States entered into Contract
49 No. 14-06-200-8292A, as amended, which established terms for the delivery to the Contractor of
50 Project Water via the Cross Valley Canal from November 10, 1975, through February 29, 1996;
51 and

52 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
53 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
54 interim renewal contract(s) identified as Contract No(s). 14-06-200-8292A-IR1, -IR2, -IR3, -IR4,
55 -IR5, -IR6, -IR7, and -IR8, the current of which is hereinafter referred to as the Existing Contract,
56 which provided for the continued water service to the Contractor from March 1, 2004, through
57 February 28, 2005; and

58 [5.2] WHEREAS, the Contractor proposes to enter into subcontracts for the furnishing of
59 water made available to the Contractor under this Contract; and

60 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
61 Existing Contract following completion of appropriate environmental documentation, including a
62 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
63 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
64 CVPIA and the potential renewal of all existing contracts for Project Water; and

65 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
66 environmental review necessary to provide for long-term renewal of the Existing Contract; and

67 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
68 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of
69 the State of California, for water service from the Project; and

70 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
71 of its obligations under the Existing Contract; and

72 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
73 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
74 beneficial use and/or has demonstrated projected future demand for water use such that the
75 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
76 quantity of Project Water to be made available to it pursuant to this Contract; and

77 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
78 agricultural areas within California for more than 50 years, and is considered by the Contractor as
79 an essential portion of its water supply; and

80 [12th] WHEREAS, the economies of regions within the Project, including the
81 Contractor's, depend upon the continued availability of water, including water service from the
82 Project; and

83 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
84 partnerships to pursue measures to improve water supply, water quality, and reliability of the
85 Project for all Project purposes; and

86 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
87 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
88 repayment of the Project as required by law; to guard reasonably against Project Water shortages;
89 to achieve a reasonable balance among competing demands for use of Project Water; and to
90 comply with all applicable environmental statutes, all consistent with the legal obligations of the
91 United States relative to the Project; and

92 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
93 relationship in order to achieve their mutual goals; and

94 [15.2] WHEREAS, the Contractor desires to contract with DWR for conveyance of
95 Project Water through the facilities of the State Water Project (SWP) as aforesaid under an
96 arrangement wherein the United States will furnish the necessary power for pumping such water
97 through DWR's Delta Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-
98 existing CVP Project use power policy; and

99 [15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject
100 to needs and obligations of the SWP and the availability of transportation capacity and payment of
101 costs as herein provided; and

102 [16th] WHEREAS, the United States, DWR, and the Contractor are willing to enter into
103 this Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

126 (f2) "Cross Valley Canal" shall mean the water conveyance and related works
127 constructed by the Contractor and others to deliver water from the State Facilities, which canal
128 currently is operated by KCWA;

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

131 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
132 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
133 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

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

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

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

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

154 (m2) "KCWA" shall mean the Kern County Water Agency;

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

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

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

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

169 (r) “Operating Non-Federal Entity” shall mean either the San Luis &
170 Delta-Mendota Water Authority or the Friant Water Authority, their successors or assigns, non-
171 Federal entities which have the obligation to operate and maintain all or a portion of the Project
172 facilities pursuant to an agreements with the United States, and which may have funding
173 obligations with respect thereto;

174 (r2) “Operations Manual” shall mean the manual setting forth detailed
175 operations and management procedures prepared by DWR, the Contracting Officer and the
176 Contractor;

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

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

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

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

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

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

194 (x2) “State Facilities” shall mean that portion of the SWP (including DWR's
195 portion of joint facilities), necessary to convey Project Water from the Sacramento-San Joaquin
196 Delta (Delta) to Reach 16A of the California Aqueduct;

197 (x3) “SWP” shall mean the California State Water Project;

198 (x4) “SWP Contractor” shall mean those entities with a long-term water supply
199 contract for water deliveries of SWP water on the date this Contract is executed;

200 (x5) “Subcontractor” shall mean an individual, group of individuals,
201 organization, or entity in the County who contracts with the Contractor to use Water Made
202 Available to the Contractor under this Contract;

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

205 (y2) “Transportation Minimum OMP&R Costs” and “Transportation Variable
206 OMP&R Costs” shall mean those costs as defined in the long-term SWP contracts and as annually
207 described in DWR Bulletin 132;

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

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

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

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

218 TERM OF CONTRACT

219 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030.

220 In the event the Contractor wishes to renew this Contract beyond February 28, 2030, the
221 Contractor shall submit a request for renewal in writing to the Contracting Officer no later than
222 two years prior to the date this Contract expires. The renewal of this Contract insofar as it pertains
223 to the furnishing of Irrigation Water to the Contractor shall be governed by subdivision (b) of this
224 Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I Water to
225 the Contractor shall be governed by subdivision (c) of this Article. The term of this Contract and
226 its renewals insofar as it pertains to conveyance of water in SWP Facilities shall be governed by
227 subdivision (e) of this Article.

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

233 (2) The conditions which must be met for this Contract to be renewed
234 are: (i) the Contractor has prepared a water conservation plan that has been determined by the

235 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and
236 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is
237 implementing an effective water conservation and efficiency program based on the Contractor's
238 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is
239 maintaining all water measuring devices and implementing all water measurement methods as
240 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has
241 reasonably and beneficially used the Project Water supplies made available to it and, based on
242 projected demands, is reasonably anticipated and expects to fully utilize for reasonable and
243 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal;
244 (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the
245 Contractor has the physical and legal ability to deliver Project Water.

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

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

264 (d) The Contracting Officer shall make a determination ten years after the date
265 of execution of this Contract, and every five years thereafter during the term of this Contract, of
266 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
267 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
268 Stat. 483). The Contracting Officer shall also make a determination ten years after the date of
269 execution of this Contract and every five years thereafter during the term of the Contract of
270 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1)
271 of the Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of
272 this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2,
273 1956 (70 Stat 483). The Contracting Officer anticipates that during the term of the Contract, all
274 authorized Project construction expected to occur will have occurred, and on that basis the
275 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable
276 to the Contractor, and agrees further that, at any time after such allocation is made, and subject to
277 satisfaction of the conditions set out in this subdivision, this Contract shall, at the request of the

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

296 (e) DWR's agreement to convey water under this Contract shall be effective
297 until February 28, 2030. Thereafter, DWR and the Contractor may renew the agreement to convey
298 for additional periods on terms mutually agreeable to the parties. The parties acknowledge that

299 operation of the SWP, including the State Facilities, is not, and shall not be, subject to Federal
300 Reclamation law.

301 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

302 3. (a) During each Year, consistent with all applicable State water rights, permits,
303 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
304 Contract, the Contracting Officer shall make available in the Delta for delivery to the Contractor
305 3,000 acre-feet of Project Water for irrigation and M&I purposes. Cross Valley Contractors shall
306 have a primary priority to pumping capacity made available by the SWP for CVP purposes up to
307 the allocation made for CVP irrigation contractors south of the Delta. Allocations of water supply
308 to Cross Valley Contractors and any additional pumping capacity made available by SWP for
309 Cross Valley Contractors' purposes shall be addressed in the Operations Manual. Water Delivered
310 to the Contractor in accordance with this subdivision shall be scheduled, and paid for pursuant to
311 the provisions of Articles 4 and 7 of this Contract, attached exhibits, and the Operations Manual
312 (including any subsequent modifications thereto).

313 (b) Because the capacity of the Project to deliver Project Water has been
314 constrained in recent years and may be constrained in the future due to many factors including
315 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
316 Contractor actually receiving the full amount of Project Water set out in subdivision (a) of this
317 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS
318 projected that the full amount of the Contract Total set forth in this Contract will not be available
319 to the Contractor in many years. During the most recent five years, the Recent Historic Average

320 of water made available to the Contractor was 1,974 acre-feet. Nothing in subdivision (b) of this
321 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

324 (d) The Contractor or, if applicable, Subcontractor, shall make reasonable and
325 beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs
326 (direct, indirect or in lieu), groundwater banking programs, surface water storage programs, and
327 other similar programs utilizing Project Water or other water furnished pursuant to this Contract
328 conducted within the Contractor's Service Area or, if applicable, Subcontractor's Service Area,
329 which are consistent with applicable State law and result in use consistent with Federal

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

342 (e) The Contractor shall comply with requirements applicable to the Contractor
343 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
344 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
345 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
346 which evidences in excess of 29 years of diversions for irrigation and/or M&I purposes of the
347 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
348 developing an appropriate baseline for the biological assessment(s) prepared pursuant to the ESA,
349 and any other needed environmental review. Nothing herein shall be construed to prevent the
350 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
351 respect to any biological opinion or other environmental documentation referred to in this Article.

