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Delta Division  
Contract No.  
14-06-200-3598A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
PATTERSON IRRIGATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 PATTERSON IRRIGATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all  
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES  
17 OF AMERICA, hereinafter referred to as the United States, and PATTERSON IRRIGATION  
18 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly  
19 organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

24 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other  
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the  
27 San Joaquin River and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related  
29 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the  
30 terms of this Contract; and

31 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant  
32 to California law for operation of the Project; and

33 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
34 No. 14-06-200-3598A, which established terms for the delivery to the Contractor of Project Water  
35 from the Delta Division Facilities from December 18, 1967, through February 28, 1995; and

36 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection  
37 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
38 interim renewal contract(s) identified as Contract No(s). 14-06-200-3598A-IR1, 14-06-200-3598A-  
39 IR2, 14-06-200-3598A-IR3, 14-06-200-3598A-IR4, 14-06-200-3598A-IR5, 14-06-200-3598A-IR6,  
40 14-06-200-3598A-IR7, 14-06-200-3598A-IR8, the current of which is hereinafter referred to as the  
41 Existing Contract, which provided for the continued water service to the Contractor from March 1,  
42 1995, through February 29, 2006; and

43 [5.1] WHEREAS, through Contract No. 14-06-200-3598A providing among other things  
44 6,000 acre-feet of Replacement Water, the parties reached a settlement with respect to any and all of  
45 the Contractor's claims that the construction and operation of the Project has interfered with its right  
46 in and to the use of the water of the San Joaquin River; and

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

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

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

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

59 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
60 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
61 beneficial use and/or has demonstrated projected future demand for water use such that the  
62 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the  
63 quantity of Project Water to be made available to it pursuant to this Contract; and

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

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

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

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

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

80 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
81 assignments, rescheduling and conveyance of Project Water and non-Project water under this  
82 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial  
83 use of water; and

84 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a  
85 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the  
86 Explanatory Recital immediately above; and

87 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
88 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

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DEFINITIONS

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

(a) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;

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

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

(d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)  
156 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the  
157 Delta Division Facilities pursuant to written agreement(s) with the United States. When this

158 Contract was entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota  
159 Water Authority.

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

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

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

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

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

173 (w.1) “Replacement Water” shall mean all water delivered to the Contractor  
174 without payment pursuant to this Contract, and without application of Federal Reclamation law,  
175 including but not limited to the acreage limitation provision of the Reclamation Reform Act of 1982  
176 (96 Stat. 1263), as amended, under the authority of Section 14 of the Reclamation Project Act of  
177 1939 (53 Stat. 1187 and 1197) as a full and complete adjustment and settlement of the Contractor’s  
178 asserted claim of right to water in the San Joaquin River in fulfillment of such rights, during the  
179 term of this Contract and any amendment or renewal thereof; and

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

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

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

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

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

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

195 TERM OF CONTRACT

196 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,  
197 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract  
198 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the  
199 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of  
200 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be  
201 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to  
202 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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

208                   (2)    The conditions which must be met for this Contract to be renewed are:

209 (i) the Contractor has prepared a water conservation plan that has been determined by the  
210 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and  
211 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is  
212 implementing an effective water conservation and efficiency program based on the Contractor's  
213 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating  
214 and maintaining all water measuring devices and implementing all water measurement methods as  
215 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has  
216 reasonably and beneficially used the Project Water supplies made available to it and, based on  
217 projected demands, is reasonably anticipated and expects to fully utilize for reasonable and  
218 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)  
219 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor  
220 has the physical and legal ability to deliver Project Water.

221                   (3)    The terms and conditions of the renewal contract described in  
222 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed  
223 consistent with the parties' respective legal rights and obligations, and in consideration of all  
224 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,  
225 without limitation, the Contractor's need for continued delivery of Project Water; environmental

226 conditions affected by implementation of the Contract to be renewed, and specifically changes in  
227 those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress  
228 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the  
229 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region  
230 served by the Contractor.

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

239 (d) The Contracting Officer shall make a determination ten years after the date of  
240 execution of this Contract, and every five years thereafter during the term of this Contract, of  
241 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of  
242 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70  
243 Stat 483). The Contracting Officer shall also make a determination ten years after the date of  
244 execution of this Contract and every five years thereafter during the term of this Contract of whether  
245 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the  
246 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this  
247 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956  
248 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all

249 authorized Project construction expected to occur will have occurred, and on that basis the  
250 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to  
251 the Contractor, and agrees further that, at any time after such allocation is made, and subject to  
252 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the  
253 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of  
254 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and  
255 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such  
256 conversion to occur shall be a determination by the Contracting Officer that, account being taken of  
257 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the  
258 remaining amount of construction costs assignable for ultimate return by the Contractor can  
259 probably be repaid to the United States within the term of a contract under subsection 9(d) or  
260 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to  
261 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall  
262 notify the Contractor, and provide the reason(s) why such a determination could not be made.  
263 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as  
264 to permit, upon request of the Contractor and satisfaction of the conditions set out above,  
265 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such  
266 determination of costs has not been made at a time which allows conversion of this Contract during  
267 the term of this Contract or the Contractor has not requested conversion of this Contract within such  
268 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)  
269 of this Article a provision that carries forth in substantially identical terms the provisions of this  
270 subdivision.

