

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

AMENDED AND RESTATED CONTRACT BETWEEN THE UNITED STATES  
AND  
SAN BENITO COUNTY WATER DISTRICT  
FOR WATER SERVICE, FACILITIES REPAYMENT, AND FOR OPERATION AND  
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

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MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

1           THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_, 20\_\_ in pursuance generally of the  
2 Act of June 17,1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto,  
3 including but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
4 supplemented; August 4, 1939 (53 Stat. 1187), as amended and supplemented; July 2, 1956 (70  
5 Stat. 483), June 21, 1963 (77 Stat. 68), August 27, 1967 (81 Stat. 173), October 12, 1982 (96  
6 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October  
7 30, 1992, (106 Stat 4706), and the Water Infrastructure Improvements for the Nation Act (Public  
8 Law 114-322,130 Stat. 1628), Section 4011 (a-d) and (f) (“WIIN Act”), all collectively  
9 hereinafter referred to as the Federal reclamation laws, between THE UNITED STATES OF  
10 AMERICA, hereinafter referred to as the United States, and SAN BENITO COUNTY WATER  
11 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
12 duly organized, existing, and acting pursuant to the laws thereof, with its principal place of  
13 business in Hollister, California,

14 WITNESSETH, That:

15 EXPLANATORY RECITALS

16 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
17 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for  
18 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection  
19 and restoration, generation and distribution of electric energy, salinity control, navigation and  
20 other beneficial uses, of water of the Sacramento River, the American River, the Trinity River,  
21 and the San Joaquin River and their tributaries; and

22 [2<sup>nd</sup>] WHEREAS, the groundwater basins in the Contractor’s Service Area have been  
23 overdrawn and the lands of the Contractor’s Service Area and its inhabitants are in need of  
24 additional water for beneficial uses and purposes; and

25 [3<sup>rd</sup>] WHEREAS, the United States has constructed the San Felipe Division as a  
26 feature of the Project for the diversion, carriage, distribution, regulation, and beneficial use of  
27 waters of the Project; and

28 [4<sup>th</sup>] WHEREAS, the water supply developed by the Project has been made available  
29 to the Contractor for beneficial uses and purposes; and

30 [5<sup>th</sup>] WHEREAS, the Contractor and the United States entered into a contract titled  
31 “*Contract Between the United States and San Benito County Water District for Water Service*  
32 *and for Operation and Maintenance of Certain Works of the San Felipe Division*”, Contract No.  
33 8-07-20-W0130, dated April 15, 1978, which established terms and conditions for the delivery to  
34 the Contractor of Project Water from June 1, 1987 through February 29, 2028, hereinafter  
35 referred to as the “1978 Contract”; and

36 [6<sup>th</sup>] WHEREAS, the Contractor and the United States entered into a contract titled  
37 “*Amendatory Water Service Contract Between the United States and San Benito County Water*  
38 *District*”, Contract No. 8-07-20-W0130, dated February 28, 1992, which modified terms and  
39 conditions for the delivery to the Contractor of Project Water from June 1, 1987 through  
40 February 29, 2028, hereinafter referred to as the “First Amendment”; and

41 [7<sup>th</sup>] WHEREAS, in 1992, Congress enacted the Central Valley Project Improvement  
42 Act (CVPIA) (106 Stat 4706), which addressed the renewal of existing long-term water service  
43 contracts and established that certain terms should be included in contracts renewed or amended  
44 after January 1, 1988; and

45 [8<sup>th</sup>] WHEREAS, to promote compliance with the CVPIA, consistent with the goal of  
46 ensuring a reliable long-term water supply for the Contractor, the parties agreed to amend the  
47 1978 Contract; and

48 [9<sup>th</sup>] WHEREAS, the Contractor executed a “Binding Agreement for Early Renewal  
49 Between the United States and San Benito County Water District”, dated September 30, 1997,  
50 Contract No. 8-07-20-W0130-BA; and

51 [10<sup>th</sup>] WHEREAS, the Contractor and the United States entered into an amendment to  
52 the 1978 Contract dated March 28, 2007, titled “*Second Amendment to Contract between the*  
53 *United States and San Benito County Water District for Water Service and Operation and*  
54 *Maintenance of Certain Works of the San Felipe Division*”, Contract No. 8-07-20-W0130A,  
55 which among other things established the terms and conditions for the repayment of the San  
56 Felipe Division facilities and implementation of certain Central Valley Project Improvement Act  
57 activities, hereinafter referred to as “Second Amendment”; and

58 [11<sup>th</sup>] WHEREAS under 4011, subsections (a)(2) and (a)(3) of the WIIN Act, except for  
59 those repayment contracts under which the Contractor has previously negotiated for prepayment,  
60 all repayment contracts under Section 9(d) and 9(c)(1) of the Act (53 Stat. 1195) in effect as of  
61 the date of the WIIN Act, at the request of the contractor, and all contracts converted pursuant to  
62 paragraph (1)(A) and (1)(B) of the WIIN Act shall provide for repayment either in lump sum or  
63 an accelerated prepayment; and

64 [12<sup>th</sup>] WHEREAS, the repayment obligations of the San Felipe Division Facilities set  
65 forth in the Second Amendment were negotiated for repayment prior to the enactment of the  
66 WIIN Act and are not subject to accelerated prepayment under the WIIN Act, and will continue  
67 to be paid in accordance with the payment schedule set forth in Exhibit D; and

68 [13<sup>th</sup>] WHEREAS, the 1978 Contract as amended by the First Amendment and the  
69 Second Amendment is hereinafter referred to as “Existing Contract”; and

70 [14<sup>th</sup>] WHEREAS, this Contract is intended to represent a continuation of the 1978  
71 Contract, including its First Amendment and Second Amendment, as amended and restated in  
72 entirety by the terms and conditions contained in this Contract; and

73 [15<sup>th</sup>] WHEREAS, the Santa Clara Valley Water District and the United States entered  
74 into a contract titled “*Contract for the Transfer of the Operation and Maintenance of Certain*  
75 *San Felipe Division*”, Contract No. 6-07-20-X0290, dated September 8, 1986, which established  
76 terms and conditions for the transfer of Operation and Maintenance of San Felipe Division  
77 facilities jointly used by the Contractor and Santa Clara Valley Water District; and

78 [16<sup>th</sup>] WHEREAS, the Contractor was notified via the transfer notice of the transfer of  
79 Operation and Maintenance of Certain San Felipe Division Facilities to the Contractor, dated  
80 September 17, 1987, October 30, 1987, and January 12, 1988; and