352 (f) Following the declaration of Water Made Available under Article 4 of this
353 Contract, the Contracting Officer will make a determination whether Project Water, or other water
354 available to the Project, can be made available to the Contractor in addition to the Contract Total
355 under Article 3 of this Contract during the Year without adversely impacting other Project
356 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
357 Contractor prior to making such a determination. If the Contracting Officer determines that
358 Project Water, or other water available to the Project, can be made available to the Contractor, the
359 Contracting Officer will announce the availability of such water and shall so notify the Contractor
360 as soon as practicable. The Contracting Officer will thereafter meet with the Contractor and other
361 Project Contractors capable of taking such water to determine the most equitable and efficient
362 allocation of such water. If the Contractor requests the delivery of any quantity of such water, the
363 Contracting Officer shall make such water available to the Contractor in accordance with

364 applicable statutes, regulations, guidelines, and policies. If the Contracting Officer determines that
365 there is an unusually large water supply not otherwise storable for Project purposes or infrequent
366 and otherwise unmanaged flood flows of short duration from the Friant Division, then Friant
367 Division Project Water may be made available to the Contractor as Section 215 Water if the
368 Contractor enters into a temporary contract, not to exceed one year, with the United States for the
369 delivery of such water or, as otherwise provided for in Federal Reclamation law and associated
370 regulations: Provided, That such water shall be first made available to the original 28 long-term
371 Friant Division contractors. Water in addition to the quantities provided for in this Contract made
372 available to the Contractor by the Contracting Officer shall be scheduled, conveyed and/or stored
373 by DWR only to the extent that DWR has provided separate approval to do so.

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

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

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

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

392 (j) The Contracting Officer shall make reasonable efforts to protect the water
393 rights necessary for the Project and to provide the water available under this Contract. The
394 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
395 extent permitted by law, in administrative proceedings related to the Project Water rights;
396 Provided, That the Contracting Officer retains the right to object to the substance of the
397 Contractor's position in such a proceeding; Provided further, That in such proceedings the
398 Contracting Officer shall recognize the Contractor has a legal right under the terms of the contract
399 to use Project Water.

400 (k) Conveyance and/or storage of Project Water by DWR shall be subject to
401 capacity available in State Facilities in excess of capacity determined by DWR in its sole
402 discretion to be needed for all SWP operations. For purposes of determining the available
403 capacity under this Contract, the deliveries of Project Water to the Contractor shall not be
404 considered a "service to long-term SWP Contractors," notwithstanding any arrangement the
405 Contractor may have with a SWP Contractor. Conveyance and/or storage for the Contractor may
406 be curtailed prior or subsequent to approval of the Contractor's schedule under Article 4 of this
407 Contract, in the event DWR determines it will interfere with the delivery of water to SWP

408 Contractors or other SWP operations necessary to meet long-term obligations of the SWP,
409 including delivery of water to SWP storage or reregulation of stored water for delivery to SWP
410 Contractors.

411 (l) If in any Year after DWR and the Contracting Officer have approved a
412 schedule or any revision thereof submitted in accordance within subdivision (a) and (b) of Article
413 4 of this Contract, and if the Contracting Officer and/or DWR are unable to make water of suitable
414 quality available in the quantities and at the times requested in the schedule and the Contractor
415 does not elect to receive and does not receive such water at other times during such Year, then the
416 Contractor shall be entitled to an adjustments for overpayment as provided in subdivision (c) of
417 Article 7, subdivision (d) of Article 8, and Article 10 of this Contract. Notwithstanding any other
418 provision of law, this shall be the Contractor's sole remedy against the State of California, DWR,
419 its officers, agents and employees for failure to deliver a quantity of water of suitable quality
420 under this Contract for any reason.

421 TIME FOR DELIVERY OF WATER

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

430 Contracting Officer shall provide the Contractor with the updated Recent Historic Average. The
431 declaration of Project operations will be expressed in terms of both Water Made Available and the
432 Recent Historic Average.

433 (b) On or before each March 1 and at such other times as necessary, the
434 Contractor, after approval of the receiving agency on behalf of the Contractor, shall submit to
435 DWR and the Contracting Officer a written schedule, satisfactory to the Contracting Officer and
436 consistent with the criteria specified in the Operations Manual. The written schedule shall show
437 the monthly quantities of Project Water to be delivered by the United States to the Contractor
438 pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer
439 shall use all reasonable means to deliver Project Water according to the approved schedule for the
440 Year commencing on such March 1.

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

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

450 (e) Scheduling and delivery of Project Water to the Contractor shall be in
451 accordance with detailed procedures set forth in the Operations Manual as it may be amended
452 from time to time.

453 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

454 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
455 Contract shall be delivered to the Contractor at a point or points of delivery either on Project
456 and/or State facilities or another location or locations mutually agreed to in writing by the
457 Contracting Officer, DWR, and the Contractor. The parties acknowledge that Project Water to be
458 furnished to the Contractor pursuant to this Contract shall be conveyed by DWR and delivered to
459 the Contractor by direct delivery via the Cross Valley Canal and/or by exchange arrangements
460 involving Arvin-Edison Water Storage District or others. The parties further acknowledge that
461 such exchange arrangements are not transfers subject to Section 3405(a) of CVPIA.
462 Notwithstanding Article 9 of this Contract, such exchange arrangements, other than the previously
463 approved exchange arrangements with Arvin-Edison Water Storage District, shall be submitted to
464 the Contracting Officer for approval in accordance with principles historically applied by the
465 Contracting Officer in approving Cross Valley exchange arrangements. DWR shall have no
466 obligation to make such exchange arrangements or be responsible for water transported in
467 facilities that are not a part of the SWP.

468 (b) Omitted.

469 (b2) When Project Water is made available by the Contracting Officer at Clifton
470 Court Forebay, DWR shall provide to the Contractor, subject to the availability of capacity as
471 determined by DWR, conveyance from the Delta and storage in DWR's share of storage at San

472 Luis Reservoir, if necessary, of such Project Water consistent with subdivision (k) of Article 3, the
473 following provisions, and the Operations Manual;

474 (1) The Contracting Officer shall deliver or cause to be delivered into
475 the DWR's Clifton Court Forebay, or at other points mutually agreed to by the parties in
476 accordance with Article 5, Project Water in such quantities and of such quality as shall be
477 sufficient to perform the Contracting Officer's and DWR's obligation to furnish water to the
478 Contractor as set forth in this contract. Such deliveries into Clifton Court Forebay shall be made
479 at such times and rates of flow as the Contracting Officer and DWR shall agree.

480 (2) DWR, in accordance with an approved Project Water delivery
481 schedule, shall convey the amount of water delivered into DWR's Clifton Court Forebay by the
482 Contracting Officer directly: (i) to turnouts from the California Aqueduct from Reaches 3 through
483 16A or to other points of diversion mutually agreed to in writing by DWR and the Contractor, or
484 (ii) to DWR or Federal share of storage in San Luis Reservoir for later release and delivery to the
485 Contractor or (iii) to replace water delivered to the Contractor from DWR's share of San Luis
486 Reservoir prior to DWR receiving Project Water from the Contracting Officer, to the extent DWR
487 determines under subdivision (k) of Article 3 that capacity (and water in the event of an exchange)
488 is available for such conveyance, storage, or exchange (if any). Such deliveries of Project Water
489 shall be required to be made pursuant to subdivision (k) of Article 3 and in a manner which will
490 not increase the cost of or adversely affect SWP operations and the quantity or quality of water
491 deliveries to SWP Contractors.

492 (3) If DWR delivers water to the Contractor from DWR's share of
493 storage in San Luis Reservoir prior to the Contracting Officer providing Project Water at DWR's

494 Clifton Court Forebay, the United States shall return a like amount of water to DWR pursuant to
495 the procedures set forth in the Operations Manual.