271 (e) In the event that this Contract terminates, the right of the Contractor to  
272 thereafter divert and use water from the San Joaquin River, and to assert its claim(s) against the  
273 United States for the alleged interference of the Project with the Contractor's ability to exercise its  
274 alleged rights to divert water from the San Joaquin River, shall exist as if this Contract had not been  
275 entered into. The existence of this Contract shall not affect the rights or position of either party  
276 with respect to its water rights or the yield thereof at any time after this Contract terminates.

277 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

278 3. (a) During each Year, consistent with all applicable State water rights, permits,  
279 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
280 Contract, the Contracting Officer shall make available for delivery to the Contractor 16,500 acre-  
281 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in  
282 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of  
283 Articles 4 and 7 of this Contract.

284 (b) Because the capacity of the Project to deliver Project Water has been  
285 constrained in recent years and may be constrained in the future due to many factors including  
286 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
287 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in  
288 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected  
289 that the Contract Total set forth in this Contract will not be available to the Contractor in many  
290 years. During the most recent five years, the Recent Historic Average of Water Made Available to  
291 the Contractor was 13,555 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights  
292 and obligations of the parties under any provision of this Contract.

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

295 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)  
296 that receives Project Water through the Delta Division Facilities obtains a contractual agreement  
297 that the Contracting Officer shall make Project Water available at a point or points of delivery in or  
298 north of the Delta, at the request of the Contractor and upon completion of any required  
299 environmental documentation, this Contract shall be amended to provide for deliveries in or north  
300 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely  
301 to those changes made necessary by the addition of such alternate points of delivery in or north of  
302 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to  
303 deliver Project Water does not trigger this right of amendment.

304 (d) The Contractor shall make reasonable and beneficial use of all water  
305 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),  
306 groundwater banking programs, surface water storage programs, and other similar programs  
307 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
308 Contractor's Service Area which are consistent with applicable State law and result in use consistent  
309 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is  
310 (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this  
311 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses  
312 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered  
313 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation  
314 law. Groundwater recharge programs, groundwater banking programs, surface water storage  
315 programs, and other similar programs utilizing Project Water or other water furnished pursuant to

316 this Contract conducted outside the Contractor's Service Area may be permitted upon written  
317 approval of the Contracting Officer, which approval will be based upon environmental  
318 documentation, Project Water rights, and Project operational concerns. The Contracting Officer  
319 will address such concerns in regulations, policies, or guidelines.

320 (e) The Contractor shall comply with requirements applicable to the Contractor  
321 in biological opinion(s) prepared as a result of a consultation regarding the execution of this  
322 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as  
323 amended, that are within the Contractor's legal authority to implement. The Existing Contract,  
324 which evidences in excess of 36 years of diversions for irrigation and/or M&I purposes of the  
325 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in  
326 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and  
327 any other needed environmental review. Nothing herein shall be construed to prevent the  
328 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
329 respect to any biological opinion or other environmental documentation referred to in this Article.

330 (f) Following the declaration of Water Made Available under Article 4 of this  
331 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
332 available to the Project, can be made available to the Contractor in addition to the Contract Total  
333 under this Article during the Year without adversely impacting other Project Contractors. At the  
334 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making  
335 such a determination. If the Contracting Officer determines that Project Water, or other water  
336 available to the Project, can be made available to the Contractor, the Contracting Officer will  
337 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
338 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable

339 of taking such water to determine the most equitable and efficient allocation of such water. If the  
340 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
341 such water available to the Contractor in accordance with applicable statutes, regulations,  
342 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and  
343 operational constraints, long-term Project Contractors shall have a first right to acquire such water,  
344 including Project Water made available pursuant to Section 215 of the RRA.

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

352 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable  
353 State law to the reasonable and beneficial use of Water Delivered and Replacement Water pursuant  
354 to this Contract during the term thereof and any subsequent renewal contracts, as described in  
355 Article 2 of this Contract, during the terms thereof shall not be disturbed so long as the Contractor  
356 shall fulfill all of its obligations under this Contract and any renewals thereof. Nothing in the  
357 preceding sentence shall affect the Contracting Officer’s ability to impose shortages under Article  
358 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent  
359 renewal contracts.

360 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
361 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this

362 Contract upon written approval by the Contracting Officer in accordance with the terms and  
363 conditions of such approval.