81 [17<sup>th</sup>] WHEREAS, the initial delivery of Project Water to the Contractor commenced on  
82 January 1, 1988; and

83 [18<sup>th</sup>] WHEREAS, on December 16, 2016, the 114th Congress of the United States of  
84 America enacted the WIIN Act; and

85 [19<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the  
86 Secretary of the Interior shall convert any water service contract in effect on the date of  
87 enactment of this subtitle and between the United States and a water users’ association  
88 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under  
89 mutually agreeable terms and conditions.”; and

90 [20<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion  
91 under this paragraph shall be as follows: (A) Water service contracts that were entered into  
92 under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section  
93 shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)”; and  
94 “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of  
95 August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a  
96 contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

97 [21<sup>st</sup>] WHEREAS, the conversion of the Contractor’s water service Contract No. 8-07-  
98 20-W0130A to a repayment contract as described in Section 4011(a)(1) of the WIIN Act is  
99 intended to continue water service to the Contractor under substantially similar terms and  
100 conditions to its Existing Contract, as amended to implement only those modifications  
101 specifically proscribed in the WIIN Act ; and

102 [22<sup>nd</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into  
103 pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment,

104 exchange and transfer contractual rights between the water users' association [Contractor], and  
105 the Bureau of Reclamation, or any rights, obligations, or relationships of the water users'  
106 association [Contractor] and their landowners as provided under State law.”; and

107 [23<sup>rd</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that  
108 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water  
109 service or repayment contractor to receive water; or (4) except as expressly provided in this  
110 section, any obligations under the Federal Reclamation law, including the continuation of  
111 Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and  
112 repayment contractors making prepayments pursuant to this section.”; and

113 [24<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the  
114 Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water  
115 service contracts into repayment contracts, amend existing repayment contracts, and allow  
116 contractors to prepay their construction cost obligations pursuant to applicable Federal  
117 Reclamation law; and

118 [25<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this Contract  
119 complies with Section 4011 of the WIIN Act; and

120 [26<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend and  
121 convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal  
122 Reclamation law on the terms and conditions set forth below;

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

125 DEFINITIONS

126 1. When used herein, unless otherwise distinctly expressed, or manifestly  
127 incompatible with the intent hereof, the term:



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

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

136 (c) "Calendar Year" shall mean the period January 1 through December 31,  
137 both dates inclusive;

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

141 (e) "Condition of Shortage" shall mean a condition respecting the Project  
142 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
143 Contract Total;

144 (f) "Contract" shall mean this Contract titled "*Amended and Restated*  
145 *Contract between the United States and San Benito County Water District for Water Service,*  
146 *Facilities Repayment, and for Operation and Maintenance of Certain San Felipe Division*  
147 *Facilities*", Contract No. 8-07-20-W0130A-P;

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

150 (h) "Contracting Officer" shall mean the duly authorized representative of the  
151 Secretary of the Interior;

152 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
153 permitted to provide Project Water under this Contract, as set forth on Exhibit "A" attached  
154 hereto which may be modified from time to time without amendment to this Contract;

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

157 (k) "Delivered Water" or "Water Delivered" shall mean Project Water  
158 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
159 Officer;

160 (l) "Delta Division Facilities" shall mean those existing and future Project  
161 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to,  
162 the Jones Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the  
163 San Luis Reservoir, used to divert, store and convey water to those Project Contractors entitled  
164 to receive water conveyed through the Delta-Mendota Canal;

165 (m) "Division" shall mean the San Felipe Division of the Project;

166 (n) "Existing Capital Obligation" shall mean the remaining amount of  
167 construction costs or other capitalized costs allocable to the Contractor, exclusive of the  
168 construction costs identified as the San Felipe Division Repayment Obligation as described in  
169 Exhibit C and Exhibit D, and as described in Section 4011, subsections (a)(2)(A) and (a)(3)(A)  
170 of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or  
171 Municipal and Industrial Water Rates, respectively, dated Month/Day/Year [specify ratebook  
172 year for all contractors.] [contractor specific to address the intertie], as adjusted to reflect  
173 payments not reflected in such schedule. The Contracting Officer has computed the Existing

174 Capital Obligation and such amount is set forth in Exhibit E, which is incorporated herein by  
175 reference;

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

186 (p) “Initial Delivery Date” shall mean the day that water from the Division  
187 Facilities is first available for deliver to the Contractor under this Contract and facilities for  
188 distribution of water are available for substantially all of the irrigable land proposed to be  
189 irrigated with surface supplies within Zone 6 of the District;

190 (q) “Municipal and Industrial Water” or “M&I Water” shall mean the use of  
191 Project Water for municipal, industrial, and miscellaneous other purposes not falling under the  
192 definition of Agricultural Water or within another category of water use under an applicable  
193 Federal authority;

194 (r) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to  
195 the delivery of M&I Water;

196 (s) “Operating Non-Federal Entity” shall mean the Operating Non-Federal  
197 Entity(ies) and their successors or assigns, which have the obligation to operate and maintain all  
198 or a portion of the Project facilities including the Division Facilities pursuant to written

199 agreements with the United States. As of the effective date of this Contract, the Operating Non-  
200 Federal Entity(ies) were the San Luis & Delta-Mendota Water Authority with respect to certain  
201 Delta Division Facilities, Santa Clara Valley Water District with respect to certain Division  
202 Facilities, and the San Benito County Water District with respect to certain Division Facilities;

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

206 (u) "Project" shall mean the Central Valley Project (CVP) owned by the  
207 United States and managed by the Department of the Interior, Bureau of Reclamation;

208 (v) "Project Contractors" shall mean all parties who have contracts for water  
209 service for Project Water from the Project with the United States pursuant to Federal  
210 Reclamation law;

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

214 (x) "Rates" shall mean the payments determined annually by the Contracting  
215 Officer in accordance with the then current applicable ratesetting policies for the Project, as  
216 described in Article 8 of this Contract;

217 (y) "Reclaimed Water" shall mean wastewater that has been treated to the  
218 extent necessary to be suitable for groundwater recharge, agricultural, municipal or industrial  
219 uses;

220 (z) "Restoration Fund Charges" shall mean those charges required pursuant  
221 to Section 3407(d) of Public Law 102-575;

222 (aa) “San Felipe Division Facilities” shall mean those existing and future  
223 Project facilities generally west of San Luis Reservoir used to divert, store and convey water to  
224 the Contractor(s). San Felipe Facilities are divided into reaches, as defined as follows:

225 (1) “Reach 1” or “Reach 1 Facilities” shall mean the facilities from the  
226 Pacheco Tunnel to and including the Pacheco Bifurcation Structure, including but not limited to,  
227 the Pacheco Pumping Plant Substation, Pacheco Pumping Plant Substation 70 kV Line, Pacheco  
228 Tunnel (including the inlet works in and under San Luis Reservoir), Pacheco Conduit and  
229 Pacheco Bifurcation Structure;

230 (2) “Reach 2” or “Reach 2 Facilities” shall mean the facilities from,  
231 but not including, the Pacheco Bifurcation Structure to and including the Watsonville Turnout  
232 facility, and Santa Clara Tunnel and a portion of the Santa Clara Conduit;

233 (3) “Reach 3” or “Reach 3 Facilities” shall mean the facilities from,  
234 but not including, the Watsonville Turnout facility to and including the Coyote Pumping Plant,  
235 including but not limited to, a portion of the Santa Clara Conduit, Coyote Pumping Plant, Coyote  
236 Pumping Plant Substation and Coyote Pumping Plant 115 kV Line;

237 (4) “San Benito Facilities” shall mean San Felipe Division Facilities  
238 used to deliver water to the San Benito Water District exclusively, including the Hollister  
239 Conduit and the San Justo Dam and Reservoir;

240 (bb) “San Felipe Division Repayment Obligation” shall mean those San Felipe  
241 Division reimbursable capital costs that are payable by the Contractor as described in Exhibit C  
242 and Exhibit D;

243 (cc) “Secretary” shall mean the Secretary of the Interior, a duly appointed  
244 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
245 through any agency of the Department of the Interior;

246 (dd) “State” shall mean the State of California;

247 (ee) “Substantial Change” shall mean a modification in, or addition to, a  
248 project facility which involves changes in the original design intent, function, and/or operational  
249 parameters of the facility, or changes in project benefits, including non-routine maintenance  
250 activities that involve construction or reconstruction of a portion of the facility. These  
251 modifications may be capitalized or non-capitalized. A substantial change is not a  
252 characterization of the proposed action in terms of being a major or minor action as defined in  
253 the National Environmental Policy Act.

254 (ff) “Tiered Pricing Component” shall be the incremental amount to be paid  
255 for each acre-foot of Water Delivered as described in subdivision (k) of Article 8 of this  
256 Contract;

257 (gg) “Water Made Available” shall mean the estimated amount of Project  
258 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
259 Contracting Officer, pursuant to subdivision (a) of Article 3 of this Contract;

260 (hh) “Water Scheduled” shall mean Project Water made available to the  
261 Contractor for which times and quantities for delivery have been established by the Contractor  
262 and Contracting Officer, pursuant to Article 4 of this Contract;

263 (ii) “WIIN Repayment Obligation” for Water Delivered as Irrigation Water  
264 shall mean the Existing Capital Obligation discounted by  $\frac{1}{2}$  of the Treasury rate, which shall be  
265 the amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN  
266 Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the  
267 United States, pursuant to the Section 4011(a)(3)(A) of the WIIN Act;

268 (jj) “Year” shall mean the period from and including March 1 of each  
269 Calendar Year through the last day of February of the following Calendar Year.

270 TERM OF CONTRACT – RIGHT TO USE OF WATER

271 2. (a) This Contract shall be effective [Effective Date], hereinafter known as the  
272 “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges  
273 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.  
274 1195) as applicable, and applicable law;

275 (1) Provided, That the Contracting Officer shall not seek to terminate  
276 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,  
277 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice  
278 to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay,  
279 or to diligently commence and maintain full curative payments satisfactory to the Contracting  
280 Officer within the sixty (60) calendar days’ notice period;

281 (2) Provided, further, That the Contracting Officer shall not seek to  
282 suspend making water available or declaring Water Made Available pursuant to this Contract for  
283 non-compliance by the Contractor with the terms of this Contract or Federal law, unless the  
284 Contracting Officer has first provided at least thirty (30) calendar days written notice to the  
285 Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence  
286 curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully  
287 cured within the thirty (30) calendar days’ notice period. If the Contracting Officer has  
288 suspended making water available pursuant to this paragraph, upon cure of such non-compliance  
289 satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water  
290 available and declaring Water Made Available pursuant to this Contract;

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

293 (b) Upon complete payment of the San Felipe Division Repayment Obligation  
294 and the WIIN Repayment Obligation by the Contractor, and notwithstanding any Additional  
295 Capital Obligation that may later be established, the acreage limitations, reporting, and full cost  
296 pricing provisions of the Reclamation Reform Act of 1982, shall no longer be applicable.

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

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

303 WATER TO BE FURNISHED TO THE CONTRACTOR

304 3. (a) The United States shall make available to the Contractor the quantities of  
305 Agricultural Water and M&I Water specified in the schedule submitted by the Contractor in  
306 accordance with Article 4, and the Contractor shall pay for said water in accordance with the  
307 provisions of Article 8: Provided, That the United States shall make available Agricultural Water  
308 and M&I Water and the Contractor shall pay for as a minimum the quantities set forth in the  
309 following table. The total quantity the United States shall make available annually during the  
310 term of this Contract shall be 43,800 acre-feet, of which 8,250 acre-feet shall be M&I Water.

311 Provided, however, That at any time or times after the Contractor's requirement for M&I Water  
312 exceeds 8,250 acre-feet per year, any or all of the Project Water to be furnished for agricultural  
313 use may be converted and shall be added to said 8,250 acre-feet and shall become the minimum  
314 quantity the Contractor shall pay for as M&I Water each Year thereafter during the term of this



315 Contract. Years shown in the table refer to the Years beginning with the Year of initial delivery  
 316 (1988).

317 TABLE OF MINIMUM DELIVERIES  
 318 (Acre-Feet)

319	<u>M&amp;I Water</u>		
320	<u>Year</u>	<u>Annual Deliveries</u>	<u>Year</u> <u>Annual Deliveries</u>
321	1	1,020	21      5,500
322	2	1,120	22      5,600
323	3	1,220	23      5,700
324	4	1,320	24      5,800
325	5	1,420	25      5,900
326	6	1,520	26      7,200
327	7	1,620	27      7,300
328	8	1,720	28      7,400
329	9	1,820	29      7,500
330	10	1,920	30      7,600
331	11	3,000	31      7,700
332	12	3,100	32      7,800
333	13	3,200	33      7,900
334	14	3,300	34      8,000
335	15	3,400	35      8,150
336	16	4,000	36      8,250
337	17	4,100	37      8,250
338	18	4,200	38      8,250
339	19	4,300	39      8,250
340	20	4,400	40      8,250

341            (b)      Each Year, the United States shall use all reasonable diligence to deliver  
 342 and the Contractor shall make all reasonable efforts to schedule and accept the amounts of water  
 343 necessary to satisfy the annual total minimum acre-feet set forth in the Table of Minimum  
 344 Deliveries: Provided, That if the Contractor is unable in any Year to accept quantities sufficient  
 345 to satisfy the total minimum for that Year, the amount of payments for water not used may be  
 346 applied to meet the payment for water taken in excess of the minimum requirement in any of the  
 347 subsequent 5 Years but not thereafter: Provided, further, That payments for water received in

348 excess of the total annual minimum may be used to satisfy minimum payments due during any of  
349 the subsequent 5 Years but not thereafter.