496 (4) The total amount of Project Water delivered at Clifton Court
497 Forebay to DWR by the Contracting Officer shall include water to compensate DWR for water
498 conveyance and storage losses incurred in the delivery of Project Water to the Contractor. The
499 amount of such conveyance and storage losses will be determined pursuant to procedures set forth
500 in the Operations Manual.

501 (5) Project Water received by DWR at Clifton Court Forebay for
502 conveyance and/or storage for delivery to the Contractor will be commingled with waters of DWR
503 which are pumped through facilities of the California Aqueduct and with other waters of both the
504 United States and DWR in the joint use facilities of the San Luis Unit.

505 (6) Priorities for use of DWR's share of storage at San Luis Reservoir
506 for storage of Project Water shall be subject to subdivision (k) of Article 3 and all DWR
507 obligations to the SWP operations and SWP Contractors and to the criteria specified in the
508 Operations Manual.

509 (7) Subject to the necessary arrangements, the Contracting Officer shall
510 transmit or cause to be transmitted, by exchange or otherwise, such quantities of power as shall be
511 required by DWR to pump through its Delta Pumping Plant and its share of Dos Amigos Pumping
512 Plant, the quantities of Project Water transported into Clifton Court Forebay pursuant to (1) of this
513 subdivision.

514 (8) DWR shall furnish the Contracting Officer with such information as
515 the Contracting Officer and DWR agree is needed regarding the timing and quantities of power

516 required by DWR to pump Project Water. Such information shall be exchanged between the
517 Contracting Officer and DWR in accordance with provisions set forth in the Operations Manual.

518 (9) The Contracting Officer and DWR may, under terms and conditions
519 satisfactory to both, and in accordance with applicable law, exchange water and/or power
520 necessary for delivery of Project Water to the Contractor under terms of this Contract. Such
521 exchange shall be in accordance with the provisions set forth in the Operations Manual.

522 (b3) To the extent that Friant Division Project Water exceeds Friant Division
523 Contract demand and other Project purposes, as determined by the Contracting Officer, and if the
524 Contractor so requests, the Contracting Officer, subject to subdivision (d) of Article 3 of this
525 Contract, shall make Project Water provided for in subdivision (a) of Article 3 of this Contract
526 available from such Friant Division supplies.

527 (b4) Project Water may be provided by the Contracting Officer to the
528 Contractor, at the Contractor's request and subject to the terms and conditions of this Contract,
529 through Federal Delta diversion and conveyance facilities and/or stored in the Federal share of
530 storage at San Luis Reservoir for reregulation for later delivery to the Contractor to the extent such
531 diversion, conveyance and/or storage does not diminish the ability of the Project to deliver Project
532 Water to users in the Delta Division, San Luis Unit and San Felipe Division service areas pursuant
533 to existing contracts and assignments or any renewals thereof, to meet current Reclamation
534 commitments to Pajaro Valley Water Management Agency, or to meet other legal obligations of
535 the Project including, but not limited to agreements related to the joint operation of the state and
536 Federal projects.

537 (c) The Contractor or, if applicable, Subcontractor, shall deliver Irrigation
538 Water in accordance with any applicable land classification provisions of Federal Reclamation law
539 and the associated regulations. The Contractor or, if applicable, Subcontractor, shall not deliver
540 Project Water to land outside the Contractor's Service Area or, if applicable, Subcontractor's
541 Service Area, unless approved in advance by the Contracting Officer.

542 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
543 measured and recorded with equipment furnished, installed, operated, and maintained by the
544 United States, DWR, or the Operating Non-Federal Entity at the point or points of delivery
545 established pursuant to subdivision (a) of this Article. Upon the request of either party to this
546 Contract, the Contracting Officer or DWR shall investigate, or cause to be investigated by the
547 appropriate Operating Non-Federal Entity/Entities, the accuracy of such measurements and shall
548 take any necessary steps to adjust any errors appearing therein. For any period of time when
549 accurate measurements have not been made, the Contracting Officer shall consult with the
550 Contractor and the appropriate Operating Non-Federal Entity prior to making a final determination
551 of the quantity delivered for that period of time.

552 (e) Neither the Contracting Officer, nor DWR, nor any Operating Non-Federal
553 Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of
554 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
555 subdivision (a) of this Article. The Contractor shall indemnify the United States, DWR, and their
556 officers, employees, agents, and assigns on account of damage or claim of damage of any nature
557 whatsoever for which there is legal responsibility, including property damage, personal injury, or
558 death arising out of or connected with the control, carriage, handling, use, disposal, or distribution

559 of such Water Delivered beyond such delivery points, except for any damage or claim arising out
560 of: (i) acts or omissions of the Contracting Officer, DWR, or any of their officers, employees,
561 agents, or assigns, including the Operating Non-Federal Entity/Entities, with the intent of creating
562 the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer,
563 DWR, or any of their officers, employees, agents, or assigns, including the Operating Non-Federal
564 Entity/Entities; (iii) negligence of the Contracting Officer or any of his officers, employees,
565 agents, or assigns including the Operating Non-Federal Entity/Entities; or (iv) damage or claims
566 resulting from a malfunction of facilities owned and/or operated by the United States, DWR, or
567 the Operating Non-Federal Entity/Entities; Provided, That the Contractor is not the Operating
568 Non-Federal Entity/Entities that owned or operated the malfunctioning facility(ies) from which the
569 damage claim arose. In the event any such claim or liability, referenced in this Article or
570 otherwise arising from this Contract, is made against DWR, its officers or its employees, the
571 Contractor agrees to defend, indemnify and hold each of them harmless from such claim to the
572 extent such claim does not arise from an error or omission of DWR related to the carriage and
573 control of Project Water made available to the Contractor by the Contracting Officer.

574 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

575 6. (a) The Contractor has established a measuring program satisfactory to the
576 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
577 purposes within the Contractor's Service Area or, if applicable, Subcontractor's Service Area, is
578 measured at each agricultural turnout and such water delivered for M&I purposes is measured at
579 each M&I service connection. The water measuring devices or water measuring methods of
580 comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be

581 responsible for installing, operating, and maintaining and repairing all such measuring devices and
582 implementing all such water measuring methods at no cost to the United States. The Contractor
583 shall use the information obtained from such water measuring devices or water measuring
584 methods to ensure its proper management of the water, to bill water users for water delivered by
585 the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class
586 as defined in the Contractor's or, if applicable, the Subcontractor's, water conservation plan
587 provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the
588 Contractor from establishing and collecting any charges, assessments, or other revenues
589 authorized by California law. The Contractor shall include a summary of all its annual surface
590 water deliveries in the annual report described in subdivision (c) of Article 26.

591 (b) To the extent the information has not otherwise been provided, upon
592 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report
593 describing the measurement devices or water measuring methods being used or to be used to
594 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
595 service connections or alternative measurement programs approved by the Contracting Officer, at
596 which such measurement devices or water measuring methods are being used, and, if applicable,
597 identifying the locations at which such devices and/or methods are not yet being used including a
598 time schedule for implementation at such locations. The Contracting Officer shall advise the
599 Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any, of
600 the measuring devices or water measuring methods identified in the Contractor's report and if the
601 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
602 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,

603 the parties shall within 60 days following the Contracting Officer's response, negotiate in good
604 faith the earliest practicable date by which the Contractor shall modify said measuring devices
605 and/or measuring methods as required by the Contracting Officer to ensure compliance with
606 subdivision (a) of this Article.

607 (c) All new surface water delivery systems installed within the Contractor's
608 Service Area or, if applicable, Subcontractor's Service, Area after the effective date of this
609 Contract shall also comply with the measurement provisions described in subdivision (a) of this
610 Article.

611 (d) The Contractor shall inform the Contracting Officer and the State of
612 California in writing by April 30 of each Year of the monthly volume of surface water delivered
613 within the Contractor's Service Area or, if applicable, Subcontractor's Service Area, during the
614 previous Year.

615 (e) The Contractor shall inform the Contracting Officer, DWR, and the
616 Operating Non-Federal Entity/Entities on or before the 20th calendar day of each month of the
617 quantity of Irrigation and M&I Water taken during the preceding month.

