

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
PACHECO WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT

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1           THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 20XX, in  
2           pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or  
3           supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
4           as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
5           July 2, 1956 (70 Stat. 483), June 3 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12,  
6           1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of  
7           October 30, 1992 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for  
8           the Nation Act (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f)  
9           (“WIIN Act”), all collectively hereinafter referred to as Federal Reclamation law, between the  
10          UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by  
11          the officer executing this Contract, hereinafter referred to as the Contracting Officer, and  
12          PACHECO WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the  
13          State of California, duly organized, existing, and acting pursuant to the laws thereof;  
14          WITNESSETH, That:

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EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed the Delta Division Facilities, including the San Luis Unit facilities (which include the San Luis Canal, the Coalinga Canal, the Pleasant Valley Pumping Plant, and the Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

[4<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Contract No. 7-07-20-W0005, as amended, which provided the Contractor, Project Water from the Project facilities from March 24, 1977 to February 2, 1986; and

[5<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Delta Division and San Luis Unit Contract Number 06-07-20-W0469 as amended, which is hereinafter referred to as the “Existing Contract”, which established terms for the delivery of Project Water

36 to the Contractor from the Delta Division and San Luis Unit, and which was in effect the date the  
37 WIIN Act was enacted; and

38 [6<sup>th</sup>] WHEREAS, on December 16, 2016, the 114<sup>th</sup> Congress of the United  
39 States of America enacted the WIIN Act; and

40 [7<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the  
41 contractor, the Secretary of the Interior shall convert any water service contract in effect on the  
42 date of enactment of this subtitle and between the United States and a water users’ association  
43 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under  
44 mutually agreeable terms and conditions.”; and

45 [8<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of  
46 conversion under this paragraph shall be as follows: (A) Water service contracts that were  
47 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under  
48 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.  
49 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9  
50 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be  
51 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

52 [9<sup>th</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered  
53 into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service,  
54 repayment, exchange and transfer contractual rights between the water users’ association  
55 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the  
56 water users’ association [Contractor] and their landowners as provided under State law.”; and

57 [10<sup>th</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that  
58 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water  
59 service or repayment contractor to receive water; or (4) except as expressly provided in this  
60 section, any obligations under the Federal Reclamation law, including the continuation of  
61 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and  
62 repayment contractors making prepayments pursuant to this section.”; and

63 [11<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the  
64 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water  
65 service contracts into repayment contracts, amend existing repayment contracts, and allow  
66 contractors to prepay their construction cost obligations pursuant to applicable Federal  
67 Reclamation law; and

68 [12<sup>th</sup>] WHEREAS, the United States has determined that the Contractor  
69 has fulfilled all of its obligations under the Existing Contract; and

70 [13<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
71 Contracting Officer that the Contractor has utilized the Project Water supplies available  
72 to it for reasonable and beneficial use and expects to utilize fully for reasonable and  
73 beneficial use the quantity of Project Water to be made available to it pursuant to this  
74 Contract; and

75 [14<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by  
76 urban and agricultural areas within California for more than 50 years, and is considered  
77 by the Contractor as an essential portion of its water supply; and

78 [15<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the  
79 Contractor's, depend upon the continued availability of water, including water service  
80 from the Project; and

81 [16<sup>th</sup>] WHEREAS, the United States Court of Appeals for the Ninth Circuit has  
82 held that Section 1(a) of the San Luis Act, Pub. L. 86-488 (74 Stat. 156) imposes on the  
83 Secretary of the Interior a duty to provide drainage service to the San Luis Unit; and

84 [17<sup>th</sup>] WHEREAS, the Contractor and the Contracting Officer recognize that  
85 adequate drainage service is required to maintain agricultural production within certain  
86 areas served with Project Water made available under this Contract; and

87 [18<sup>th</sup>] WHEREAS, the Contracting Officer intends, to the extent appropriated  
88 funds are available, to develop and implement effective solutions to drainage problems in  
89 the San Luis Unit; and

90 [19<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor  
91 acknowledge that such drainage solutions may involve actions not originally  
92 contemplated and/or the construction or use of facilities, other than the San Luis Drain;  
93 that the Contractor is investing in drainage solutions for lands within its boundaries that  
94 should be considered by the Contracting Officer in determining drainage solutions; and that the  
95 existing ratesetting policy as it relates to the allocation and collection of drainage costs may  
96 require amendment to recognize those investments by the Contractor and other relevant  
97 circumstances; and

98 [20<sup>th</sup>] WHEREAS, the Department of the Interior, Bureau of Reclamation  
99 published in June 2006 the San Luis Drainage Feature Re-evaluation Final

100 Environmental Impact Statement, which considers alternatives to provide agricultural  
101 drainage service to the San Luis Unit; and

102 [21<sup>st</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
103 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
104 Project for all Project purposes; and

105 [22<sup>nd</sup>] WHEREAS, the mutual goals of the United States and the Contractor  
106 include: to provide for reliable Project Water supplies; to control costs of those supplies;  
107 to achieve repayment of the Project as required by law; to guard reasonably against Project  
108 Water shortages; to achieve a reasonable balance among competing demands for use of  
109 Project Water; and to comply with all applicable environmental statutes, all consistent with  
110 the legal obligations of the United States relative to the Project; and

111 [23<sup>rd</sup>] WHEREAS, the parties intend by this Contract to maintain a cooperative  
112 relationship in order to achieve their mutual goals; and

113 [24<sup>th</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
114 assignments, rescheduling, and conveyance of Project Water and non-Project water under this  
115 Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the  
116 beneficial use of water; and

117 [25<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a  
118 disincentive to the Contractor in continuing to carry out the beneficial activities set out in  
119 the Explanatory Recital immediately above; and

120 [26<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this  
121 Contract complies with Section 4011 of the WIIN Act; and



122 [27<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend  
123 and convert the Existing Contract pursuant to section 4011 of the WIIN Act and other Federal  
124 Reclamation law on the terms and conditions set forth below.