364 (j) The Contracting Officer shall make reasonable efforts to protect the water  
365 rights necessary for the Project and to provide the water available under this Contract. The  
366 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
367 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,  
368 That the Contracting Officer retains the right to object to the substance of the Contractor's position  
369 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall  
370 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

371 (k) In addition to Project Water and other water available to the Contractor  
372 pursuant to this Contract, each year the Contracting Officer shall furnish from the Delta Division  
373 Facilities, free of charge to the Contractor, including free from obligation to pay Rates and Charges  
374 hereinafter provided for, and in accordance with a schedule submitted in the same manner as  
375 required by subdivision (b) of Article 4 hereof, 6,000 acre-feet of Replacement Water. For  
376 purposes of this Contract, the Replacement Water shall be considered to be the first 6,000 acre-feet  
377 furnished in each Year. Nothing in this Contract is intended to affect the Contractor's right to  
378 continue to divert water from the San Joaquin River pursuant to State law. Nothing herein shall be  
379 deemed to be an assignment of any water right of the Contractor.

380 TIME FOR DELIVERY OF WATER

381 4. (a) On or about February 20<sup>th</sup> of each Calendar Year, the Contracting Officer  
382 shall announce the Contracting Officer's expected declaration of the Water Made Available as well  
383 as the quantity of Replacement Water expected to be delivered. Such declaration will be expressed  
384 in terms of both Water Made Available and the Recent Historic Average and will be updated

385 monthly, and more frequently if necessary, based on then-current operational and hydrologic  
386 conditions and a new declaration with changes, if any, to the Water Made Available will be made.  
387 The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate,  
388 with relevant supporting information, upon the written request of the Contractor. Concurrently with  
389 the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor  
390 with the updated Recent Historic Average.

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

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

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

406 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

420 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
421 measured and recorded with equipment furnished, installed, operated, and maintained by the  
422 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating  
423 Non-Federal Entity, unless undertaken by the Contractor with the consent of the Contracting  
424 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.  
425 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause  
426 to be investigated by the appropriate Operating Non-Federal Entity, the accuracy of such  
427 measurements and shall take any necessary steps to adjust any errors appearing therein. For any  
428 period of time when accurate measurements have not been made, the Contracting Officer shall

429 consult with the Contractor and the appropriate Operating Non-Federal Entity, if any, prior to  
430 making a final determination of the quantity delivered for that period of time.

431 (e) Absent a separate contrary written agreement with the Contractor, neither the  
432 Contracting Officer nor any Operating Non-Federal Entity shall be responsible for the control,  
433 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to  
434 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this  
435 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and  
436 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal  
437 responsibility, including property damage, personal injury, or death arising out of or connected with  
438 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such  
439 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of  
440 the Contracting Officer or any of its officers, employees, agents, and assigns, including the  
441 Operating Non-Federal Entity, with the intent of creating the situation resulting in any damage or  
442 claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,  
443 and assigns, including the Operating Non-Federal Entity; (iii) negligence of the Contracting Officer  
444 or any of its officers, employees, agents, and assigns including the Operating Non-Federal Entity; or  
445 (iv) a malfunction of facilities owned and/or operated by the United States or the Operating  
446 Non-Federal Entity.

447 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

448 6. (a) The Contractor has established a measuring program satisfactory to the  
449 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
450 purposes within the Contractor's Service Area is measured at each agricultural turnout and such  
451 water delivered for M&I purposes is measured at each M&I service connection. The water

452 measuring devices or water measuring methods of comparable effectiveness must be acceptable to  
453 the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
454 maintaining and repairing all such measuring devices and implementing all such water measuring  
455 methods at no cost to the United States. The Contractor shall use the information obtained from  
456 such water measuring devices or water measuring methods to ensure its proper management of the  
457 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water  
458 delivered for M&I purposes by customer class as defined in the Contractor's water conservation  
459 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude  
460 the Contractor from establishing and collecting any charges, assessments, or other revenues  
461 authorized by California law. The Contractor shall include a summary of all its annual surface  
462 water deliveries in the annual report described in subdivision (c) of Article 26.

463 (b) To the extent the information has not otherwise been provided, upon  
464 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report  
465 describing the measurement devices or water measuring methods being used or to be used to  
466 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I  
467 service connections or alternative measurement programs approved by the Contracting Officer, at  
468 which such measurement devices or water measuring methods are being used, and, if applicable,  
469 identifying the locations at which such devices and/or methods are not yet being used including a  
470 time schedule for implementation at such locations. The Contracting Officer shall advise the  
471 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the  
472 measuring devices or water measuring methods identified in the Contractor's report and if the  
473 Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
474 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,

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

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

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

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

488 RATES AND METHOD OF PAYMENT FOR WATER

489 7. (a) The Contractor shall pay the United States as provided in this Article for all  
490 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance  
491 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's  
492 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,  
493 modified, or superceded only through a public notice and comment procedure; (ii) applicable  
494 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
495 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,  
496 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting

497 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon  
498 execution of this Contract are set forth in Exhibit “B,” as may be revised annually.