618 RATES AND METHOD OF PAYMENT FOR WATER

619 7. (a) The Contractor shall pay the United States as provided in this Article for all
620 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
621 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the
622 Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be
623 amended, modified, or superseded only through a public notice and comment procedure;
624 (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and

625 (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction,
626 electronic funds transfer, or any other mechanism as may be agreed to in writing by the Contractor
627 and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the
628 Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised
629 annually.

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

632 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
633 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
634 period October 1, of the current Calendar Year, through September 30, of the following Calendar
635 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to
636 review and comment on such estimates. On or before September 15 of each Calendar Year, the
637 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the
638 period October 1 of the current Calendar Year, through September 30 of the following Calendar
639 Year, and such notification shall revise Exhibit "B".

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

647 (c) Except as otherwise provided in the Operations Manual, at the time the
648 Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to
649 subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the
650 United States equal to the total amount payable pursuant to the applicable Rate(s) set under
651 subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
652 Contract during the first two calendar months of the Year. Before the end of the first month and
653 before the end of each calendar month thereafter, the Contractor shall make an advance payment
654 to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water
655 Scheduled to be delivered pursuant to this Contract during the second month immediately
656 following. Adjustments between advance payments for Water Scheduled and payments at Rates
657 due for Water Delivered shall be made before the end of the following month; Provided, That any
658 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
659 increases the amount of Water Delivered pursuant to this Contract during any month shall be
660 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
661 Water is not delivered to the Contractor in advance of such payment. In any month in which the
662 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of
663 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to
664 the Contractor unless and until an advance payment at the Rates then in effect for such additional
665 Project Water is made. Final adjustment between the advance payments for the Water Scheduled
666 and payments for the quantities of Water Delivered during each Year pursuant to this Contract
667 shall be made as soon as practicable but no later than April 30th of the following Year, or 60 days

668 after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract
669 if such water is not delivered by the last day of February.

670 (d) The Contractor shall also make a payment in addition to the Rate(s) in
671 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
672 appropriate Tiered Pricing Component then in effect, before the end of the month following the
673 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
674 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
675 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
676 report for the subject month prepared by the Operating Non-Federal Entity/Entities or, if there is
677 no Operating Non-Federal Entity/Entities, by the Contracting Officer. The water delivery report
678 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component
679 for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made
680 through the adjustment of payments due to the United States for Charges for the next month. Any
681 amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be
682 computed pursuant to Article 20 of this Contract.

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

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

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

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

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

710 (j) (1) Beginning at such time as deliveries of Project Water in a Year
711 exceed 80 percent of the Contract Total, then before the end of the month following the month of
712 delivery the Contractor shall make an additional payment to the United States equal to the
713 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
714 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
715 Contract Total, shall equal one-half of the difference between the Rate established under
716 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
717 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered
718 which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate
719 established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or
720 M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
721 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract Total,
722 this increment shall be deemed to be divided between Irrigation Water and M&I Water in the same
723 proportion as actual deliveries of each bear to the cumulative total Water Delivered.

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

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

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

745 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
746 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
747 upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in
748 the delivery of the transferred Project Water to the transferee's point of delivery in accordance
749 with the then-applicable Project ratesetting policy. If the Contractor is receiving lower Rates and
750 Charges because of inability to pay and is transferring Project Water to another entity whose Rates
751 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project
752 Water shall be the Contractor's Rates and Charges and will not be adjusted to reflect the
753 Contractor's inability to pay.

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

756 (n) With respect to the Rates for M&I Water the Contractor asserts that it is not
757 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
758 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
759 Contractor does not waive any legal rights or remedies that it may have with respect to such
760 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder,
761 the Contractor may challenge in the appropriate administrative or judicial forums: (1) the
762 existence, computation, or imposition of any deficit charges accruing during the term of the
763 Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing
764 on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the
765 application by the United States of payments made by the Contractor under its Existing Contract
766 and any preceding interim renewal contracts, if applicable; and (5) the application of such
767 payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the
768 benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of
769 these issues, and credits for payments heretofore made; Provided, That the basis for such ruling is
770 applicable to the Contractor.

771 (o) The Contractor and the Contracting Officer concur that, as of the effective
772 date of this Contract, the Contractor has no non-interest-bearing O&M deficits and shall have no
773 further liability therefor.

774 RATES AND METHOD OF PAYMENT FOR CONVEYANCE
775 AND OTHER SERVICES BY DWR

776 8. (a) To the extent Project Water is conveyed through State Facilities, payment
777 for conveyance of water through the State Facilities shall be made by the Contractor directly to
778 DWR. Exhibit "C" sets forth the charges and interest rates applicable at the time this long-term
779 renewal contract is executed. DWR shall invoice the Contractor monthly for all conveyance
780 charges owing for the previous month. Payment by the Contractor to DWR shall be due 30 days
781 after the date of the invoice. Any payment not received within 30 days after the date of the
782 invoice shall be considered delinquent. Delinquent charges shall be calculated in accordance with
783 Exhibit "C" of this Contract; Provided, That no interest shall be charged to or be paid by the
784 Contractor unless such delinquency continues for more than 30 days in total.

785 (b) Omitted.

786 (c) Conveyance charges for the Contractor shall be determined by DWR on the
787 same basis it uses to determine conveyance charges for use of SWP facilities by entities that are
788 not SWP contractors. The method for determining this charge is described in DWR's annual
789 Bulletin 132. The charge for conveyance of water under this Contract shall be set forth in Exhibit
790 "C" of this Contract and revised annually.

791 (1) In accordance with subdivision (c) of this Article, when DWR
792 provides conveyance directly from the Delta or from the Federal share of storage at San Luis
793 Reservoir, the unit conveyance charge shall equal at a minimum the sum of the following, as
794 determined by DWR: (i) The equivalent unit transportation capital and Minimum OMP&R Costs
795 for those reaches of the California Aqueduct utilized for the delivery; (ii) The portion of the Delta
796 Water Rate for Reaches 1, 2A, 2B, and 3 of the California Aqueduct; (iii) The replacement

797 component of the Transportation Variable OM&R Costs for the Harvey O. Banks Delta Pumping
798 Plant and DWR's share of the Dos Amigos Pumping Plant; (iv) A charge to offset direct fish losses
799 associated with pumping at the Banks Pumping Plant, pursuant to the December 30, 1986,
800 agreement between the California Department of Fish and Game and DWR; and (v) The
801 incremental costs, if any, caused by the conveyance and delivery of Project Water to the
802 Contractor which, unless included in the increased charges to the Contractor, would result in
803 increased charges to the SWP Contractors or increased costs to DWR.

804 (2) When DWR provides conveyance from the State's share of storage
805 in San Luis Reservoir, the unit charge shall equal the sum of the following as determined by
806 DWR: (i) The San Luis Facilities portion of the Delta Water Rate; (ii) The net unit energy cost to
807 replace water in San Luis Reservoir; and (iii) The sum of all unit charges provided under
808 subdivision (c)(1) of this Article.

809 (d) Should DWR deliver Project Water to San Luis Reservoir on behalf of the
810 Contractor and it is later determined by DWR that capacity to store such Project Water in DWR's
811 share of San Luis Reservoir is no longer available because of need for such storage to meet SWP
812 operations and obligations to SWP Contractors and the Contractor cannot take delivery of such
813 Project Water, DWR shall relieve the Contractor of its obligations to pay DWR for all such Project
814 Water so transported, stored, and no longer available to the Contractor. DWR shall reimburse the
815 Contractor for payments which have previously been made to DWR for any such conveyed and
816 stored supply, less the administrative charge described in subdivision (f) of this Article.

817 (e) If the Contractor is unable, fails or refuses to accept delivery of Project
818 Water made available by DWR in accordance with this Contract, such inability, failure or refusal
819 shall not relieve the Contractor of its obligation to pay DWR all associated costs.

820 (f) The Contractor shall pay DWR a monthly administrative charge specified in
821 Exhibit “C” of this Contract for each month in which DWR conveys Project Water to the
822 Contractor and for each month in which DWR invoices the Contractor for delinquent charges.