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

127 DEFINITIONS

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

130 (a) “Additional Capital Obligation” shall mean construction costs or other  
131 capitalized costs incurred after the Effective Date or not reflected in the Existing Capital  
132 Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and  
133 (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130  
134 Stat. 1628) (“WIIN Act”);

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

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

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

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

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

148 (g) “Contractor's Service Area” shall mean the area to which the Contractor is  
149 permitted to provide Project Water under this Contract as described in Exhibit “A”  
150 attached hereto, which may be modified from time to time in accordance with Article 36  
151 of this Contract without amendment of this Contract;

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

154 (i) “Delta Division Facilities” shall mean those existing and future Project  
155 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not  
156 limited to, the C.W. “Bill” Jones Pumping Plant, the O'Neill Forebay, the O'Neill  
157 Pumping/Generating Plant, and the San Luis Reservoir, used to divert, store, and convey  
158 water to those Project Contractors entitled to receive water conveyed through the Delta-  
159 Mendota Canal;

160 (j) “Eligible Lands” shall mean all lands to which Irrigation Water may be  
161 delivered in accordance with Section 204 of the Reclamation Reform Act of 1982 (96 Stat.  
162 1263), as amended;

163 (k) “Excess Lands” shall mean all lands in excess of the limitations  
164 contained in Section 204 of the Reclamation Reform Act of 1982, other than those lands  
165 exempt from acreage limitation under Federal Reclamation law;

166 (l) “Existing Capital Obligation” shall mean the remaining amount of  
167 construction costs or other capitalized costs allocable to the Contractor as described in section  
168 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central  
169 Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively,  
170 dated **Month/Day/Year [specify ratebook year for all contractors.] [contractor specific to**  
171 **address the intertie]**, as adjusted to reflect payments not reflected in such schedule. The  
172 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in  
173 Exhibit “C”, which is incorporated herein by reference;

174 (m) “Full Cost Rate”, pursuant to CVPIA section 3405(d), shall mean an  
175 annual rate, as determined by the Contracting Officer that shall amortize the expenditures for  
176 construction properly allocable to the Project irrigation or M&I functions, as appropriate, of  
177 facilities in service including all O&M deficits funded, less payments, over such periods as may  
178 be required under Federal Reclamation law, or applicable contract provisions. Interest will  
179 accrue on both the construction expenditures and funded O&M deficits from October 12, 1982,  
180 on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent  
181 to October 12 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C)  
182 of the Reclamation Reform Act of 1982. The Full Cost Rate includes actual operation,  
183 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations  
184 for the Reclamation Reform Act of 1982;

185 (n) "Ineligible Lands" shall mean all lands to which Irrigation Water may  
186 not be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982;

187 (o) "Irrigation Full Cost Water Rate", pursuant to CVPIA section 3405(d),  
188 shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

189 (p) "Irrigation Water or Agricultural Water" shall mean the use of  
190 Project Water to irrigate lands primarily for the production of commercial agricultural crops  
191 or livestock, and domestic and other uses that are incidental thereto;

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

194 (r) "Municipal and Industrial (M&I) Water" shall mean the use of Project  
195 Water for municipal, industrial, and miscellaneous other purposes not falling under the  
196 definition of "Irrigation Water" or within another category of water use under an  
197 applicable Federal authority;

198 (s) "M&I Full Cost Water Rate", pursuant to CVPIA section 3405(d), shall  
199 mean the Full Cost Rate applicable to the delivery of M&I Water;

200 (t) "Operation and Maintenance" or "O&M" shall mean normal and  
201 reasonable care, control, operation, repair, replacement (other than capital replacement),  
202 and maintenance of Project facilities;

203 (u) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)  
204 successors or assigns, which has (have) the obligation to operate and maintain all or a  
205 portion of the Delta Division Facilities pursuant to written agreement(s) with the United  
206 States. When this Contract was entered into, the Operating Non-Federal Entities were the  
207 San Luis & Delta-Mendota Water Authority and, with respect to San Luis Unit facilities,  
208 the California Department of Water Resources, and the Contractor;

209 (v) "Project" shall mean the Central Valley Project owned by the United  
210 States and managed by the Department of the Interior, Bureau of Reclamation;

211 (w) "Project Contractors" shall mean all parties who have contracts for  
212 water service for Project Water from the Project with the United States pursuant to Federal  
213 Reclamation law;

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

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

221 (z) "Repayment Obligation" for Water Delivered as Irrigation Water shall  
222 mean the Existing Capital Obligation discounted by  $\frac{1}{2}$  of the Treasury rate, which shall be the  
223 amount due and payable to the United States, pursuant to section 4011(a)(2)(A) of the WIIN Act;  
224 and for Water Delivered as M&I Water shall mean the amount due and payable to the United  
225 States, pursuant to section 4011(a)(3)(A) of the WIIN Act;

226 (aa) "San Luis Unit" shall mean the Project facilities constructed pursuant to  
227 the Act of June 3, 1960 (74 Stat. 156), including the San Luis Canal;

228 (bb) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
229 successor, or an authorized representative acting pursuant to any authority of the  
230 Secretary and through any agency of the Department of the Interior;

231 (cc) “Tiered Pricing Component” shall be the incremental amount to be  
232 paid for each acre-foot of Water Delivered as described in Article 7 of this Contract and  
233 as provided for in Exhibit “B”;

234 (dd) “Water Delivered” or “Delivered Water” shall mean Project Water  
235 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
236 Officer;

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

240 (ff) “Water Scheduled” shall mean Project Water made available to the  
241 Contractor for which times and quantities for delivery have been established by the  
242 Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract;  
243 and

244 (gg) “Year” shall mean the period from and including March 1 of each  
245 Calendar Year through the last day of February of the following Calendar Year.

246 TERM OF CONTRACT – RIGHT TO USE OF WATER

247 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the  
248 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges  
249 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.  
250 1195) as applicable, and applicable law;

251 (1) *Provided, That* the Contracting Officer shall not seek to terminate  
252 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,

253 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice  
254 to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay,  
255 or to diligently commence and maintain full curative payments satisfactory to the Contracting  
256 Officer within the sixty (60) calendar days' notice period;

257                                   (2)     *Provided, further, That* the Contracting Officer shall not seek to  
258 suspend making water available or declaring Water Made Available pursuant to this Contract for  
259 non-compliance by the Contractor with the terms of this Contract or Federal law, unless the  
260 Contracting Officer has first provided at least thirty (30) calendar days written notice to the  
261 Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence  
262 curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully  
263 cured within the thirty (30) calendar days' notice period. If the Contracting Officer has  
264 suspended making water available pursuant to this paragraph, upon cure of such non-compliance  
265 satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water  
266 available and declaring Water Made Available pursuant to this Contract;

267                                   (3)     *Provided, further, That* this Contract may be terminated at any  
268 time by mutual consent of the parties hereto.

269                                   (b)     Upon complete payment of the Repayment Obligation by the Contractor,  
270 and notwithstanding any Additional Capital Obligation that may later be established, the acreage  
271 limitations, reporting, and full cost pricing provisions of the Reclamation Reform Act of 1982,  
272 and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands of Article 1 of  
273 this Contract shall no longer be applicable.