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

501 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
502 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
503 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
504 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to  
505 review and comment on such estimates. On or before September 15 of each Calendar Year, the  
506 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the  
507 period October 1 of the current Calendar Year, through September 30, of the following Calendar  
508 Year, and such notification shall revise Exhibit “B.”

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

516 (c) At the time the Contractor submits the initial schedule for the delivery of  
517 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
518 shall make an advance payment to the United States equal to the total amount payable pursuant to  
519 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be

520 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
521 of the first month and before the end of each calendar month thereafter, the Contractor shall make  
522 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
523 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
524 following. Adjustments between advance payments for Water Scheduled and payments at Rates  
525 due for Water Delivered shall be made before the end of the following month; Provided, That any  
526 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases  
527 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied  
528 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not  
529 delivered to the Contractor in advance of such payment. In any month in which the quantity of  
530 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled  
531 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor  
532 unless and until an advance payment at the Rates then in effect for such additional Project Water is  
533 made. Final adjustment between the advance payments for the Water Scheduled and payments for  
534 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon  
535 as practicable but no later than April 30th of the following Year, or 60 days after the delivery of  
536 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not  
537 delivered by the last day of February.

538 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
539 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
540 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
541 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
542 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent

543 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery  
544 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no  
545 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be  
546 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water  
547 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the  
548 adjustment of payments due to the United States for Charges for the next month. Any amount to be  
549 paid for past due payment of Charges and the Tiered Pricing Component shall be computed  
550 pursuant to Article 20 of this Contract.

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

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

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

563 (h) The Contracting Officer shall keep its accounts pertaining to the  
564 administration of the financial terms and conditions of its long-term contracts, in accordance with  
565 applicable Federal standards, so as to reflect the application of Project costs and revenues. The

566 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a  
567 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project  
568 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer  
569 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes  
570 relating to accountings, reports, or information.

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

578 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
579 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
580 delivery the Contractor shall make an additional payment to the United States equal to the  
581 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
582 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
583 Contract Total, shall equal one-half of the difference between the Rate established under  
584 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
585 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which  
586 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established  
587 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost  
588 Water Rate, whichever is applicable.

589                   (2)     Subject to the Contracting Officer’s written approval, the Contractor  
590 may request and receive an exemption from such Tiered Pricing Component for Project Water  
591 delivered to produce a crop which the Contracting Officer determines will provide significant and  
592 quantifiable habitat values for waterfowl in fields where the water is used and the crops are  
593 produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water  
594 shall apply only if such habitat values can be assured consistent with the purposes of the CVPIA  
595 through binding agreements executed with or approved by the Contracting Officer prior to use of  
596 such water.

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

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

610                   (l)     Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,  
611 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates, in

612 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect  
613 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred  
614 Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and  
615 Charges because of inability to pay and is transferring Project Water to another entity whose Rates  
616 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project  
617 Water shall not be adjusted to reflect the Contractor's inability to pay.

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

620 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not  
621 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the  
622 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the  
623 Contractor does not waive any legal rights or remedies that it may have with respect to such  
624 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the  
625 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,  
626 computation, or imposition of any deficit charges accruing during the term of the Existing Contract  
627 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such  
628 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by  
629 the United States of payments made by the Contractor under its Existing Contract and any  
630 preceding interim renewal contracts if applicable; and (5) the application of such payments in the  
631 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any  
632 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and  
633 credits for payments heretofore made, provided that the basis for such ruling is applicable to the  
634 Contractor.

635 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

636 8. The Contractor and the Contracting Officer concur that, as of the effective date of  
637 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further  
638 liability therefore.

639 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

675 APPLICATION OF PAYMENTS AND ADJUSTMENTS

676 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
677 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
678 the Contractor arising out of this Contract then due and payable. Overpayments of more than  
679 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
680 overpayment at the option of the Contractor may be credited against amounts to become due to the

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

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

692 TEMPORARY REDUCTIONS--RETURN FLOWS

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

698 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may  
699 temporarily discontinue or reduce the quantity of Water Delivered and Replacement Water  
700 Delivered to the Contractor as herein provided for the purposes of investigation, inspection,  
701 maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for  
702 the delivery of Project Water and Replacement Water to the Contractor, but so far as feasible the  
703 Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due notice in

704 advance of such temporary discontinuance or reduction, except in case of emergency, in which case  
705 no notice need be given; Provided, That the United States shall use its best efforts to avoid any  
706 discontinuance or reduction in such service. Upon resumption of service after such reduction or  
707 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the  
708 quantity of Project Water and Replacement Water which would have been delivered hereunder in  
709 the absence of such discontinuance or reduction.