350 (c) In no event shall the United States be obligated to furnish more than  
351 43,800 acre-feet of water during any Year of the term of this Contract: *Provided, That* this  
352 quantity may be increased pursuant to subdivisions (f) and (g) of this Article: *And Provided,*  
353 *further, That* this quantity may be decreased by agreement of the parties for the remainder of the  
354 term of this Contract.

355 (d) In the event the United States is unable to deliver the scheduled quantity  
356 of water due to water shortage or other disruption of service and part or all of the undelivered  
357 water was required to meet the contract minimum then the minimum amount which the  
358 Contractor shall be required to pay for in such Year will be reduced to the amount delivered.

359 (e) The United States will provide the electrical capacity and energy,  
360 hereinafter referred to as Project power, necessary to deliver Project Water to and through the  
361 Division Facilities without any charge over and above the Rates and any adjustments thereof set  
362 forth in Article 8 of this Contract.

363 (f) If the Contractor in any Year requires a quantity of water in addition to the  
364 maximum quantity of 43,800 acre-feet per annum which the United States is obligated to deliver  
365 to the Contractor, additional water, if water and capacity are available as determined by the  
366 Contracting Officer, may be delivered upon receipt from the Contractor of a written request  
367 together with a schedule indicating the desired times, uses, and quantities of water and payment  
368 at the applicable Rates specified in Article 8 of this Contract. The delivery by the United States  
369 and acceptance by the Contractor of such additional water shall neither entitle nor obligate the  
370 Contractor to receive such quantities in subsequent Years.

371 (g) If from time to time the Contracting Officer determines that other potential  
372 contractors within the Division have not obligated themselves to purchase the maximum quantity  
373 of water the Division is capable of supplying, the Contracting Officer will notify all contractors  
374 within the Division of such unobligated supply and will make the same available on a prorated  
375 basis to such contractors who request additional water and demonstrate a need therefor to the  
376 satisfaction of the Contracting Officer. Any such additional quantities made available to the  
377 Contractor shall be delivered and paid for as shall be agreed upon in writing by the parties  
378 hereto.

379 (h) If at any time during the term of this Contract the Contractor determines  
380 there is Reclaimed Water available which the Contractor desires to use, as demonstrated to the  
381 satisfaction of the Contracting Officer, the United States will renegotiate appropriate  
382 amendments to decrease the required amounts in this Article.

383 (i) The Contractor's right pursuant to Federal Reclamation law and applicable  
384 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract  
385 shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable  
386 Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of  
387 August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding  
388 sentence shall affect the Contracting Officer's ability to impose shortages under Article 5 or  
389 subdivision (b) of Article 6 of this Contract.

390 DELIVERY SCHEDULES

391 4. The Contractor will submit for each Year a schedule satisfactory to the  
392 Contracting Officer showing the quantities of water required each month during such Year.  
393 Schedules will be submitted not later than March 1<sup>st</sup> and at such other times as is necessary to  
394 assure coordination of Project operation. The United States shall notify the Contractor of

395 concurrence with or changes to said schedule prior to February 15th and shall attempt to deliver  
396 water in accordance with said schedules or any revision thereof satisfactory to the Contracting  
397 Officer which are submitted to the Contracting Officer within a reasonable time before the  
398 desired time for delivery. The inability, failure, or refusal of the Contractor to submit a schedule  
399 shall not relieve it of its payment obligations.

400 MAINTENANCE OF FLOWS – TEMPORARY REDUCTIONS

401 5. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
402 requirements of Federal law and (ii) the obligations of the United States under existing contracts,  
403 or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall  
404 make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in  
405 this Contract.

406 (b) The United States may temporarily discontinue or reduce the quantity of  
407 water to be furnished to the Contractor as herein provided for the purposes of investigation,  
408 inspection, maintenance, repair, or replacement of any of the facilities necessary for the  
409 furnishing of water to the Contractor, but so far as feasible the United States will give the  
410 Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
411 of emergency, in which case no notice need be given: *Provided, however, That* the United States  
412 shall use its best efforts to avoid any discontinuance or reduction in service for a period longer  
413 than 3 days. Upon resumption of service after such reduction and if requested by the Contractor,  
414 the United States will attempt to deliver the quantity of water which would have been furnished  
415 hereunder in the absence of such contingency.

416 CONSTRAINTS ON THE AVAILABILITY OF WATER

417 6. (a) In its operation of the Project, the Contracting Officer will use all  
418 reasonable means to guard against a Condition of Shortage in the quantity of Project Water to be  
419 made available to the Contractor pursuant to this Contract. In the event the Contracting Officer

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

422 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting  
423 or other similar operational errors affecting the Project, drought, other physical or natural causes  
424 beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to  
425 meet current and future legal obligations, then, except as provided in Article 32 of this Contract,  
426 no liability shall accrue against the United States or any of its officers, agents, or employees for  
427 any damage, direct or indirect, arising therefrom.

428 (c) In any Year that the Contracting Officer determines there is a shortage in  
429 the quantity of water available to Project Contractors, the Contracting Officer will apportion  
430 available water among the water users capable of receiving water from the same Project facilities  
431 by reducing deliveries to all such water users by the same percentage, unless the Contracting  
432 Officer is prohibited by existing contracts, Project authorizations, or the Contracting Officer  
433 determines that some other method of apportionment is required to prevent undue hardship. In  
434 the event reduced deliveries within the Division are necessary, Project Water furnished under  
435 this Contract for M&I purposes will be allocated in accordance with the CVP M&I Water  
436 Shortage Policy. Such Policy shall be amended, modified, or superseded only through public  
437 notice and comment procedure.