274 (c) Notwithstanding any provision of this Contract, the Contractor reserves  
275 and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483), to the extent  
276 allowed by law.

277 (d) Notwithstanding any provision of this Contract, the Contractor reserves  
278 and shall have all rights and benefits under the Act of June 21, 1963 (77 Stat. 68), to the extent  
279 allowed by law.

280 WATER TO BE FURNISHED TO THE CONTRACTOR

281 3. (a) In the Year commencing with March 1 following execution of this  
282 Contract and each Year thereafter during the remainder of the term of this Contract, the United  
283 States shall furnish to the Contractor and the Contractor shall accept and pay for, as provided in  
284 Article 7 hereof, 10,080 acre-feet of water from the Delta-Mendota Canal: *Provided, That* at the  
285 option of the Contractor any or all of the water made available under this Contract may be  
286 delivered from the San Luis Canal and paid for at the rate per acre-foot applicable for deliveries  
287 from the San Luis Unit pursuant to Article 7: *Provided further, That* by written notice furnished  
288 to the Contracting Officer before November 1 of any Year the Contractor may decrease the  
289 quantity of water required thereafter to be furnished each Year to the Contractor by the United  
290 States during the remainder of the term of this Contract.

291 (b) In the event the Contractor in any year requires a quantity of water in  
292 addition to the quantity it is obligated to accept and pay for pursuant to Article 3, such additional  
293 water, if available as determined by the Contracting Officer, shall be furnished by the United  
294 States in accordance with a revised schedule submitted pursuant to Article 4. The furnishing by



295 the United States and acceptance by the Contractor of such additional quantity of water shall  
296 neither entitle nor obligate the Contractor to receive such quantities in subsequent years.

297 (e) The Contractor shall comply with requirements applicable to the  
298 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
299 of any water service contract between the Contracting Officer and the Contractor in effect  
300 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered  
301 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to  
302 implement. The Existing Contract, which evidences diversions for irrigation and/or M&I  
303 purposes since 1977 of the quantities of Project Water provided in subdivision (a) of Article 3 of  
304 this Contract, will be considered in developing an appropriate baseline for any required  
305 biological assessment(s) prepared pursuant to the ESA, and any other needed environmental  
306 review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking  
307 judicial relief in a court of competent jurisdiction with respect to any biological opinion or other  
308 environmental documentation referred to in this Article.

309 SCHEDULES FOR DELIVERY OF WATER

310 4. (a) Before March 1 of each year the Contractor shall submit a schedule  
311 in writing to the Contracting Officer subject to the provisions of Article 3 hereof and this Article,  
312 in a form and from an operational standpoint satisfactory to the Contracting Officer, indicating  
313 the desired times and quantities for the delivery of all water pursuant to this Contract during such  
314 Year. Within the provisions hereof the United States shall attempt to deliver said water in  
315 accordance with said schedule or any revision thereof satisfactory to the Contracting Officer  
316 submitted by the Contractor within a reasonable time before the desired change of times or

317 quantities, or both, for delivery: *Provided, That* the United States shall not be obligated to deliver  
318 water from the Delta-Mendota Canal to the Contractor during the months of December and  
319 January.

320 (b) If in any Year after the Contracting Officer has approved a schedule or any  
321 revision thereof submitted by the Contractor pursuant to subdivision (a) of this Article, the United  
322 States is unable to furnish any portion of the water in the quantities and at the times requested in  
323 the schedule and the Contractor does not elect to receive and does not receive such water at other  
324 times during such Year, the Contractor shall be entitled to an adjustment as provided in Article  
325 10 of this Contract.

326 (c) If the Contractor during any month is furnished a quantity of water in  
327 addition to that which it has requested for such month in its schedule and accepts such water, the  
328 Contractor shall be deemed to have revised its schedule and ordered such additional water and the  
329 United States shall be deemed to have accepted such revision as satisfactory. As soon thereafter  
330 as possible, the Contractor shall submit a revised schedule to the United States for the remaining  
331 quantity to be delivered during that Year.

332 (d) The Contractor will use all proper methods to secure the economical and  
333 beneficial use of water furnished pursuant to this Contract.

334 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

335 5. (a) The water to be furnished to the Contractor from the Delta-Mendota Canal  
336 will be delivered through permanent facilities to be constructed by the United States at Mileposts  
337 90.52 Right and 90.53 Right, and from the San Luis Canal at Milepost 89.67 Left, or at such  
338 other point or points as may be agreed upon between the Contracting Officer and the Contractor..

339           (b)     The Contractor shall construct and install, without cost or expense to  
340 the United States, temporary facilities required by the Contractor to take and convey the  
341 water from the point or points of delivery along the San Luis Canal. The Contractor will  
342 furnish for approval of the Contracting Officer drawings showing the construction to be  
343 performed by the Contractor at least 6 months before starting construction on property of  
344 the United States. The Contractor will not commence construction of any facilities on the  
345 property of the United States without the Contracting Officer's written approval of the  
346 drawings submitted by the Contractor. It is specifically recognized and agreed that this  
347 Contract does not grant to the Contractor any right of access to Project water or to lands of  
348 the United States for any purpose except as provided herein for installation, operation, and  
349 maintenance of the Contractor's facilities to take Project water.

350           (c)     The Contracting Officer shall make all reasonable efforts, consistent with  
351 the most efficient overall operation of the Project, to maintain sufficient flows and levels of  
352 water in the Delta-Mendota Canal and San Luis Canal to furnish water to the Contractor at the  
353 full designed capacity of the turnouts established as delivery points pursuant to subdivision (a) of  
354 this article.

355           (d)     The Contractor shall deliver Irrigation Water in accordance with any  
356 applicable land classification provisions of Federal Reclamation law and the associated  
357 regulations. Water furnished to the Contractor pursuant to this Contract shall not be sold or  
358 otherwise disposed of for use outside the Contractor's service area without the written consent of  
359 the Contracting Officer.

360 (e) All Water Delivered pursuant to this Contract at the points of delivery  
361 established pursuant to subdivision (a) of this Article shall be measured by the United States with  
362 equipment installed, operated, and maintained by the Contracting Officer. Upon the request of  
363 the Contractor, the accuracy of such measurements will be investigated by the Contracting Officer  
364 and any errors appearing therein adjusted,

365 (f) The Contracting Officer shall not be responsible for the control, carriage,  
366 handling, use, disposal, or distribution of water which may be furnished at the delivery points  
367 established pursuant to subdivision (a) of this Article, nor for claim of damage of any nature  
368 whatsoever, including but not limited to property damage, personal injury or death, arising out of  
369 or connected with the control, carriage, handling, use, disposal, or distribution of such water  
370 beyond such delivery point.