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

716 CONSTRAINTS ON THE AVAILABILITY OF WATER

717 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable  
718 means to guard against a Condition of Shortage in the quantity of water to be made available to the  
719 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a

720 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said  
721 determination as soon as practicable.

722 (b) If there is a Condition of Shortage because of errors in physical operations of  
723 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions  
724 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision  
725 (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its

726 officers, agents, or employees for any damage, direct or indirect, arising therefrom.

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

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

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

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

749                   (4)     The available supply shall be multiplied by the Contractor's  
750 proportionate share and the result shall be the quantity of Project Water made available by the  
751 United States to the Contractor for the relevant Year in accordance with the schedule developed by  
752 the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such  
753 amount exceed the Contract Total. In the event the Contracting Officer subsequently determines  
754 that the Contracting Officer can increase or needs to decrease the available supply for delivery from  
755 Delta Division Facilities to long-term water service and repayment Contractors during the relevant  
756 Year, such additions or reductions to the available supply shall be apportioned consistent with  
757 subparagraphs (1) through (4), inclusive.

758                   (d)     By entering into this Contract, the Contractor does not waive any legal rights  
759 or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
760 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of  
761 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is  
762 implemented in order to allocate Project Water between municipal and industrial and irrigation  
763 purposes; Provided, That the Contractor has commenced any such judicial challenge or any  
764 administrative procedures necessary to institute any judicial challenge within six months of the  
765 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any  
766 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein  
767 shall be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

768                   (e)     Notwithstanding any other provision of this Contract, Replacement Water  
769 will bear shortages and be reduced in accordance with the terms of the Second Amended Contract  
770 for Exchange of Waters, dated February 14, 1968, between the United States and the Central

771 California Irrigation District, Columbia Canal Company, San Luis Canal Company, and Firebaugh  
772 Canal Company, Contract No. I1r-1144.

773 UNAVOIDABLE GROUNDWATER PERCOLATION

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

778 RULES AND REGULATIONS

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

783 WATER AND AIR POLLUTION CONTROL

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

787 QUALITY OF WATER

788  
789 16. (a) Project facilities used to deliver Project Water and Replacement Water to the  
790 Contractor pursuant to this Contract shall be operated and maintained to enable the United States to  
791 deliver Project Water and Replacement Water to the Contractor in accordance with the water quality  
792 standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by  
793 Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The  
794 United States is under no obligation to construct or furnish water treatment facilities to maintain or  
795 to improve the quality of Water Delivered to the Contractor pursuant to this Contract. The United  
796 States does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

803 (c) Omitted.

804 WATER ACQUIRED BY THE CONTRACTOR  
805 OTHER THAN FROM THE UNITED STATES

806 17. (a) Water or water rights now owned or hereafter acquired by the Contractor  
807 other than from the United States and Irrigation Water furnished pursuant to the terms of this  
808 Contract may be simultaneously transported through the same distribution facilities of the  
809 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water  
810 and non-Project water were constructed without funds made available pursuant to Federal  
811 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the  
812 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation  
813 Water must be established through the certification requirements as specified in the Acreage  
814 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands  
815 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be  
816 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the  
817 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with  
818 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to  
819 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the  
820 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,

821 the Contracting Officer will calculate annually the cost to the Federal Government, including  
822 interest of storing or delivering non-Project water, which for purposes of this Contract shall be  
823 determined as follows: The quotient shall be the unpaid distribution system costs divided by the  
824 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the  
825 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the  
826 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of  
827 excess or full cost land within the Contractor's Service Area that receives non-Project water through  
828 Federally financed or constructed facilities. The incremental fee calculation methodology will  
829 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide  
830 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review  
831 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is  
832 adopted it shall supercede this provision.

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

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

844                   (2)     Delivery of such non-Project water in and through Project facilities  
845 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes  
846 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to  
847 other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any  
848 other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

849                   (3)     Neither the United States nor the Operating Non-Federal Entity(ies)  
850 shall be responsible for control, care, or distribution of the non-Project water before it is introduced  
851 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to  
852 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their  
853 respective officers, agents, and employees, from any claim for damage to persons or property, direct  
854 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in  
855 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project  
856 water into Project facilities.

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

860                   (5)     After Project purposes are met, as determined by the Contracting  
861 Officer, the United States and Project Contractors entitled to Project Water from Delta Division  
862 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be  
863 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
864 any such remaining capacity being made available to non-Project contractors. Other Project  
865 Contractors shall have a second priority to any remaining capacity of facilities declared to be

866 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
867 any such remaining capacity being made available to non-Project contractors.

868 OPINIONS AND DETERMINATIONS

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

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

883 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

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

922 CHARGES FOR DELINQUENT PAYMENTS

923 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
924 on delinquent installments or payments. When a payment is not received by the due date, the  
925 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
926 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
927 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
928 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
929 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
930 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
931 payment.

932  
933 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
934 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
935 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation  
936 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
937 date and remain fixed for the duration of the delinquent period.