438 (d) If operation of the Project to meet legally required Delta water quality  
439 control standards, including Federally adopted water quality standards, results in a shortage in  
440 water supply and requires a reduction in deliveries of water to the Contractor under this Contract,  
441 such reductions will be made in accordance with subdivision (c) of this Article and shall not be  
442 deemed a breach hereof.

443 POINT OF DELIVERY – MEASUREMENT – RESPONSIBILITY FOR DISTRIBUTION

444 7. (a) The Water to be furnished to the Contractor pursuant to this Contract will  
445 be made available to the Contractor at the headworks of the San Benito Facilities, hereinafter  
446 referred to as the point of delivery. Turnouts will be constructed by the United States at its

447 expense at such points within the San Benito Facilities as may be agreed upon in writing by the  
448 Contracting Officer and the Contractor: *Provided, That* future additional turnouts shall be  
449 provided at the Contractor's expense.

450 (b) The Contractor shall construct and install, without cost or expense to the  
451 United States, suitable connection facilities required by the Contractor to take and convey the  
452 water from the turnouts. The Contractor will furnish for approval of the Contracting Officer  
453 drawings showing the construction to be performed by the Contractor within the United States  
454 right-of-way 3 months before issuance of the invitations for bids. The facilities may be installed,  
455 operated, and maintained on or across the United States right-of-way subject to such restrictions  
456 and regulations as to type, location, method of installation, operation, and maintenance as may be  
457 prescribed by the Contracting Officer.

458 (c) All Water Delivered to the Contractor shall be measured by the Contractor  
459 or the Contracting Officer's designee at the first measuring device installed on the San Benito  
460 Facilities at or downstream from the point of delivery and at other point or points satisfactory to  
461 the Contracting Officer with equipment furnished and installed by the Contractor, Contracting  
462 Officer's designee, or the United States. The measuring equipment shall be operated and  
463 maintained in proper condition for accurate measurement by the Contractor at its expense. The  
464 United States shall have access to the measuring equipment it furnished at all reasonable times.

465 (1) Water Delivered to the Contractor through Non-Project Facilities  
466 shall be measured by the Contractor or the Contracting Officer's designee at a measuring point  
467 or points agreed to in writing by the Contracting Officer. Measuring equipment, subject to  
468 approval of the Contracting Officer, will be purchased, installed, operated and maintained in

469 proper condition for accurate measurement at the Contractor's expense. The United States shall  
470 have reasonable access to the measuring equipment.

471 (d) The quantity of Agricultural and M&I Water furnished to the Contractor  
472 shall be determined as follows:

473 (1) (A) The Contractor has established a measuring program  
474 satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water  
475 delivered for irrigation purposes to the Contractor's customers within the Contractor's Service  
476 Area is measured at each agricultural turnout and such water delivered for M&I purposes to the  
477 Contractor's customers is measured at each M&I service connection. The water measuring  
478 devices or water measuring methods of comparable effectiveness must be acceptable to the  
479 Contracting Officer. The Contractor shall be responsible for ensuring that its retail customers are  
480 installing, operating, and maintaining and repairing all measuring devices and implementing all  
481 water measuring methods at no cost to the United States. The Contractor shall use the  
482 information obtained from such water measuring devices or water measuring methods to ensure  
483 its proper management of the water, to bill water users for water delivered by the Contractor;  
484 and, if applicable, to record water delivered for M&I purposes by customer class as defined in  
485 the Contractor's water conservation plan provided for in Article 42 of this Contract. Nothing  
486 herein contained, however, shall preclude the Contractor from establishing and collecting any  
487 charges, assessments, or other revenues authorized by California law. The Contractor shall  
488 include a summary of all its annual surface water deliveries in the annual report described in  
489 subdivision (c) of Article 42 of this Contract.

490 (B) To the extent the information has not otherwise been  
491 provided, upon the effective date of this Contract, the Contractor shall provide to the Contracting

492 Officer a written report describing the measurement devices or water measuring methods being  
493 used or to be used to implement subdivision (d)(1)(i) of this Article and identifying the  
494 agricultural turnouts and the M&I service connections or alternative measurement programs  
495 approved by the Contracting Officer, at which such measurement devices or water measuring  
496 methods are being used, and, if applicable, identifying the locations at which such devices and/or  
497 methods are not yet being used including a time schedule for implementation at such locations.  
498 The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy,  
499 and necessary modifications, if any, of the measuring devices or water measuring methods  
500 identified in the Contractor's report and if the Contracting Officer does not respond in such time,  
501 they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the  
502 measuring devices or methods are inadequate, the parties shall within 60 days following the  
503 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the  
504 Contractor shall modify said measuring devices and/or measuring methods as required by the  
505 Contracting Officer to ensure compliance with subdivision (d)(1)(i) of this Article.

506 (C) All new surface water delivery systems installed within the  
507 Contractor's Service Area after the effective date of this Contract shall also comply with the  
508 measurement provisions described in subdivision (d)(1)(i) of this Article.

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

512 (E) The Contractor shall inform the Contracting Officer and the  
513 Operating Non-Federal Entity on or before the 20th calendar day of each month of the quantity  
514 of Agricultural Water and M&I Water taken during the preceding month.



515                           (2)     Project Water may be used by the Contractor for  
516 recharge into the groundwater basins in San Benito County. The amount of Project Water  
517 delivered by the United States in any Year which is used for recharge shall be measured by the  
518 Contractor as near to the recharge facility as practicable. The Contractor will cause  
519 determinations of groundwater extractions and use to be made and recorded and will cause the  
520 water surface elevations in the groundwater basins to be recorded, all in a manner satisfactory to  
521 the Contracting Officer. The installation, operation, and maintenance of all measuring devices  
522 and all computations of amounts of water re-charged and extracted shall be made without cost or  
523 expense to the United States. The United States shall have the same rights with respect to the  
524 investigations and testing of said measuring devices and records as are set forth in subdivision  
525 (d)(1) of this Article. Prior to January 31 of each Year, the Contractor will submit to the  
526 Contracting Officer a report setting forth the amount of Project Water recharged by the  
527 Contractor and the quantities of water that were pumped from the basins and put to M&I and  
528 agricultural use respectively during the preceding Year. The quantities of Project Water  
529 recharged in each basin shall be computed annually by prorating between M&I Water and  
530 Agricultural Water in the same proportion that the water pumped from the basin and used for  
531 each of said purposes bears to the total water pumped from the basin in that Year: *Provided, That*  
532 the Contractor shall not divide the Contractor's Service Area into more than three basins for  
533 accounting purposes:

534                           (3)     The difference in any Year between the total amount delivered to  
535 the Contractor and the sum of the totals determined in accordance with subsections (d)(1) and  
536 (d)(2) of this Article shall be deemed to be Agricultural Water.