371 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

372 6. (a) The Contractor has established a measuring program satisfactory to  
373 the Contracting Officer. The Contractor shall ensure that all surface water delivered for  
374 irrigation purposes within the Contractor's Service Area is measured at each agricultural  
375 turnout and such water delivered for M&I purposes is measured at each M&I service  
376 connection. The water measuring devices or water measuring methods of comparable  
377 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be  
378 responsible for installing, operating, maintaining, and repairing all such measuring devices  
379 and implementing all such water measuring methods at no cost to the United States. The  
380 Contractor shall use the information obtained from such water measuring devices or  
381 water measuring methods to ensure its proper management of the water; to bill water users for

382 water delivered by the Contractor; and, if applicable, to record water delivered for M&I  
383 purposes by customer class as defined in the Contractor's water conservation plan  
384 provided for in Article 25 of this Contract. Nothing herein contained, however, shall  
385 preclude the Contractor from establishing and collecting any charges, assessments, or  
386 other revenues authorized by California law. The Contractor shall include a summary of  
387 all its annual surface water deliveries in the annual report described in subdivision (c) of  
388 Article 25 of this Contract.

389 (b) To the extent the information has not otherwise been provided, upon  
390 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
391 report describing the measurement devices or water measuring methods being used or to  
392 be used to implement subdivision (a) of this Article and identifying the agricultural  
393 turnouts and the M&I service connections or alternative measurement programs  
394 approved by the Contracting Officer, at which such measurement devices or water  
395 measuring methods are being used, and, if applicable, identifying the locations at which  
396 such devices and/or methods are not yet being used including a time schedule for  
397 implementation at such locations. The Contracting Officer shall advise the Contractor  
398 in writing within 60 days as to the adequacy and necessary modifications, if any, of the  
399 measuring devices or water measuring methods identified in the Contractor's report and  
400 if the Contracting Officer does not respond in such time, they shall be deemed adequate.  
401 If the Contracting Officer notifies the Contractor that the measuring devices or methods  
402 are inadequate, the parties shall within 60 days following the Contracting Officer's  
403 response, negotiate in good faith the earliest practicable date by which the Contractor shall

404 modify said measuring devices and/or measuring methods as required by the Contracting  
405 Officer to ensure compliance with subdivision (a) of this Article.

406 (c) All new surface water delivery systems installed within the Contractor's  
407 Service Area after the Effective Date of this Contract shall also comply with the  
408 measurement provisions described in subdivision (a) of this Article.

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

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

415 RATES, METHOD OF PAYMENT FOR WATER AND ACCELERATED  
416 REPAYMENT OF FACILITIES

417 7. (a) Notwithstanding the Contractor's full prepayment of the  
418 Repayment Obligation pursuant to section 4011, subsection (a)(2)(A) and subsection  
419 (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required  
420 pursuant to section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for  
421 the final cost allocation as described in this Article, subsection (b), the Contractor's  
422 Project construction and other obligations shall be determined in accordance with: (i)  
423 the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's  
424 then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such  
425 ratesetting policies shall be amended, modified, or superseded only through a public

426 notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
427 rules and regulations, or policies, and (iii) other applicable provisions of this Contract.  
428 Payments shall be made by cash transaction, electronic funds transfers, or any other  
429 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.  
430 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon  
431 execution of this Contract are set forth in Exhibit “B”, as may be revised annually.

432 (1) The Contractor shall pay the United States as provided for in this  
433 Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing  
434 Component in accordance with policies for Irrigation Water and M&I Water. The Contractor’s  
435 Rates shall be established to recover its estimated reimbursable costs included in the Operation  
436 and Maintenance component of the Rate and amounts established to recover deficits and other  
437 charges, if any, including construction costs as identified in the following subdivisions.

438 (2) In accordance with the WIIN Act, the Contractor’s allocable share  
439 of Project construction costs will be repaid pursuant to the provisions of this Contract.

440 (A) The amount due and payable to the United States, pursuant  
441 to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been  
442 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth  
443 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual  
444 installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date of  
445 this Contract as set forth in Exhibit “C”. The Repayment Obligation is due in lump sum by  
446 **[Month, Day, Year]** as provided by the WIIN Act. The Contractor must provide appropriate  
447 notice to the Contracting Officer in writing no later than thirty (30) days prior to **[Month, Day,**

448 **Year] [Division Level: consider the effective date of the contract being converted]** if  
449 electing to repay the amount due using the lump sum alternative. If such notice is not provided  
450 by such date, the Contractor shall be deemed to have elected the installment payment alternative,  
451 in which case, the first such payment shall be made no later than **[Month, Day, Year] [Division**  
452 **Level: consider the effective date of the contract being converted].** The second payment  
453 shall be made no later than the first anniversary of the first payment date. The third payment  
454 shall be made no later than the second anniversary of the first payment date. The final payment  
455 shall be made no later than **[Month, Day, Year] [no later than the third anniversary of the**  
456 **effective date of the contract].** If the installment payment option is elected by the Contractor,  
457 the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the  
458 Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall  
459 re-compute the remaining amount due to reflect the pre-payment using the same methodology as  
460 was used to compute the initial annual installment payment amount, which is illustrated in  
461 Exhibit “C”. Notwithstanding any Additional Capital Obligation that may later be established,  
462 receipt of the Contractor’s payment of the Repayment Obligation to the United States shall fully  
463 and permanently satisfy the Existing Capital Obligation.

464 (B) Additional Capital Obligations that are not reflected in, the  
465 schedules referenced in Exhibit “C” and properly assignable to the Contractor, shall be repaid as  
466 prescribed by the WIIN Act without interest except as required by law. Consistent with Federal  
467 Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital  
468 Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the  
469 Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of



470 the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not  
471 be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B),  
472 however, will be considered under subdivision (b) of this Article. A separate agreement shall be  
473 established by the Contractor and the Contracting Officer to accomplish repayment of the  
474 Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the  
475 WIIN Act, subject to the following:

476 (1) If the collective Additional Capital Obligation  
477 properly assignable to the contractors exercising conversion under section 4011 of the WIIN Act  
478 is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable  
479 to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer  
480 notifies the Contractor of the Additional Capital Obligation; *Provided, That* the reference to the  
481 amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

482 (2) If the collective Additional Capital Obligation  
483 properly assignable to the contractors exercising conversion under section 4011 of the WIIN Act  
484 is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs  
485 properly assignable to the Contractor shall be repaid as provided by applicable Federal  
486 Reclamation law and Project ratesetting policy; *Provided, That* the reference to the amount of  
487 five million dollars (\$5,000,000) shall not be a precedent in any other context.