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

941 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

976 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
977 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
978 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
979 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
980 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
981 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,  
982 That in the event the Contractor becomes involved in, or is threatened with, litigation with a

983 subcontractor or vendor as a result of such direction, the Contractor may request the United States  
984 to enter into such litigation to protect the interests of the United States.

985 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

998 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

999 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1000 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
1001 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,  
1002 as well as with their respective implementing regulations and guidelines imposed by the U.S.  
1003 Department of the Interior and/or Bureau of Reclamation.

1004 (b) These statutes require that no person in the United States shall, on the  
1005 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
1006 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
1007 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
1008 Contractor agrees to immediately take any measures necessary to implement this obligation,  
1009 including permitting officials of the United States to inspect premises, programs, and documents.

1010 (c) The Contractor makes this agreement in consideration of and for the purpose  
1011 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal  
1012 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,  
1013 including installment payments after such date on account of arrangements for Federal financial  
1014 assistance which were approved before such date. The Contractor recognizes and agrees that such  
1015 Federal assistance will be extended in reliance on the representations and agreements made in this  
1016 Article, and that the United States reserves the right to seek judicial enforcement thereof.

1017

PRIVACY ACT COMPLIANCE

1018           24.   (a)    The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
1019 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
1020 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
1021 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform  
1022 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1023                   (b)    With respect to the application and administration of the criminal penalty  
1024 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible  
1025 for maintaining the certification and reporting records referenced in (a) above are considered to be  
1026 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1027  
1028                   (c)    The Contracting Officer or a designated representative shall provide the  
1029 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
1030 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
1031 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
1032 contained in the Landholder's certification and reporting records.

1033                   (d)    The Contracting Officer shall designate a full-time employee of the Bureau of  
1034 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
1035 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
1036 authorized to grant requests by individuals for access to their own records.

1037                   (e)    The Contractor shall forward promptly to the System Manager each proposed  
1038 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
1039 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1040 information and records necessary to prepare an appropriate response to the requester. These  
1041 requirements do not apply to individuals seeking access to their own certification and reporting  
1042 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the  
1043 Privacy Act as a basis for the request.

1044

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1045           25.    In addition to all other payments to be made by the Contractor pursuant to this  
1046 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
1047 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of  
1048 direct cost incurred by the United States for work requested by the Contractor associated with this  
1049 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1050 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in

1051 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1052 administration.

1053 WATER CONSERVATION

1054 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1055 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1056 implementing an effective water conservation and efficiency program based on the Contractor's  
1057 water conservation plan that has been determined by the Contracting Officer to meet the  
1058 conservation and efficiency criteria for evaluating water conservation plans established under  
1059 Federal law. The water conservation and efficiency program shall contain definite water  
1060 conservation objectives, appropriate economically feasible water conservation measures, and time  
1061 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract  
1062 shall be contingent upon the Contractor's continued implementation of such water conservation  
1063 program. In the event the Contractor's water conservation plan or any revised water conservation  
1064 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
1065 determined by the Contracting Officer to meet such criteria, due to circumstances which the  
1066 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be  
1067 made under this Contract so long as the Contractor diligently works with the Contracting Officer to  
1068 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately  
1069 begins implementing its water conservation and efficiency program in accordance with the time  
1070 schedules therein.

1071 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1072 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
1073 the Best Management Practices identified by the time frames issued by the California Urban Water

1074 Conservation Council for such M&I Water unless any such practice is determined by the  
1075 Contracting Officer to be inappropriate for the Contractor.

1076 (c) The Contractor shall submit to the Contracting Officer a report on the status  
1077 of its implementation of the water conservation plan on the reporting dates specified in the then  
1078 existing conservation and efficiency criteria established under Federal law.

1079 (d) At five-year intervals, the Contractor shall revise its water conservation plan  
1080 to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1081 plans established under Federal law and submit such revised water management plan to the  
1082 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1083 water conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1084 evaluating water conservation plans established under Federal law.

1085 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1086 shall be described in the Contractor's water conservation plan.

1087 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

1088           OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1089           28.     (a)     The O&M of a portion of the Project facilities which serve the Contractor,  
1090 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San  
1091 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement  
1092 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &  
1093 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the  
1094 rights or obligations of the Contractor or the United States hereunder.

1095                     (b)     The Contracting Officer has previously notified the Contractor in writing that  
1096 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1097 been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,  
1098 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &  
1099 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the  
1100 terms and conditions of the separate agreement between the United States and the Operating Non-  
1101 Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this  
1102 Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds,  
1103 which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such  
1104 successor determines, sets, or establishes for the O&M of the portion of the Project facilities  
1105 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1106 Authority or such successor. Such direct payments to the Operating Non-Federal Entity San Luis &  
1107 Delta-Mendota Water Authority or such successor shall not relieve the Contractor of its obligation  
1108 to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered  
1109 Pricing Component except to the extent the Operating Non-Federal Entity San Luis &

1110 Delta-Mendota Water Authority collects payments on behalf of the United States in accordance  
1111 with the separate agreement identified in subdivision (a) of this Article.