537 (e) The Contractor shall maintain, in a manner satisfactory to the Contracting  
538 Officer, monthly records of the quantities of water determined pursuant to section (c) of this  
539 Article and will submit a report to the Contracting Officer before the 7th day of the following  
540 month.

541 (f) The United States shall not be responsible for the control, carriage,  
542 handling, use, disposal, or distribution of water beyond the point of delivery, and the Contractor  
543 shall hold the United States harmless on account of damage or claim of damage of any nature  
544 whatsoever for which there is legal responsibility, including property damage, personal injury or  
545 death arising out of or connected with the control, carriage, handling, use, disposal, or  
546 distribution of such water beyond said points of delivery.

547 RATES AND METHOD OF PAYMENT FOR WATER AND ACCELERATED REPAYMENT  
548 OF FACILITIES

549 8. (a) Notwithstanding the Contractor's full prepayment of the WIIN Repayment  
550 Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN  
551 Act, as set forth in Exhibit "E", and any payments required pursuant to Section 4011, subsection  
552 (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this  
553 Article, subdivision (b), the Contractor's Project construction and other cost obligations shall be  
554 determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted  
555 in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the  
556 WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through  
557 a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated  
558 rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments  
559 shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be  
560 agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and

561 Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set  
562 forth in Exhibit “B”, as may be revised annually.

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

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

571 (A) The amount due and payable to the United States, pursuant  
572 to the WIIN Act, shall be the WIIN Repayment Obligation. The WIIN Repayment Obligation  
573 has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is  
574 set forth as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal  
575 annual installments (Irrigation Only) to be repaid no later than three (3) years after the Effective  
576 Date of this Contract as set forth in Exhibit “E”. The WIIN Repayment Obligation is due in  
577 lump sum by **[Month, Day, Year]** as provided by the WIIN Act. The Contractor must provide  
578 appropriate notice to the Contracting Officer in writing no later than thirty (30) days prior to  
579 **[Month, Day, Year] [Division Level: consider the effective date of the contract being**  
580 **converted]** if electing to repay the amount due using the lump sum alternative. If such notice is  
581 not provided by such date, the Contractor shall be deemed to have elected the installment  
582 payment alternative, in which case, the first such payment shall be made no later than **[Month,**  
583 **Day, Year] [Division Level: consider the effective date of the contract being converted].**

584 The second payment shall be made no later than the first anniversary of the first payment date.  
585 The third payment shall be made no later than the second anniversary of the first payment date.  
586 The final payment shall be made no later than [Month, Day, Year] [no later than the third  
587 anniversary of the effective date of the contract]. If the installment payment option is elected by  
588 the Contractor, the Contractor may pre-pay the remaining portion of the WIIN Repayment  
589 Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the  
590 Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using  
591 the same methodology as was used to compute the initial annual installment payment amount,  
592 which is illustrated in Exhibit "E". Notwithstanding any Additional Capital Obligation that may  
593 later be established, receipt of the Contractor's payment of the WIIN Repayment Obligation to  
594 the United States shall fully and permanently satisfy the Existing Capital Obligation.

595 (B) Additional Capital Obligations that are not reflected in  
596 Exhibit "E", which addresses the WIIN Repayment Obligation, and are properly assignable to  
597 the Contractor, shall be repaid as prescribed by the WIIN Act without interest except as required  
598 by law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I  
599 portion of the Additional Capital Obligation assigned to the Contractor until such costs are paid.  
600 Increases or decreases in the Additional Capital Obligation assigned to the Contractor caused  
601 solely by annual adjustment of the Additional Capital Obligation assigned to each Project  
602 contractor by the Secretary shall not be considered in determining the amounts to be paid  
603 pursuant to this subdivision (a)(2)(B), however, will be considered under subdivision (b) of this  
604 Article. A separate agreement shall be established by the Contractor and the Contracting Officer  
605 to accomplish repayment of the Additional Capital Obligation assigned to the Contractor within  
606 the timeframe prescribed by the WIIN Act, subject to the following:

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

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

619 (b) In the event that the final cost allocation referenced in Section 4011(b) of  
620 the WIIN Act determines that the costs properly assignable to the Contractor are greater than  
621 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining  
622 allocated costs. The term of such additional repayment contract shall be not less than one (1)  
623 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate  
624 of repayment of such amount may be developed by the Contractor and Contracting Officer. In  
625 the event that the final cost allocation indicates that the costs properly assignable to the  
626 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such  
627 overpayment as an offset against any outstanding or future obligations of the Contractor, with the  
628 exception of Restoration Fund Charges pursuant to Section 3407(d) of Public Law 102-575.

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

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

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

646 (d) At the time the Contractor submits the initial schedule for the delivery of  
647 Project Water for each Year pursuant to Article 4 of this Contract, the Contractor shall make an  
648 advance payment to the United States equal to the total amount payable pursuant to the  
649 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
650 delivered pursuant to this Contract during the first two calendar months of the Year. Before the  
651 end of the first month and before the end of each calendar month thereafter, the Contractor shall

652 make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this  
653 Article, for the water scheduled to be delivered pursuant to this Contract during the second  
654 month immediately following. Adjustments between advance payments for water scheduled and  
655 payments at Rates due for Water Delivered shall be made before the end of the following month;  
656 *Provided, That* any revised schedule submitted by the Contractor pursuant to Article 4 of this  
657 Contract which increases the amount of Water Delivered pursuant to this Contract during any  
658 month shall be accompanied with appropriate advance payment, at the Rates then in effect, to  
659 assure that Project Water is not delivered to the Contractor in advance of such payment. In any  
660 month in which the quantity of Water Delivered to the Contractor pursuant to this Contract  
661 equals the quantity of water scheduled and paid for by the Contractor, no additional Project  
662 Water shall be delivered to the Contractor unless and an advance payment at the Rates then in  
663 effect for such additional Project Water is made. Final adjustment between the advance  
664 payments for the water scheduled and payments for the quantities of Water Delivered during  
665 each Year pursuant to this Contract shall be made as soon as practicable but no later than April  
666 30th of the following Year.

667 (e) The Contractor shall also make a payment in addition to the Rate(s) in  
668 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
669 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
670 month of delivery; *Provided, That* the Contractor may be granted an exception from the Tiered  
671 Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be  
672 consistent with the quantities of Agricultural Water and M&I Water delivered as shown in the  
673 water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or,  
674 if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery

675 report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing  
676 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges  
677 shall be made through the adjustment of payments due to the United States for Charges for the  
678 next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing  
679 Component shall be computed pursuant to Article 11 of this Contract.