488 (b) In the event that the final cost allocation referenced in Section 4011(b) of  
489 the WIIN Act determines that the costs properly assignable to the Contractor are greater than  
490 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining  
491 allocated costs. The term of such additional repayment contract shall be not less than one (1)

492 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate  
493 of repayment of such amount may be developed by the Contractor and Contracting Officer. In  
494 the event that the final cost allocation indicates that the costs properly assignable to the  
495 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such  
496 overpayment as an offset against any outstanding or future obligations of the Contractor, with the  
497 exception of Restoration Fund charges pursuant to section 3407(d) of Pub. L. 102-575.

498 (c) Effective the March 1, following the Effective Date and each March 1  
499 thereafter, the Contracting Officer shall adjust the Rates, Charges, and Tiered Pricing  
500 Component set forth in subdivision (a) of this article in accordance with the then current water  
501 ratesetting policies of the Project.

502 (d) The Contractor shall make payments to the United States each Year at the  
503 Rates provided in subdivision (a) of this Article for the quantity of water which the Contractor is  
504 required to pay for during such Year pursuant to the provisions of Article 3. Before January 1 of  
505 the Year following execution of this Contract the Contractor shall pay the amount payable  
506 pursuant to the approved schedule for the months of January and February immediately  
507 following. Before the end of said month of January and before the end of each month thereafter  
508 the Contractor shall pay the amount payable pursuant to the latest approved schedule, during the  
509 second month immediately following. Adjustments between the payment for the scheduled  
510 quantities of water and the payment for quantities actually made available each month shall be  
511 made during the following month: *Provided, That* any revised schedule which increases the  
512 Contractor's water deliveries shall be accompanied with appropriate payment to assure water is  
513 not delivered in advance of payment. By February 1 of each Calendar Year, the Contractor shall

514 make any additional payment it is obligated to make for that Year pursuant to Article 3.

515 (e) The Contractor shall also make a payment in addition to the Rate(s) in  
516 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the  
517 appropriate Tiered Pricing Component then in effect, before the end of the month following  
518 the month of delivery; *Provided, That* the Contractor may be granted an exception from  
519 the Tiered Pricing Component pursuant to subdivision (f)(2) of this Article. The  
520 payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as  
521 shown in the water delivery report for the subject month prepared by the Operating Non-Federal  
522 Entity(ies) or, if there is no Operating Non-Federal Entity(ies), by the Contracting Officer. The  
523 water delivery report shall be deemed a bill for the payment of Charges and the applicable  
524 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or  
525 underpayment of Charges shall be made through the adjustment of payments due to the United  
526 States for Charges for the next month. Any amount to be paid for past due payment of Charges  
527 and Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

528 (f) (1) Beginning at such time as deliveries of Project Water in a Year  
529 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
530 delivery the Contractor shall make an additional payment to the United States equal to the  
531 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
532 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
533 Contract Total, shall equal one-half of the difference between the Rate established under  
534 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water  
535 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water

536 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)  
537 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water  
538 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to  
539 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract  
540 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in  
541 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

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

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

555 (g) For the term of this Contract, Rates applied under the respective  
556 ratesetting policies will be established to recover only reimbursable O&M (including any  
557 deficits) and capital costs of the Project, as those terms are used in the then-current Project

558 ratesetting policies, and interest, where appropriate, except in instances where a minimum  
559 Rate is applicable in accordance with the relevant Project ratesetting policy. Changes of  
560 significance in practices which implement the Contracting Officer's ratesetting policies will  
561 not be implemented until the Contracting Officer has provided the Contractor an opportunity  
562 to discuss the nature, need, and impact of the proposed change.

563 (h) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
564 CVPIA, the Rates for Project Water transferred by the Contractor shall be the  
565 Contractor's Rates, in accordance with the applicable Project ratesetting policy, adjusted  
566 upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer  
567 in the delivery of the transferred Project Water to the transferee's point of delivery. If the  
568 Contractor is receiving lower Rates and Charges because of inability to pay and is  
569 transferring Project Water to another entity whose Rates and Charges are not adjusted  
570 due to inability to pay, the Rates and Charges for transferred Project Water shall not be  
571 adjusted to reflect the Contractor's inability to pay.

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

574 (j) In the event the Contractor in any year is unable, fails, or refuses to accept  
575 delivery of the quantities of water scheduled and made available for delivery and for which  
576 payment is required pursuant to this Contract or if the Contractor in any year fails to submit a  
577 schedule under subdivision (a) of Article 4, said inability, failure, or refusal shall not relieve the  
578 Contractor of the obligation to pay for said water and the Contractor agrees to make payment  
579 therefor in the same manner as if said water had been delivered to and accepted by the

580 Contractor in accordance with this Contract.

581 NON-INTEREST BEARING O&M DEFICITS

582 8. The Contractor and the Contracting Officer concur that, as of the Effective Date  
583 the Contractor has no non-interest bearing O&M deficits and shall have no further  
584 liability therefore.

585 APPLICATION OF PAYMENTS AND ADJUSTMENTS

586 9. The amount of any overpayment by the Contractor by reason of the quantity of  
587 water actually available for the Contractor during any year, as conclusively determined by the  
588 Contracting Officer, having been less than the quantity of such water which the Contractor  
589 otherwise under the provisions of this Contract would have been required to receive and pay for,  
590 shall be applied first to any accrued indebtedness arising out of this Contract then due and owing  
591 to the United States by the Contractor and any amount of such overpayment then remaining  
592 shall, at the option of the Contractor be refunded to the Contractor or credited upon amounts to  
593 become due to the United States from the Contractor under the provisions hereof in the ensuing  
594 year.

595 TEMPORARY REDUCTIONS – RETURN FLOWS

596 10. (a) The United States may temporarily discontinue or reduce the quantity of  
597 water to be furnished to the Contractor as herein provided for the purposes of such investigation,  
598 inspection, maintenance, repair, or replacement as may be necessary of any of the Project  
599 facilities necessary for the furnishing of water to the Contractor, or any part thereof, but so far as  
600 feasible the United States will give the Contractor due notice in advance of such temporary  
601 discontinuance or reduction, except in case of emergency, in which case no notice need be given,

602 In the event of any such discontinuance or reduction, the United States, upon resumption of  
603 service, will attempt to deliver the quantity of water which would have been furnished to the  
604 Contractor in the absence of such contingency.