823 SALES, TRANSFERS, OR EXCHANGES OF WATER

824 9. (a) The right to receive Project Water provided for in this Contract may be
825 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
826 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
827 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
828 Water under this Contract may take place without the prior written approval of the Contracting
829 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
830 exchanges shall be approved absent all appropriate environmental documentation including but
831 not limited to documents prepared pursuant to NEPA and ESA. Such environmental
832 documentation should include, as appropriate, an analysis of groundwater impacts and economic
833 and social effects, including environmental justice, of the proposed water transfers on both the
834 transferor and transferee. No sale, transfer or exchange of the right to Project Water under this
835 Contract may take place without the prior written approval of the Contracting Officer and of
836 DWR, if State Facilities are used to convey such water.

837 (b) In order to facilitate efficient water management by means of water
838 transfers of the type historically carried out among Project Contractors located within the same

839 geographical area and to allow the Contractor to participate in an accelerated water transfer
840 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all
841 necessary environmental documentation including, but not limited to, documents prepared
842 pursuant to NEPA and ESA analyzing annual transfers within such geographical areas and the
843 Contracting Officer shall determine whether such transfers comply with applicable law.
844 Following the completion of the environmental documentation, such transfers addressed in such
845 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
846 require prior written approval by the Contracting Officer. Such environmental documentation and
847 the Contracting Officer's compliance determination shall be reviewed every five years and
848 updated, as necessary, prior to the expiration of the then-existing five-year period. All subsequent
849 environmental documentation shall include an alternative to evaluate not less than the quantity of
850 Project Water historically transferred within the same geographical area.

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

861 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

878 (c) In the event that the Contractor contests the accuracy of any statement
879 submitted to it by DWR pursuant to this Contract it shall give DWR notice thereof at least ten
880 days prior to the day upon which payment of the stated amount is due. To the extent that DWR
881 finds that the Contractor's contentions regarding the statement are correct, it shall revise the
882 statement accordingly, and the Contractor shall make payment of the revised amounts on or before

883 the due date. To the extent that DWR does not find the Contractor's contentions to be correct, or
884 where time is not available for review of such contentions for correctness prior to due date, the
885 Contractor shall make payment of the stated amounts on or before the due date, but may make the
886 contested part of such payment under protest and seek an adjustment as described in subdivision
887 (d) of this Article.

888 (d) If in any year, by reason of errors in computation or other causes, there is an
889 overpayment or underpayment to DWR by the Contractor of its charges provided for herein, the
890 amount of such overpayment or underpayment shall be credited or debited, as the case may be, to
891 the Contractor's account for the next succeeding Year and DWR shall notify the Contractor thereof
892 in writing.

893 TEMPORARY REDUCTIONS-RETURN FLOWS

894 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and
895 State Facilities and the requirements of Federal law; (ii) the authorized purposes and priorities of
896 the State Facilities and State laws and policies governing the SWP; (iii) the obligations of the
897 United States and DWR under existing contracts, or renewals thereof, providing for water
898 deliveries from the Project and State Facilities; and (iv) the terms and conditions of this Contract;
899 the Contracting Officer and DWR shall make all reasonable efforts to optimize Project Water
900 deliveries to the Contractor as provided in this Contract.

901 (b) The Contracting Officer, DWR, or Operating Non-Federal Entity/Entities
902 may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein
903 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any
904 of the Project or State Facilities or any part thereof necessary for the delivery of Project Water to

905 the Contractor, but so far as feasible the Contracting Officer, DWR, or Operating Non-Federal
906 Entity will give the Contractor due notice in advance of such temporary discontinuance or
907 reduction, except in case of emergency, in which case no notice need be given; Provided, That the
908 United States and DWR shall use its best efforts to avoid any discontinuance or reduction in such
909 service. Upon resumption of service after such reduction or discontinuance, and if requested by
910 the Contractor, the United States and DWR will, if possible, deliver the quantity of Project Water
911 which would have been delivered hereunder in the absence of such discontinuance or reduction.

912 (c) The United States reserves the right to all seepage and return flow water
913 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond
914 the Contractor's Service Area or, if applicable, Subcontractor's Service Area; Provided, That this
915 shall not be construed as claiming for the United States any right to seepage or return flow being
916 put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area
917 or, if applicable, Subcontractor's Service Area, by the Contractor or those claiming by, through, or
918 under the Contractor.

919 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

925 (b) If there is a Condition of Shortage because of errors in physical operations
926 of the Project, drought, other physical causes beyond the control of the Contracting Officer or

927 actions taken by the Contracting Officer to meet legal obligations then, except as provided in
928 subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or
929 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

930 (c) In any Year in which there may occur a shortage for any of the reasons
931 specified in subdivision (b) of this Article, the Contracting Officer shall apportion the available
932 Project Water supply among the Contractors and others entitled, under existing contracts and
933 future contracts (to the extent such future contracts are permitted under subsections (a) and (b) of
934 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the
935 contractual obligations of the United States.

936 (d) DWR shall make all reasonable efforts consistent with sound fiscal policies,
937 and proper operating procedures to maintain the necessary facilities and to deliver Project Water to
938 the Contractor in accordance with the provisions of this Contract in such a manner and at such
939 times as such Project Water is scheduled by the Contractor; Provided, That such Project Water has
940 been furnished to DWR by the Contracting Officer; and, Provided, further, That in no event shall
941 any liability accrue against DWR or any of its officers, agents or employees for damage, direct or
942 indirect for failure to deliver Project Water to the Contractor on account of errors in operation,
943 drought, or any other cause beyond the control of DWR. Inasmuch as DWR is providing only
944 conveyance and storage services under this Contract, it bears no responsibility for the availability
945 of Project Water for such conveyance.

946 (e) If any of the parties to this Contract are precluded in whole or in part from
947 delivering, conveying or receiving Project Water as a result of uncontrollable forces, all parties
948 shall be relieved from the obligation to the extent they are reasonably unable to complete the

949 obligation due to the uncontrollable force. Uncontrollable force shall include, but is not limited to,
950 earthquakes, fires, tornados, floods and other natural disasters. Each party shall be responsible for
951 payment of any costs incurred on its behalf by the other party(ies) before the occurrence of the
952 uncontrollable force.

953 UNAVOIDABLE GROUNDWATER PERCOLATION

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

958 RULES AND REGULATIONS

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

963 WATER AND AIR POLLUTION CONTROL

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

967 QUALITY OF WATER

968 16. (a) Project and State Facilities used to deliver Project Water to the Contractor
969 pursuant to this Contract shall be operated and maintained to enable the United States and DWR to
970 deliver Project Water to the Contractor in accordance with the water quality standards specified in
971 subsection 2(b) of the Act of August 26, 1937 (50 Stat. 850), as added by Section 101 of the Act
972 of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States and DWR
973 are under no obligation to construct or furnish water treatment facilities to maintain or to improve

974 the quality of Water Delivered to the Contractor pursuant to this Contract. The United States and
975 DWR do not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

983 WATER ACQUIRED BY THE CONTRACTOR
984 OTHER THAN FROM THE UNITED STATES

985 17. (a) Water or water rights now owned or hereafter acquired by the Contractor or,
986 if applicable, Subcontractor, other than from the United States and Irrigation Water furnished
987 pursuant to the terms of this Contract may be simultaneously transported through the same
988 distribution facilities of the Contractor or, if applicable, Subcontractor, subject to the following:
989 (i) if the facilities utilized for commingling Irrigation Water and non-project water were
990 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
991 Federal Reclamation law will be applicable only to the Landholders of lands which receive
992 Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through
993 the certification requirements as specified in the Acreage Limitation Rules and Regulations (43
994 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area
995 or, if applicable, Subcontractor's Service Area, can be established and the quantity of Irrigation
996 Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands;

997 and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are/were
998 constructed with funds made available pursuant to Federal Reclamation law, the non-Project water
999 will be subject to the acreage limitation provisions of Federal Reclamation law, unless the
1000 Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In
1001 determining the incremental fee, the Contracting Officer will calculate annually the cost to the
1002 Federal Government, including interest of storing or delivering non-Project water, which for
1003 purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
1004 distribution system costs divided by the total irrigable acreage within the Contractor's Service
1005 Area. The incremental fee per acre is the mathematical result of such quotient times the interest
1006 rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such
1007 incremental fee will be charged to each acre of excess or full cost land within the Contractor's
1008 Service Area that receives non-Project water through Federally financed or constructed facilities.
1009 The incremental fee calculation methodology will continue during the term of this Contract absent
1010 promulgation of a contrary Reclamation-wide rule, regulation, or policy adopted after the
1011 Contractor has been afforded the opportunity to review and comment on the proposed rule,
1012 regulation, or policy. If such rule, regulation, or policy is adopted it shall supersede this provision.
1013 The Contractor and the Contracting Officer concur that, as of the effective date of this Contract,
1014 the Contractor has a distribution system that was constructed without the use of Federally financed
1015 funds. The use of this distribution system is not subject to the provision of this subdivision of this
1016 Article. A separate written agreement with DWR must be obtained by the Contractor prior to
1017 conveyance of such water in State Facilities.