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

686 (g) Payments to be made by the Contractor to the United States under this  
687 Contract may be paid from any revenues available to the Contractor.

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

693 (i) The Contracting Officer shall keep its accounts pertaining to the  
694 administration of the financial terms and conditions of its long-term contracts, in accordance  
695 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
696 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
697 Contractor a detailed accounting of all Project and Contractor expense allocations, the



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

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

708 (k) (1) Beginning at such time as deliveries of Project Water in a Year  
709 exceed 80 percent of the total available pursuant to this Contract, then before the end of the  
710 month following the month of delivery the Contractor shall make an additional payment to the  
711 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component  
712 for the amount of Water Delivered in excess of 80 percent of the total available pursuant to this  
713 Contract, but less than or equal to 90 percent of that total, shall equal one-half of the difference  
714 between the Rate established under subdivision (a) of this Article and the Full Cost Rate for  
715 Agricultural Water or Full Cost Rate for M&I Water, whichever is applicable. The Tiered  
716 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the total  
717 available pursuant to this Contract shall equal the difference between (i) the Rate established  
718 under subdivision (a) of this Article and (ii) the Full Cost Rate for Agricultural Water or Full  
719 Cost Rate for M&I Water, whichever is applicable.

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

728                           (3)     For purposes of determining the applicability of the Tiered Pricing  
729 Component pursuant to this Article, Water Delivered shall include Project Water that the  
730 Contractor transfers to others and Project Water provided to the Contractor pursuant to  
731 subdivision (g) of Article 3 of this Contract, but shall not include Project Water transferred to the  
732 Contractor.

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

741                           (m)     Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
742 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates

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

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

751 SAN FELIPE DIVISION REPAYMENT OBLIGATION

752 The Contractor's repayment obligation is described below:

753 9. (a) Repayment of San Felipe Division Facilities. The Contractor and Santa  
754 Clara Valley Water District entered into contracts with the United States committing to repay  
755 their separate, individual share of the total reimbursable capital costs for the San Felipe Division  
756 Facilities. These contracts collectively provide for repayment of the unpaid reimbursable capital  
757 costs as of September 30, 2006. Until the final accounting of such costs is available, the  
758 Contractor's and Santa Clara Valley Water District's interim repayment terms will be based on  
759 the September 30, 2004, reimbursable capital costs for the San Felipe Division Facilities, which  
760 totaled \$319,417,648, as shown on Exhibit C, which exhibit may be revised by mutual agreement  
761 of the parties and Santa Clara Valley Water District without amending this Contract. These  
762 reimbursable capital costs for the San Felipe Division Facilities are summarized below:

763 (1) Reach 1 Facilities. The total reimbursable capital cost of Reach 1  
764 Facilities including allocated interest during construction as of September 30, 2004, is  
765 \$154,767,564.

766 (2) Reach 2 Facilities and Reach 3 Facilities. The total reimbursable  
767 capital cost of Reach 2 Facilities and Reach 3 Facilities including allocated interest during  
768 construction, as of September 30, 2004, is \$102,546,257.

769 (3) San Benito Facilities. The total reimbursable capital costs of the  
770 San Benito Facilities including allocated interest during construction as of September 30, 2004,  
771 is \$62,103,817.

772 (4) Interest During Construction. The reimbursable San Felipe  
773 Division interest during construction, as of September 30, 2004, is \$32,227,149.

774 (b) Final Accounting for San Felipe Division Facilities. In the event that the  
775 September 30, 2006, final accounting of the unpaid reimbursable capital costs for the San Felipe  
776 Division Facilities is not available by December 31, 2007, the Contractor's and Santa Clara  
777 Valley Water District's repayment obligations will be based on the most recent total reimbursable  
778 capital costs available, and include all payments through December 31, 2007.

779 (c) San Felipe Division Facilities Interest Rates. The interest rate for the  
780 Pacheco Tunnel Inlet used for M&I purposes is 3.137 percent per annum. The interest rate for  
781 the San Felipe Division Facilities, not including the Pacheco Tunnel Inlet, used for M&I  
782 purposes is 3.50 percent per annum. Any calculation or recalculation of the semi-annual  
783 payment schedule shown in Exhibit D in this Contract, or in any subsequent renewed or amended  
784 contract during the remainder of the 50-year repayment period, shall be based on these interest  
785 rates.

786 (d) Repayment of Unpaid Capital Interest. The Contractor shall pay for  
787 unpaid capital interest, consistent with the "Agreement Among the United States, City of Fresno,  
788 City of Coalinga, Contra Costa Water District, Keswick County Service Area #25, Mountain

789 Gate Community Services District, Sacramento Municipal Utility District, San Juan Water  
790 District, Santa Clara Valley Water District, Shasta County Water Agency, and City of Tracy for  
791 Settlement of the CVP M&I Ratesetting Lawsuit" entered into in 2005 to resolve City of Fresno  
792 v. United States, Civ. No. F-03-5350 (E.D.Cal). As specified in the settlement agreement, the  
793 interest rate for the unpaid balance shall be 3.50 percent per annum.

794 (e) San Felipe Division Repayment Obligation and Annual Payment  
795 Schedule.

796 (1) Interim San Felipe Division Repayment Obligation. The  
797 Contractor's interim repayment obligation will be computed by totaling its separate, individual  
798 share of reimbursable capital costs for Reach 1 Facilities, and San Benito Facilities, as of  
799 September 30, 2004, shown on Exhibit C, plus its unpaid capital interest, minus its accumulated  
800 repayment as of September 30, 2004. The Contractor's semiannual payment schedule shown on  
801 Exhibit D reflects a stepped repayment structure. Reach 1 Facilities costs are allocated 18.98%  
802 to the Contractor, and Reach 1 Facilities interest during construction (IDC) costs are allocated  
803 5.184% to the Contractor.

804 (2) Final San Felipe Division Repayment Obligation. Using the same  
805 allocation of Reach 1 Facilities cost to the Contractor and the same stepped repayment structure  
806 as in subparagraph (e)(1), the Contractor's final San Felipe Division 1 Repayment Obligation  
807 will be computed by totaling its separate, individual share of reimbursable capital costs for  
808 Reach 1 Facilities and San Benito Facilities, as of September 30, 2006, plus its final balance of  
809 unpaid capital interest, minus its final accumulated repayment. The reimbursable San Felipe  
810 Division capital costs shown on Exhibit C, and the Contractor's semi-annual payment schedule

811 on Exhibit D will be revised in a manner consistent with the above, without amending this  
812 Contract.