605 (b) The United States reserves the right to all waste, seepage and return-flow  
606 water derived from water furnished to the Contractor hereunder and which escapes or is  
607 discharged beyond the Contractor's boundaries and nothing herein shall be construed as an  
608 abandonment or a relinquishment by the United States of any such water, but this shall not be  
609 construed as claiming for the United States any right, as waste, seepage, or return flow, to water  
610 being used pursuant to this Contract for surface irrigation or underground storage within the  
611 Contractor's boundaries by the Contractor or those claiming by, through, or under the  
612 Contractor's Service Area.

613 CONSTRAINTS ON THE AVAILABILITY OF WATER

614 11. (a) In its operation of the Project, the Contracting Officer will use all  
615 reasonable means to guard against a Condition of Shortage in the quantity of Project  
616 Water to be made available to the Contractor pursuant to this Contract. In the event the  
617 Contracting Officer determines that a Condition of Shortage appears probable, the  
618 Contracting Officer will notify the Contractor of said determination as soon as practicable.

619 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting  
620 or other similar operational errors affecting the Project; drought and other physical or natural  
621 causes beyond the control of the Contracting Officer; or actions taken by the Contracting  
622 Officer to meet current and future legal obligations, then, except as provided in subdivision (a) of  
623 Article 17 of this Contract, no liability shall accrue against the United States or any of its  
624 officers, agents, or employees for any damage, direct or indirect, arising therefrom.

625 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

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PROTECTION OF WATER AND AIR QUALITY

13. (a) The Contractor, without expense to the United States, will care for, operate and maintain transferred works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

(b) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest level possible as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(c) The Contractor will comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within its Service Area.

(d) This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

(e) The Contracting Officer shall notify the Contractor in writing when drainage service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the Contractor at rates established pursuant to the then-existing ratesetting policy for Irrigation Water; *Provided, That* such ratesetting policy shall be amended, modified, or superseded only through the process described in subdivisions (a) of Article 7 of this Contract.

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

14. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Project water furnished pursuant to the terms of this contract may be transported through distribution facilities of the Contractor if the Contracting Officer determines that such mingling is necessary to avoid a duplication of facilities: *Provided,*



660 *That* such water is not transported through the Contractor's facilities constructed or financed by  
661 the United States. Notwithstanding such mingling, the provisions of this Contract shall apply  
662 only to the quantity of water furnished to the Contractor pursuant to the terms hereof and the  
663 quantity of water acquired by or available to the Contractor other than from the United States  
664 shall not in any manner be subject to the provisions of this Contract.

665 (b) With respect to the distribution works or portions thereof in which  
666 mingling is permitted as provided in subdivision (a) of this Article, the Contractor:

667 (1) At the request of the Contracting Officer, the Contractor will be  
668 responsible for the installation, operation, and maintenance of water measuring equipment at  
669 delivery points to excess lands and, further, will be responsible for the installation, operation,  
670 and maintenance of similar equipment for measuring the water available to the Contractor or  
671 landowners within the Contractor's Service Area other than from the Project, and the  
672 Contracting Officer may check and inspect said equipment at any time; and

673 (2) Agrees that the quantity of water furnished to it by the United  
674 States during each 24-hour period will be delivered by the Contractor through the aforesaid  
675 outlets to Eligible Lands only. The Contractor shall be deemed to be in breach of this Article  
676 and Article 14 of this Contract if at any time there is furnished to all Excess Lands not covered  
677 by recordable contracts and served by the distribution works or portions thereof in which  
678 mingling is permitted, quantity of water which is greater than that which the Contractor or  
679 landowners within the Contractor's service area have introduced into said system from the supply  
680 available other than pursuant to this Contract.

681 (c) The Contractor may request transportation of water available to it from

682 sources other than the United States through facilities of the United States. The terms and  
683 conditions of such service shall be agreed upon prior to initial transportation of water.

684 CHARGES FOR DELINQUENT PAYMENTS

685 15. (a) The Contractor shall be subject to interest, administrative, and penalty  
686 charges on delinquent payments. If a payment is not received by the due date, the  
687 Contractor shall pay an interest charge on the delinquent payment for each day the payment  
688 is delinquent beyond the due date. If a payment becomes 60 days delinquent, the  
689 Contractor shall pay, in addition to the interest charge, an administrative charge to  
690 cover additional costs of billing and processing the delinquent payment. If a payment is  
691 delinquent 90 days or more, the Contractor shall pay, in addition to the interest and  
692 administrative charges, a penalty charge for each day the payment is delinquent beyond the  
693 due date, based on the remaining balance of the payment due at the rate of 6 percent per  
694 year. The Contractor shall also pay any fees incurred for debt collection services associated  
695 with a delinquent payment.

696 (b) The interest rate charged shall be the greater of either the rate prescribed  
697 quarterly in the Federal Register by the Department of the Treasury for application to  
698 overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged  
699 will be determined as of the due date and remain fixed for the duration of the delinquent  
700 period.

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

704 EQUAL EMPLOYMENT OPPORTUNITY

705 16. During the performance of this Contract, the Contractor agrees as follows:

706 (a) The Contractor will not discriminate against any employee or applicant  
707 for employment because of race, color, religion, sex, sexual orientation, gender identity, or  
708 national origin. The Contractor will take affirmative action to ensure that applicants are  
709 employed, and that employees are treated during employment, without regard to their race,  
710 color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall  
711 include, but not be limited to, the following: employment, upgrading, demotion, or  
712 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other  
713 forms of compensation; and selection for training, including apprenticeship. The Contractor  
714 agrees to post in conspicuous places, available to employees and applicants for employment,  
715 notices to be provided by the Contracting Officer setting forth the provisions of this  
716 nondiscrimination clause.

717 (b) The Contractor will, in all solicitations or advertisements for employees  
718 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
719 consideration for employment without regard to race, color, religion, sex, sexual orientation,  
720 gender identity, or national origin.

721 (c) The Contractor will not discharge or in any other manner discriminate  
722 against any employee or applicant for employment because such employee or applicant has  
723 inquired about, discussed, or disclosed the compensation of the employee or applicant or  
724 another employee or applicant. This provision shall not apply to instances in which an  
725 employee who has access to the compensation information of other employees or applicants as  
726 part of such employee's essential job functions discloses the compensation of such other  
727 employees or applicants to individuals who do not otherwise have access to such information,  
728 unless such disclosure is in response to a formal complaint or charge, in furtherance of an  
729 investigation, proceeding, hearing, or action, including an investigation conducted by the  
730 employer, or is consistent with the Contractor's legal duty to furnish information.