1112 (c) For so long as the O&M of any portion of the Project facilities serving the  
1113 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1114 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1115 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1116 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1117 or its successor.

1118 (d) In the event the O&M of the Project facilities operated and maintained by the  
1119 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the  
1120 United States during the term of this Contract, the Contracting Officer shall so notify the  
1121 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the  
1122 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing  
1123 the O&M costs of the portion of such Project facilities which have been re-assumed. The  
1124 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the  
1125 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit  
1126 "B" directly to the United States in compliance with Article 7 of this Contract.

1127 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1128 29. The expenditure or advance of any money or the performance of any obligation of  
1129 the United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1130 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1131 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1132 or allotted.

1133 BOOKS, RECORDS, AND REPORTS

1134 30. (a) The Contractor shall establish and maintain accounts and other books and  
1135 records pertaining to administration of the terms and conditions of this Contract, including: the

1136 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1137 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1138 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished  
1139 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may  
1140 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have  
1141 the right during office hours to examine and make copies of the other party's books and records  
1142 relating to matters covered by this Contract.

1143 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1144 records, or other information shall be requested from the Contractor by the Contracting Officer  
1145 unless such books, records, or information are reasonably related to the administration or  
1146 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1147 time within which to provide the requested books, records, or information.

1148 (c) At such time as the Contractor provides information to the Contracting  
1149 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to  
1150 the Operating Non-Federal Entity.

1151 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1152 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1153 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1154 therein shall be valid until approved in writing by the Contracting Officer.

1155 (b) The assignment of any right or interest in this Contract by either party shall  
1156 not interfere with the rights or obligations of the other party to this Contract absent the written  
1157 concurrence of said other party.

1158 (c) The Contracting Officer shall not unreasonably condition or withhold  
1159 approval of any proposed assignment.

1160 SEVERABILITY

1161 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1162 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an

1163 association or other form of organization whose primary function is to represent parties to Project  
1164 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1165 enforceability of a provision included in this Contract and said person, entity, association, or  
1166 organization obtains a final court decision holding that such provision is legally invalid or  
1167 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1168 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1169 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1170 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
1171 specified above may be extended by mutual agreement of the parties. Pending the completion of  
1172 the actions designated above, to the extent it can do so without violating any applicable provisions  
1173 of law, the United States shall continue to make the quantities of Project Water specified in this  
1174 Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1175 found to be legally invalid or unenforceable in the final court decision.

#### 1176 RESOLUTION OF DISPUTES

1177 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1178 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1179 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1180 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1181 notice of the intent to take such action; Provided, That such notice shall not be required where a  
1182 delay in commencing an action would prejudice the interests of the party that intends to file suit.  
1183 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1184 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1185 waive or abridge any right or remedy that the Contractor or the United States may have.

1186

OFFICIALS NOT TO BENEFIT

1187           34.    No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1188 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1189 manner as other water users or landowners.

1190

CHANGES IN CONTRACTOR'S SERVICE AREA

1191           35.    (a)    While this Contract is in effect, no change may be made in the Contractor's  
1192 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1193 except upon the Contracting Officer's written consent.

1194                   (b)    Within 30 days of receipt of a request for such a change, the Contracting  
1195 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1196 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1197 timely completion of the process. Such process will analyze whether the proposed change is likely  
1198 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability  
1199 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1200 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1201 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply  
1202 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the  
1203 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this  
1204 Contract.

1205

FEDERAL LAWS

1206           36.    By entering into this Contract, the Contractor does not waive its rights to contest the  
1207 validity or application in connection with the performance of the terms and conditions of this  
1208 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1209 terms and conditions of this Contract unless and until relief from application of such Federal law or

1210 regulation to the implementing provision of the Contract is granted by a court of competent  
1211 jurisdiction.

1212 NOTICES

1213 37. Any notice, demand, or request authorized or required by this Contract shall be  
1214 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1215 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California  
1216 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board  
1217 of Directors of the Patterson Irrigation District, 948 Orange Avenue or P. O. Box 685, Patterson,  
1218 California 95363. The designation of the addressee or the address may be changed by notice given  
1219 in the same manner as provided in this Article for other notices.

1220 CONFIRMATION OF CONTRACT

1221 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1222 decree of a court of competent jurisdiction of the State of California, confirming the execution of  
1223 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1224 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1225 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1226 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1227 year first above written.