1018 (b) Omitted.

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OPINIONS AND DETERMINATIONS

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

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

COORDINATION AND COOPERATION

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

1041 quality of Project Water supply, the allocation of Project Water supply, and Project financial
1042 matters including, but not limited to, budget issues. The communication, coordination, and
1043 cooperation provided for hereunder shall extend to all provisions of this Contract. Each party
1044 shall retain exclusive decision making authority for all actions, opinions, and determinations to be
1045 made by the respective party.

1046 (b) Within 120 days following the effective date of this Contract, the
1047 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
1048 with interested Project Contractors to develop a mutually agreeable, written Project-wide process,
1049 which may be amended as necessary separate and apart from this Contract. The goal of this
1050 process shall be to provide, to the extent practicable, the means of mutual communication and
1051 interaction regarding significant decisions concerning Project operation and management on a
1052 real-time basis.

1053 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
1054 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
1055 intent:

1056 (1) The Contracting Officer will, at the request of the Contractor, assist
1057 in the development of integrated resource management plans for the Contractor. Further, the
1058 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
1059 improve water supply, water quality, and reliability.

1060 (2) The Secretary will, as appropriate, pursue program and project
1061 implementation and authorization in coordination with Project Contractors to improve the water
1062 supply, water quality, and reliability of the Project for all Project purposes.

1063 (3) The Secretary will coordinate with Project Contractors and the State
1064 of California to seek improved water resource management.

1065 (4) The Secretary will coordinate actions of agencies within the
1066 Department of the Interior that may impact the availability of water for Project purposes.

1067 (5) The Contracting Officer shall periodically, but not less than
1068 annually, hold division level meetings to discuss Project operations, division level water
1069 management activities, and other issues as appropriate.

1070 (d) Without limiting the contractual obligations of the Contracting Officer
1071 under the other Articles of this Contract, nothing in this Article shall be construed to limit or
1072 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the
1073 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
1074 protect health, safety, or the physical integrity of structures or facilities.

1075 CHARGES FOR DELINQUENT PAYMENTS

1076 20. (a) The Contractor shall be subject to interest, administrative and penalty
1077 charges on delinquent installments or payments. When a payment is not received by the due date,
1078 the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due
1079 date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
1080 administrative charge to cover additional costs of billing and processing the delinquent payment.
1081 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
1082 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due
1083 date. Further, the Contractor shall pay any fees incurred for debt collection services associated
1084 with a delinquent payment.

1085 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
1086 in the Federal Register by the Department of the Treasury for application to overdue payments, or
1087 the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the
1088 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
1089 determined as of the due date and remain fixed for the duration of the delinquent period.

1090 (c) When a partial payment on a delinquent account is received, the amount
1091 received shall be applied, first to the penalty, second to the administrative charges, third to the
1092 accrued interest, and finally to the overdue payment.

1093 EQUAL OPPORTUNITY

1094 21. During the performance of this Contract, the Contractor agrees as follows:

1095 (a) The Contractor will not discriminate against any employee or applicant for
1096 employment because of race, color, religion, sex, or national origin. The Contractor will take
1097 affirmative action to ensure that applicants are employed, and that employees are treated during
1098 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
1099 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
1100 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
1101 compensation; and selection for training, including apprenticeship. The Contractor agrees to post
1102 in conspicuous places, available to employees and applicants for employment, notices to be
1103 provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1104 (b) The Contractor will, in all solicitations or advertisements for employees
1105 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1106 consideration for employment without discrimination because of race, color, religion, sex, or
1107 national origin.

1108 (c) The Contractor will send to each labor union or representative of workers
1109 with which it has a collective bargaining agreement or other contract or understanding, a notice, to
1110 be provided by the Contracting Officer, advising the said labor union or workers' representative of
1111 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,
1112 1965, and shall post copies of the notice in conspicuous places available to employees and
1113 applicants for employment.

1114 (d) The Contractor will comply with all provisions of Executive Order No.
1115 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the
1116 Secretary of Labor.

1117 (e) The Contractor will furnish all information and reports required by said
1118 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1119 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
1120 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such
1121 rules, regulations, and orders.

1122 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1123 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1124 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared
1125 ineligible for further Government contracts in accordance with procedures authorized in said

1126 amended Executive Order, and such other sanctions may be imposed and remedies invoked as
1127 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
1128 otherwise provided by law.

1129 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1130 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1131 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1132 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
1133 action with respect to any subcontract or purchase order as may be directed by the Secretary of
1134 Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided,
1135 however, That in the event the Contractor becomes involved in, or is threatened with, litigation
1136 with a subcontractor or vendor as a result of such direction, the Contractor may request the United
1137 States to enter into such litigation to protect the interests of the United States.

1138 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1139 22. (a) The obligation of the Contractor to pay the United States and DWR as
1140 provided in this Contract is a general obligation of the Contractor notwithstanding the manner in
1141 which the obligation may be distributed among the Contractor's water users and notwithstanding
1142 the default of individual water users in their obligations to the Contractor.

1143 (b) The payment of charges becoming due hereunder is a condition precedent to
1144 receiving benefits under this Contract. The United States and DWR shall not make water or
1145 conveyance facilities available to the Contractor through Project or State Facilities during any
1146 period in which the Contractor may be in arrears in the advance payment of water rates due the
1147 United States. The Contractor shall not furnish water made available pursuant to this Contract for
1148 lands or parties which are in arrears in the advance payment of water rates levied or established by
1149 the Contractor.

1150 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1151 obligation to require advance payment for water rates which it levies. Subdivision (b) of this
1152 Article applies to periods when the Contractor is in arrears on payment of charges to DWR.

1153 (d) If in any year the Contractor fails or is unable to raise sufficient funds by
1154 other means, the governing body of the Contractor shall levy upon all property within the

1155 Contractor's boundary not exempt from taxation, a special assessment sufficient to provide for all
1156 payments due the United States and DWR under this Contract.

1157 (e) Assessments levied by the governing body of the Contractor pursuant to
1158 subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor
1159 charged with the duty of enforcing and collecting assessments levied by the Contractor.

1160 (f) All money collected by way of special assessments under this Article for
1161 payments due DWR shall be kept in a separate fund by the treasurer or other officer of the
1162 Contractor charged with the safekeeping and disbursement of funds of the Contractor, and, upon
1163 the written demand of DWR, the treasurer or other officer shall pay over to DWR all money in his
1164 possession or control then due DWR under this Contract, which money shall be applied by DWR
1165 to the satisfaction of the amount due under this Contract.

1166 (g) In the event of failure, neglect, or refusal of any officer of the Contractor to
1167 levy any assessment necessary to provide payment by the Contractor under this Contract, to
1168 enforce or to collect the assessment, or to pay over to the United States or DWR any money then
1169 due collected on the assessment, either or both DWR and the United States may take such action
1170 in a court of competent jurisdiction as they deem necessary to compel the performance in their
1171 proper sequence of all such duties. Action taken pursuant hereto shall not deprive DWR or
1172 United States or limit any remedy provided by this Contract or by law for the recovery of money
1173 due or which may become due under this Contract.

1174 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1175 23. (a) The Contractor, or if applicable, Subcontractor shall comply with Title VI
1176 of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975
1177 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any

1178 other applicable civil rights laws, as well as with their respective implementing regulations and
1179 guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

1180 (b) These statutes require that no person in the United States shall, on the
1181 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1182 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1183 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
1184 Contractor agrees to immediately take any measures necessary to implement this obligation,
1185 including permitting officials of the United States to inspect premises, programs, and documents.