731 (d) The Contractor will send to each labor union or representative of  
732 workers with which it has a collective bargaining agreement or other contract or understanding,  
733 a notice, to be provided by the Contracting Officer, advising the labor union or workers'  
734 representative of the Contractor's commitments under section 202 of Executive Order No.  
735 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places  
736 available to employees and applicants for employment.

737 (e) The Contractor will comply with all provisions of Executive Order No.  
738 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
739 of Labor.

740 (f) The Contractor will furnish all information and reports required by  
741 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of  
742 the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and  
743 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation  
744 to ascertain compliance with such rules, regulations, and orders.

745 (g) In the event of the Contractor's noncompliance with the  
746 nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this  
747 Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may  
748 be declared ineligible for further Government contracts in accordance with procedures  
749 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may  
750 be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24,  
751 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by  
752 law.

753 (h) The Contractor will include the provisions of paragraphs (a) through (g)  
754 in every subcontract or purchase order unless exempted by the rules, regulations, or orders

755 of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of Sept.  
756 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The  
757 Contractor will take such action with respect to any subcontract or purchase order as may be  
758 directed by the Secretary of Labor as a means of enforcing such provisions, including  
759 sanctions for noncompliance: *Provided, however, That* in the event the Contractor  
760 becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a  
761 result of such direction, the Contractor may request the United States to enter into such  
762 litigation to protect the interests of the United States.

763 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

764 17. (a) The obligation of the Contractor to pay the United States as provided in  
765 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
766 obligation may be distributed among the Contractor's water users and notwithstanding the default  
767 of individual water users in their obligation to the Contractor.

768 (b) The payment of charges becoming due pursuant to this Contract is a  
769 condition precedent to receiving benefits under this Contract. The United States shall not make  
770 water available to the Contractor through Project facilities during any period in which the  
771 Contractor is in arrears in the advance payment of water rates due the United States. The  
772 Contractor shall not deliver water under the terms and conditions of this Contract for lands or  
773 parties that are in arrears in the advance payment of water rates as levied or established by the  
774 Contractor.

775 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

776 18. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
777 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
778 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
779 III; 42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-  
780 336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
781 applicable implementing regulations and any guidelines imposed by the U.S.  
782 Department of the Interior and/or Bureau of Reclamation.

783 (b) These statutes prohibit any person in the United States from being  
784 excluded from participation in, being denied the benefits of, or being otherwise subjected to  
785 discrimination under any program or activity receiving financial assistance from the Bureau  
786 of Reclamation on the grounds of race, color, national origin, disability, or age. By  
787 executing this Contract, the Contractor agrees to immediately take any measures necessary  
788 to implement this obligation, including permitting officials of the United States to inspect  
789 premises, programs, and documents.

790 (c) The Contractor makes this Contract in consideration of and for the  
791 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other

792 Federal financial assistance extended after the date hereof to the Contractor by the Bureau  
793 of Reclamation, including installment payments after such date on account of  
794 arrangements for Federal financial assistance which were approved before such date.  
795 The Contractor recognizes and agrees that such Federal assistance will be extended in  
796 reliance on the representations and agreements made in this Article and that the United  
797 States reserves the right to seek judicial enforcement thereof.

798 (d) Complaints of discrimination against the Contractor shall be investigated  
799 by the Contracting Officer's Office of Civil Rights.

800 PRIVACY ACT COMPLIANCE

801 19. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)  
802 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy  
803 Act (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting  
804 records required to be submitted to the Contractor for compliance with Sections 206,  
805 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and  
806 390zz), and pursuant to 43 C.F.R. § 426.18.

807 (b) With respect to the application and administration of the criminal penalty  
808 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's  
809 employees who are responsible for maintaining the certification and reporting records  
810 referenced in paragraph (a) above are considered to be employees of the Department of the  
811 Interior. See 5 U.S.C. § 552a(m).

812 (c) The Contracting Officer or a designated representative shall provide the  
813 Contractor with current copies of the Department of the Interior Privacy Act regulations  
814 and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice  
815 (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding,  
816 and disclosure of information contained in the Landholders' certification and reporting  
817 records.

818 (d) The Contracting Officer shall designate a full-time employee of the  
819 Bureau of Reclamation to be the System Manager responsible for making decisions on  
820 denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43  
821 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to  
822 their own records.

823 (e) The Contractor shall forward promptly to the System Manager each  
824 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of  
825 records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral;  
826 and provide the System Manager with information and records necessary to prepare an  
827 appropriate response to the requester. These requirements do not apply to individuals  
828 seeking access to their own certification and reporting forms filed with the Contractor

829 pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as an  
830 authority for the request.

831 (f) Upon complete payment of the Repayment Obligation by the  
832 Contractor, this Article 19 will no longer be applicable.

833 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

834 20. In addition to all other payments to be made by the Contractor pursuant to this  
835 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill  
836 and detailed statement submitted by the Contracting Officer to the Contractor for such  
837 specific items of direct cost incurred by the United States for work requested by the  
838 Contractor associated with this Contract plus indirect costs in accordance with applicable  
839 Bureau of Reclamation policies and procedures. All such amounts referred to in this  
840 Article shall not exceed the amount agreed to in writing in advance by the Contractor.  
841 This Article shall not apply to costs for routine contract administration.

842 WATER CONSERVATION

843 21. (a) Prior to the delivery of water provided from or conveyed through  
844 Federally constructed or Federally financed facilities pursuant to this Contract, the  
845 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the  
846 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and  
847 Regulations).

848 Additionally, an effective water conservation and efficiency program shall be based on the  
849 Contractor's water conservation plan that has been determined by the Contracting Officer to  
850 meet the conservation and efficiency criteria for evaluating water conservation plans  
851 established under Federal law. While the contents and standards of a given water conservation  
852 program are primarily matters of State and local determination, there is a strong Federal interest

853 in developing an effective water conservation program because of this Contract. The Contractor  
854 shall develop and implement an effective water conservation program for all uses of water which  
855 is provided from, or conveyed through, Federally constructed or Federally financed facilities for  
856 the Contractor's use. The original water conservation program shall specify definite objectives,  
857 appropriate existing and proposed water conservation measures including, but not limited to,  
858 changes in water uses and modifications in the design or operation of existing or proposed  
859 distribution systems, and time schedules for meeting the water conservation objectives.