1228 THE UNITED STATES OF AMERICA

1229 By: \_\_\_\_\_  
1230 Regional Director, Mid-Pacific Region  
1231 Bureau of Reclamation

1232 (SEAL)

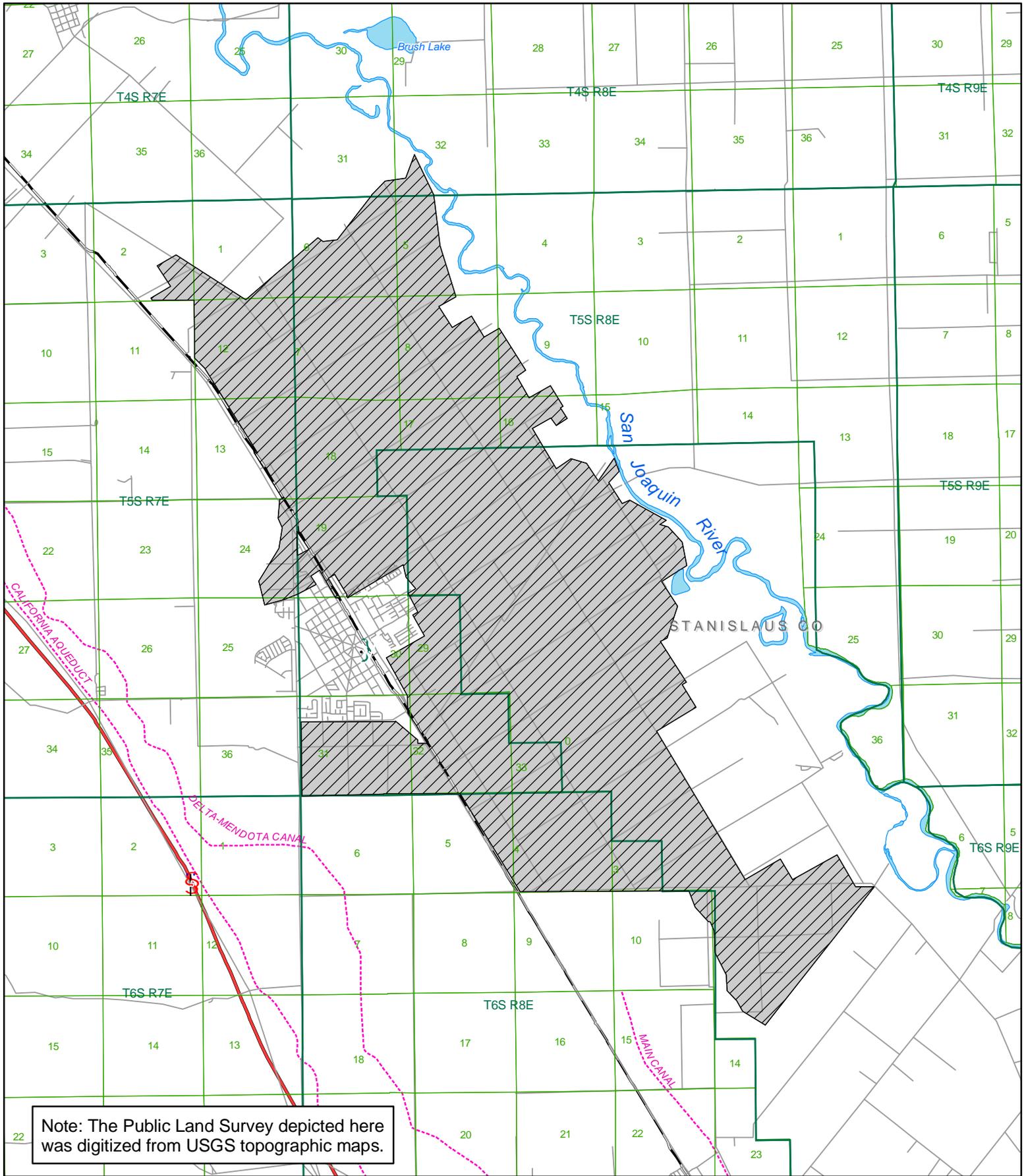
1233 PATTERSON IRRIGATION DISTRICT

1234 By: \_\_\_\_\_  
1235 President of the Board of Directors

1236 Attest:

1237 By: \_\_\_\_\_  
1238 Secretary of the Board of Directors

1239 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-27-04 Patterson ID Final Draft LTRC  
1240 with exhibits.doc)



# Patterson I.D.

Contract No. 14-06-200-3598A-LTR1  
EXHIBIT A



EXHIBIT B  
PATTERSON WATER DISTRICT  
Water Rates and Charges

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

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&amp;I</u> <u>Water 1/</u>
Capital Rates	\$10.69	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing	1.96	
CFO/PFR Adj. Rate 2/		
<b>TOTAL COST-OF-SERVICE-RATES</b>	<u>\$26.07</u>	<u>  1/</u>
<u>FULL-COST RATES</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$40.21</u>	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	<u>\$47.32</u>	
<u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>

1/ To be provided as needed. Contractor does not currently receive M&I water and is not projected to take any in the near future.

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

3/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1-9/30).