1186 (c) The Contractor makes this agreement in consideration of and for the
1187 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1188 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1189 Reclamation, including installment payments after such date on account of arrangements for
1190 Federal financial assistance which were approved before such date. The Contractor recognizes
1191 and agrees that such Federal assistance will be extended in reliance on the representations and
1192 agreements made in this Article, and that the United States reserves the right to seek judicial
1193 enforcement thereof.

1194 PRIVACY ACT COMPLIANCE

1195 24. (a) The Contractor, or if applicable, Subcontractor shall comply with the
1196 Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and
1197 regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification
1198 and reporting records, required to be submitted to the Contractor, or if applicable, Subcontractor
1199 for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266),
1200 and pursuant to 43 CFR 426.18.

1201 (b) With respect to the application and administration of the criminal penalty
1202 provisions of the Act (5 U.S.C. 552a(i)), the Contractor, or if applicable, Subcontractor and their
1203 employees responsible for maintaining the certification and reporting records referenced in (a)
1204 above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1205 (c) The Contracting Officer or a designated representative shall provide the
1206 Contractor, or if applicable, Subcontractor with current copies of the Interior Department Privacy
1207 Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice
1208 (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and
1209 disclosure of information contained in the Landholder's certification and reporting records.

1210 (d) The Contracting Officer shall designate a full-time employee of the Bureau
1211 of Reclamation to be the System Manager who shall be responsible for making decisions on denials
1212 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor,
1213 or if applicable, Subcontractor is authorized to grant requests by individuals for access to their own
1214 records.

1215 (e) The Contractor, or if applicable, Subcontractor shall forward promptly to the
1216 System Manager each proposed denial of access under 43 CFR 2.64; and each request for amendment
1217 of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the
1218 System Manager with information and records necessary to prepare an appropriate response to the
1219 requester. These requirements do not apply to individuals seeking access to their own certification
1220 and reporting forms filed with the Contractor, or if applicable, Subcontractor pursuant to 43 CFR 426.18,
1221 unless the requester elects to cite the Privacy Act as a basis for the request.

1222 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1223 25. In addition to all other payments to be made by the Contractor pursuant to this
1224 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1225 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1226 of direct cost incurred by the United States for work requested by the Contractor associated with
1227 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1228 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1229 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1230 administration.

1231 WATER CONSERVATION

1232 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1233 constructed or Federally financed facilities pursuant to this Contract, the Contractor or, if
1234 applicable, Subcontractor, shall be implementing an effective water conservation and efficiency
1235 program based on the Contractor's or, if applicable, Subcontractor's, water conservation plan that
1236 has been determined by the Contracting Officer to meet the conservation and efficiency criteria for
1237 evaluating water conservation plans established under Federal law. The water conservation and
1238 efficiency program shall contain definite water conservation objectives, appropriate economically
1239 feasible water conservation measures, and time schedules for meeting those objectives. Continued

1240 Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's, or if
1241 applicable, Subcontractor's continued implementation of such water conservation program. In the
1242 event the Contractor's or, if applicable, Subcontractor's, water conservation plan or any revised
1243 water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have
1244 not yet been determined by the Contracting Officer to meet such criteria, due to circumstances
1245 which the Contracting Officer determines are beyond the control of the Contractor or, if
1246 applicable, Subcontractor, water deliveries shall be made under this Contract so long as the
1247 Contractor or, if applicable, Subcontractor, diligently works with the Contracting Officer to obtain
1248 such determination at the earliest practicable date, and thereafter the Contractor or, if applicable,
1249 Subcontractor, immediately begins implementing its water conservation and efficiency program in
1250 accordance with the time schedules therein.

1251 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1252 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor or, if applicable,
1253 Subcontractor, shall implement the Best Management Practices identified by the time frames
1254 issued by the California Urban Water Conservation Council for such M&I Water unless any such
1255 practice is determined by the Contracting Officer to be inappropriate for the Contractor, or if
1256 applicable, Subcontractor.

1257 (c) The Contractor or, if applicable, Subcontractor, shall submit to the
1258 Contracting Officer a report on the status of its implementation of the water conservation plan on
1259 the reporting dates specified in the then existing conservation and efficiency criteria established
1260 under Federal law.

1261 (d) At five-year intervals, the Contractor or, if applicable, Subcontractor, shall
1262 revise its water conservation plan to reflect the then-current conservation and efficiency criteria
1263 for evaluating water conservation plans established under Federal law and submit such revised
1264 water management plan to the Contracting Officer for review and evaluation. The Contracting
1265 Officer will then determine if the water conservation plan meets Reclamation's then-current
1266 conservation and efficiency criteria for evaluating water conservation plans established under
1267 Federal law.

1268 (e) If the Contractor or, if applicable, Subcontractor, is engaged in direct
1269 groundwater recharge, such activity shall be described in the Contractor's or, if applicable,
1270 Subcontractor's, water conservation plan.

1271 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1272 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1273 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1274 hereafter acquired by the Contractor, or if applicable, Subcontractor or any user of such water
1275 within the Contractor's Service Area, or if applicable, Subcontractor's Service Area. Any such
1276 water shall not be considered Project Water under this Contract. In addition, this Contract shall
1277 not be construed as limiting or curtailing any rights which the Contractor, or if applicable,
1278 Subcontractor or any water user within the Contractor's Service Area, or if applicable,
1279 Subcontractor's Service Area acquires or has available under any other contract pursuant to
1280 Federal Reclamation law.

1281 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1282 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1283 and responsibility for funding a portion of the costs of such O&M, have been transferred to two
1284 Operating Non-Federal Entities by separate agreements between the United States and the
1285 Operating Non-Federal Entities. Those separate agreements shall not interfere with or affect the
1286 rights or obligations of the Contractor or the United States hereunder. Specifically, portions of the
1287 Delta-Mendota Canal, the San Luis Canal and other related facilities are operated by the San Luis
1288 & Delta-Mendota Water Authority and the Friant-Kern Canal and related facilities are operated by
1289 the Friant Water Authority.

1290 (b) The Contractor shall pay directly to the applicable Operating Non-Federal
1291 Entity, or to any successor approved by the Contracting Officer under the terms and conditions of
1292 the separate agreement/agreements between the United States and the Operating Non-Federal
1293 Entities described in subdivision (a) of this Article, all rates, charges, or assessments of any kind,
1294 including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1295 successor determines, sets, or establishes for the O&M of the portion of the Project facilities
1296 operated and maintained by the Operating Non-Federal Entity or such successor. Such direct
1297 payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor of
1298 its obligation to pay directly to the United States the Contractor's share of the Project Rates,
1299 Charges, and Tiered Pricing Component(s) except to the extent the Operating Non-Federal Entity
1300 collects payments on behalf of the United States in accordance with the separate agreement
1301 identified in subdivision (a) of this Article.

1302 (c) For so long as the O&M of any portion of the Project facilities serving the
1303 Contractor is performed by the Operating Non-Federal Entities, or any successors thereto, the
1304 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1305 Contract representing the cost associated with the activity being performed by the Operating Non-
1306 Federal Entities or their successors.

1307 (d) In the event the O&M of the Project facilities operated and maintained by
1308 the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1309 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1310 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1311 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1312 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1313 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1314 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1315 States in compliance with Article 7 of this Contract.

1316 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1317 29. The expenditure or advance of any money or the performance of any obligation of
1318 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1319 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1320 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1321 or allotted.

1322 BOOKS, RECORDS, AND REPORTS

1323 30. (a) The Contractor shall establish and maintain accounts and other books and
1324 records pertaining to administration of the terms and conditions of this Contract, including: the
1325 Contractor's financial transactions, water supply data, and Project land and right-of-way
1326 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1327 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1328 furnished to the Contracting Officer in such form and on such date or dates as the Contracting

1329 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1330 Contract shall have the right during office hours to examine and make copies of the other party's
1331 books and records relating to matters covered by this Contract.

1332 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1333 records, or other information shall be requested from the Contractor by the Contracting Officer
1334 unless such books, records, or information are reasonably related to the administration or
1335 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1336 time within which to provide the requested books, records, or information.