860 (b) The original water conservation program shall be submitted to and  
861 approved by the Contracting Officer prior to one or all of the following: (1) service of Federally  
862 stored/conveyed water; (2) transfer of Operation and Maintenance of the Project facilities to the  
863 Contractor; or (3) transfer of the Project to an Operation and Maintenance status. The  
864 distribution and use of Federally stored/conveyed water and/or the operation of Project facilities  
865 transferred to the Contractor shall be consistent with the approved water conservation program.  
866 Following date of execution of this Contract, and at subsequent 5-year intervals, the Contractor  
867 and Contracting Officer shall review the original water conservation plan to determine if the  
868 objectives set forth therein are being met. If it is determined that the water conservation  
869 measures set forth therein require codification to further the established objectives, the  
870 Contractor and the Contracting Officer shall work together to formulate the modifications which  
871 the Contractor shall then be required to implement.

872 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

873 22. The expenditure or advance of any money or the performance of any obligation of  
874 the United States under this Contract shall be contingent upon appropriation or allotment  
875 of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor  
876 from any obligations under this Contract. No liability shall accrue to the United States in case  
877 funds are not appropriated or allotted.

878 BOOKS, RECORDS, AND REPORTS

879 23. The Contractor shall establish and maintain accounts and other books and records  
880 pertaining to administration of the terms and conditions of this Contract, including the  
881 Contractor's financial transactions; water supply data; project operations, maintenance, and  
882 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
883 census), land-ownership, land-leasing, and water-use data; and other matters that the  
884 Contracting Officer may require. Reports shall be furnished to the Contracting Officer  
885 in such form and on such date or dates as the Contracting Officer may require. Subject to  
886 applicable Federal laws and regulations, each party to this Contract shall have the right during  
887 office hours to examine and make copies of the other party's books and records relating to  
888 matters covered by this Contract.

889 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

890 24. The provisions of this Contract shall apply to and bind the successors and assigns  
891 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein  
892 by either party shall be valid until approved in writing by the other party.

893 SEVERABILITY

894 25. In the event that a person or entity who is neither (i) a party to a Project contract,  
895 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)  
896 an association or other form of organization whose primary function is to represent parties to  
897 Project contracts, brings an action in a court of competent jurisdiction challenging the  
898 legality or enforceability of a provision included in this Contract and said person, entity,  
899 association, or organization obtains a final court decision holding that such provision is  
900 legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in  
901 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i)



902 within 30 days of the date of such final court decision identify by mutual agreement the  
903 provisions in this Contract which must be revised and (ii) within three months thereafter  
904 promptly agree on the appropriate revision(s). The time periods specified above may be  
905 extended by mutual agreement of the parties. Pending the completion of the actions  
906 designated above, to the extent it can do so without violating any applicable provisions of  
907 law, the United States shall continue to make the quantities of Project Water specified in this  
908 Contract available to the Contractor pursuant to the provisions of this Contract which were not  
909 found to be legally invalid or unenforceable in the final court decision.

910 OFFICIALS NOT TO BENEFIT

911 26. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
912 the Contractor shall benefit from this Contract other than as a water user or landowner in the  
913 same manner as other water users or landowners.

914 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

915 27. While this Contract is in effect, no change may be made in the Contractor's  
916 Service Area or organization, by inclusion or exclusion of lands or by any other changes which  
917 may affect the respective rights, obligations, privileges, and duties of either the United States or  
918 the Contractor under this Contract, including, but not limited to, dissolution, consolidation, or  
919 merger, except upon the Contracting Officer's written consent.

920 NOTICES

921 28. Any notice, demand, or request authorized or required by this Contract shall be  
922 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
923 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
924 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,  
925 postage prepaid, or delivered to the Board of Directors of the Pacheco Water District, P. O. Box  
926 2657, Los Banos, CA 93635. The designation of the addressee or the address may be changed  
927 by notice given in the same manner as provided in this Article for other notices.

928 RECLAMATION REFORM ACT OF 1982

929 29. (a) Upon a Contractor's compliance with and discharge of the Repayment  
930 Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation  
931 Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

932 (b) The obligation of a Contractor to pay the Additional Capital Obligation  
933 shall not affect the Contractor's status as having repaid all of the construction costs assignable to  
934 the Contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation  
935 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

936 CERTIFICATION OF NONSEGREGATED FACILITIES

937 30. The Contractor hereby certifies that it does not maintain or provide for its  
938 employees any segregated facilities at any of its establishments and that it does not permit its  
939 employees to perform their services at any location under its control where segregated facilities  
940 are maintained. It certifies further that it will not maintain or provide for its employees any  
941 segregated facilities at any of its establishments and that it will not permit its employees to  
942 perform their services at any location under its control where segregated facilities are  
943 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
944 Employment Opportunity clause in this Contract. As used in this certification, the term  
945 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
946 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
947 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
948 facilities provided for employees which are segregated by explicit directive or are in fact  
949 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
950 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
951 identical certifications from proposed subcontractors for specific time periods) it will obtain  
952 identical certifications from proposed subcontractors prior to the award of subcontracts  
953 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
954 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
955 following notice to such proposed subcontractors (except where the proposed subcontractors  
956 have submitted identical certifications for specific time periods):

957 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
958 CERTIFICATIONS OF NONSEGREGATED FACILITIES

959 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract  
960 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment

961 Opportunity clause. The certification may be submitted either for each subcontract or for all  
962 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
963 making false statements in offers is prescribed in 18 U.S.C. § 1001.

964 MEDIUM FOR TRANSMITTING PAYMENT

965 31. (a) All payments from the Contractor to the United States under this Contract  
966 shall be by the medium requested by the United States on or before the date payment is due. The  
967 required method of payment may include checks, wire transfers, or other types of payment  
968 specified by the United States.

969 (b) Upon execution of this Contract, the Contractor shall furnish the  
970 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
971 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
972 out of the Contractor's relationship with the United States.

973 CONTRACT DRAFTING CONSIDERATIONS

974 32. This amended Contract has been negotiated and reviewed by the parties hereto,  
975 each of whom is sophisticated in the matters to which this amended Contract pertains. The  
976 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by  
977 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
978 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

979 CONFIRMATION OF CONTRACT

980 33. Promptly after the execution of this amended Contract, the Contractor will  
981 provide to the Contracting Officer a certified copy of a final decree of a court of competent  
982 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor  
983 for the authorization of the execution of this amended Contract. This amended Contract shall not  
984 be binding on the United States until the Contractor secures a final decree.

985

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

988 UNITED STATES OF AMERICA

989 By: \_\_\_\_\_  
990 Regional Director  
991 Interior Region 10: California-Great Basin  
992 Bureau of Reclamation

993 PACHECO WATER DISTRICT  
994 (SEAL)

995 By: \_\_\_\_\_  
996 President of the Board of Directors

997 Attest:

998 By: \_\_\_\_\_  
999 Secretary of the Board of Directors