1337 (c) At such time as the Contractor provides information to the Contracting
1338 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1339 the Operating Non-Federal Entity/Entities.

1340 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1341 31. (a) The provisions of this Contract shall apply to and bind the successors and
1342 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1343 therein shall be valid until approved in writing by the Contracting Officer.

1344 (b) The assignment of any right or interest in this Contract by a party shall not
1345 interfere with the rights or obligations of the other parties to this Contract absent the written
1346 concurrence of said other parties.

1347 (c) The Contracting Officer shall not unreasonably condition or withhold
1348 approval of any proposed assignment.

1349 (d) No assignment or transfer of any rights to use State Facilities authorized by
1350 this Contract shall be valid without advance written approval by DWR.

1351 SEVERABILITY

1352 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1353 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1354 association or other form of organization whose primary function is to represent parties to Project
1355 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1356 enforceability of a provision included in this Contract and said person, entity, association, or
1357 organization obtains a final court decision holding that such provision is legally invalid or
1358 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1359 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final
1360 court decision identify by mutual agreement the provisions in this Contract which must be revised
1361 and (ii) within three months thereafter promptly agree on the appropriate revision(s). The time
1362 periods specified above may be extended by mutual agreement of the parties. Pending the
1363 completion of the actions designated above, to the extent it can do so without violating any
1364 applicable provisions of law, the United States shall continue to make the quantities of Project
1365 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1366 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1367 RESOLUTION OF DISPUTES

1368 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1369 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1370 dispute. Prior to the Contractor or, if applicable, Subcontractor, commencing any legal action, or
1371 the Contracting Officer referring any matter to Department of Justice, the party shall provide to the
1372 other party 30 days' written notice of the intent to take such action; Provided, That such notice

1373 shall not be required where a delay in commencing an action would prejudice the interests of the
1374 party that intends to file suit. During the 30-day notice period, the Contractor or, if applicable,
1375 Subcontractor, and the Contracting Officer shall meet and confer in an attempt to resolve the
1376 dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right
1377 or remedy that the Contractor or, if applicable, Subcontractor, or the United States may have.

1378 OFFICIALS NOT TO BENEFIT

1379 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1380 Contractor or, if applicable, Subcontractor, shall benefit from this Contract other than as a water
1381 user or landowner in the same manner as other water users or landowners.

1382 CHANGES IN CONTRACTOR'S OR SUBCONTRACTOR'S SERVICE AREA

1383 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1384 Service Area, or if applicable, Subcontractor's Service Area, by inclusion or exclusion of lands,
1385 dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written
1386 consent.

1387 (b) Within 30 days of receipt of a request for such a change, the Contracting
1388 Officer will notify the Contractor or, if applicable, Subcontractor, of any additional information
1389 required by the Contracting Officer for processing said request, and both parties will meet to
1390 establish a mutually agreeable schedule for timely completion of the process. Such process will
1391 analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to
1392 the terms of this Contract; (ii) impair the ability of the Contractor or, if applicable, Subcontractor,
1393 to pay for Project Water furnished under this Contract or to pay for any Federally-constructed
1394 facilities for which the Contractor or, if applicable, Subcontractor, is responsible; and (iii) have an
1395 impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting
1396 Officer shall comply with NEPA and ESA. The Contractor or, if applicable, Subcontractor, will
1397 be responsible for all costs incurred by the Contracting Officer in this process, and such costs will

1398 be paid in accordance with Article 25 of this Contract. Upon approval by the Contracting Officer,
1399 the Contractor or, if applicable, Subcontractor's, Service Area, shall promptly give notice of any
1400 such change in Contractor's Service Area or, if applicable, the Subcontractor's Service Area, to
1401 DWR.

1402 FEDERAL LAWS

1403 36. By entering into this Contract, the Contractor does not waive its rights to contest
1404 the validity or application in connection with the performance of the terms and conditions of this
1405 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1406 terms and conditions of this Contract unless and until relief from application of such Federal law
1407 or regulation to the implementing provision of the Contract is granted by a court of competent
1408 jurisdiction.

1409 NOTICES

1410 37. Any notice, demand, or request authorized or required by this Contract shall be
1411 deemed to have been given on behalf of the parties when mailed, postage prepaid; or delivered to
1412 the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1413 93721-1813; to the Chief, State Water Project Analysis Office, Department of Water Resources, P
1414 O. Box 942836, Sacramento, California 94236-0001; and to the Board of Supervisors of the
1415 County of Fresno, 2220 Tulare Street, Fresno, California 93721. The designation of the addressee
1416 or the address may be changed by notice given in the same manner as provided in this Article for
1417 other notices.

1418 CONFIRMATION OF CONTRACT

1419 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1420 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1421 this Contract. The Contractor shall furnish both the United States and DWR with a certified copy
1422 of the final decree, the validation proceedings, and all pertinent supporting records of the court
1423 approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and
1424 binding on the Contractor.

1425 SUBCONTRACTS--SALE OF WATER

1426 39. The Contractor may enter into subcontracts with third parties for the wholesale
1427 distribution to such third parties of Project Water furnished pursuant to this Contract within the
1428 Contractor's Service Area. Each such subcontract shall be subject to the obligations and
1429 limitations imposed, and to the rights granted, by this Contract and shall so provide. The terms
1430 and conditions of each subcontract, not previously approved, shall be approved by the Contracting
1431 Officer prior to the execution of such subcontract. Approval shall be limited to approval of the
1432 Subcontractor's Service Area and a determination that the subcontract is consistent with the
1433 provisions of this Contract. Nothing contained herein or in any subcontract shall be deemed in
1434 any way to release the Contractor from its primary liability to the United States hereunder with
1435 respect to each and all of the obligations undertaken by the Contractor in this Contract.

1436 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1437 year first above written.
1438

THE UNITED STATES OF AMERICA

1439 By: _____
1440 Regional Director, Mid-Pacific Region
1441 Bureau of Reclamation

1442 Approved as to Legal Form and DEPARTMENT OF WATER RESOURCES
1443 Sufficiency: OF THE STATE OF CALIFORNIA

1444 By: _____
1445 Chief Counsel,
1446 Department of Water Resources

By: _____
Director,
Department of Water Resources

1447 (SEAL) COUNTY OF FRESNO

1448 By: _____
1449 Chairman, Board of Supervisors

1450 Attest:

1451 By: _____
1452 Clerk, Board of Supervisors
1453

By: _____
Director, Public Works & Development
Services Department

1454 Approved as to Accounting Form: Approved as to Legal Form:

1455 By: _____
1456 Auditor-Controller/Treasurer/Tax Collector

By: _____
County Counsel

1457 BUDGET UNIT NO. _____ ACCOUNT NO.: _____

1458 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-20-04 County of Fresno Final Draft
1459 LTRC with exhibits.doc)``

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
COUNTY OF FRESNO
Water Rates and Charges

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

	<u>2004 Rates per Acre-Foot</u>	
	<u>Banks Joint Point Pumping</u>	
	<u>Irrigation Water</u>	<u>M&I Water</u>
O&M AND COST-OF-SERVICE RATES:		
Capital Rates:		
Cross Valley Conveyance (if applicable)	\$5.73	\$8.73
O&M Rates:		
Water Marketing	\$7.59	\$5.01
Storage	\$5.83	\$6.38
Direct Pumping (Project Use Energy)	\$3.25	\$3.25
Dos Amigos	4/	2/
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing	\$1.00	\$11.39
CFO/PFR Adj.Rate: **	\$2.17	\$0.31
TOTAL COST-OF-SERVICE RATES:	\$25.57	\$35.08
FULL-COST RATES:		
Section 202(3) Rate is applicable to a Qualified recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$34.71	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$37.36	
SURCHARGES UNDER P.L 102-575 TO RESTORATION FUND*		
Restoration Payments [3407(d)(2)(A)]	\$7.82	\$15.64

*The surcharges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1/01-9/30/02).

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

2/ - Except for Folsom-South Canal Conveyance Costs, Conveyance and Conveyance Pumping Operation and Maintenance Costs were removed for ratesetting purposes and are to be billed directly to the water authorities.

4/ - Conveyance and Conveyance Pumping operation and maintenance costs were removed for ratesetting purposes and are to be direct billed.