813 (f) Supplemental Payments and Relief from Payment Schedule.

814 (1) The Contractor may, at any time prior to the expiration of this  
815 Contract, make supplemental payment(s) of all or part of the unpaid balance for any or part of  
816 the Contractor's share of Reach I Facilities or San Benito Facilities, or its unpaid capital interest,  
817 in which case the repayment schedule in Exhibit D will be shortened and will maintain the same  
818 stepped repayment structure over the remaining repayment period. Exhibit D may be revised by  
819 mutual agreement of the Parties without amending this Contract.

820 (2) If circumstances arise that compromise the Contractor's ability to  
821 make payments according to Exhibit D, the Contractor may request a deferment of said  
822 payments consistent with Reclamation law, and if approved, Exhibit D shall be revised  
823 accordingly by mutual agreement without amending this Contract.

824 (g) Upon repayment of the amounts required under this Article, the Contractor  
825 shall have no further repayment obligations associated with the capital costs of the San Felipe  
826 Division Facilities or unpaid capital interest.

827 ADJUSTMENTS

828 10. The amount of any payment by the Contractor during any Year over the amount  
829 the Contractor otherwise under the provisions of this Contract would have been required to pay,  
830 as conclusively determined by the Contracting Officer, shall be applied first to any accrued  
831 indebtedness arising out of this Contract then due and owing to the United States by the  
832 Contractor, and any amount of such overpayment then remaining, at the option of the Contractor,  
833 shall be refunded to the Contractor or credited upon amounts to become due to the United States  
834 from the Contractor in the ensuing Year under the provisions hereof.

835

CHARGES FOR DELINQUENT PAYMENTS

836

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

846

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

850

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

853

EXCHANGES OF WATER

854

12. The Contractor may from time to time, with the prior written approval of the Contracting Officer, enter into contracts, transfers, or exchanges with other contractors for a water supply from the Project which would have the effect of providing additional Project Water to the Contractor, or which would have the effect of transferring water furnished or delivered hereunder to other parties having contracts with the United States for water from the Project.

859

CONVEYANCE OF NON-PROJECT WATER

860

13. The Contractor shall have the right to use Division Facilities to convey non-Project water, subject, however, to each of the following conditions:

862

(a) The Contractor and the Contracting Officer shall agree upon the charge to be paid by the Contractor prior to the use of the Facilities;

864

(b) Such conveyance shall not interfere with deliveries of Project Water to the Contractor or to any other user of the Facilities;

865

866 (c) Arrangements for power necessary to convey such water shall be the  
867 responsibility of the Contractor;

868 (d) The United States shall not incur any liability  
869 or unreimbursed cost or expense thereby; and

870 (e) To the extent that non-Project water conveyed through Division Facilities  
871 is directly applied to land for agricultural use, such water shall be subject to subdivision (b) of  
872 Article 31 of this Contract.

873 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

874 14. (a) The Operation and Maintenance of a portion of the Project facilities which  
875 serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have  
876 been transferred to the San Luis & Delta-Mendota Water Authority, an Operating Non-Federal  
877 Entity by separate agreement (8-07-20-X0354-X) between the United States and the Operating  
878 Non-Federal Entity San Luis & Delta-Mendota Water Authority. That separate agreement shall  
879 not interfere with or affect the rights or obligations of the Contractor or the United States  
880 hereunder.

881 (b) The Contracting Officer has previously notified the Contractor in writing  
882 that the Operation and Maintenance of a portion of the Project facilities which serve the  
883 Contractor has been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota  
884 Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal  
885 Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the  
886 Contracting Officer under the terms and conditions of the separate agreement between the United  
887 States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
888 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind,  
889 including any assessment for reserve funds, which the Operating Non-Federal Entity San Luis &



890 Delta-Mendota Water Authority or such successor determines, sets, or establishes for the O&M  
891 of the portion of the Project facilities operated and maintained by the Operating Non-Federal  
892 Entity San Luis & Delta-Mendota Water Authority or such successor. Such direct payments to  
893 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor  
894 shall not relieve the Contractor of its obligation to pay directly to the United States the  
895 Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the  
896 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects  
897 payments on behalf of the United States in accordance with the separate agreement identified in  
898 subdivision (a) of this Article.

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

905 (d) In the event the O&M of the Project facilities operated and maintained by  
906 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by  
907 the United States during the term of this Contract, the Contracting Officer shall so notify the  
908 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include  
909 the portion of the Rates to be paid by the Contractor for Project Water under this Contract  
910 representing the O&M costs of the portion of such Project facilities which have been re-assumed.  
911 The Contractor shall, thereafter, in the absence of written notification from the Contracting

912 Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the  
913 revised Exhibit "B" directly to the United States in compliance with Article 8 of this Contract.

914 OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

915 15. (a) Upon substantial completion of the San Benito Facilities, or as otherwise  
916 determined by the Contracting Officer, and following written notification, the care, operation,  
917 and maintenance of any or all of those San Benito Facilities may be transferred to the Contractor.  
918 Title to the transferred works will remain in the name of the United States, unless otherwise  
919 provided by the Congress of the United States.

920 (1) The United States shall be responsible for major repair or  
921 replacement of transferred works and other Division works required as a result of disaster or  
922 obsolescence, as determined by the Contracting Officer.

923 (b) The Contractor, without expense to the United States, will care for,  
924 operate, and maintain the transferred works in full compliance with the terms of this Contract  
925 and in such a manner that the transferred works remain in good and efficient condition.

926 (c) Necessary repairs of the transferred works shall be made promptly by the  
927 Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and  
928 maintenance of the transferred works threatening or causing interruption of water service, the  
929 Contracting Officer may issue to the Contractor a special written notice of those necessary  
930 repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1)  
931 make the necessary repairs; or 2) submit a plan for accomplishing the repairs acceptable to the  
932 Contracting Officer that contains a timeframe for completing the necessary repairs. In the case  
933 of an emergency the written notice of necessary repairs will include a timeframe for completion  
934 of the repairs. If the Contractor fails to either: 1) make the necessary repairs within the identified  
935 timeframe; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting  
936 Officer within 60 days of receipt of the notice and accomplish the repairs within the timeframe  
937 identified therein, the Contracting Officer may cause the repairs to be made, and the cost of those  
938 repairs shall be paid by the Contractor as directed by the Contracting Officer.

939 (d) The Contractor shall not make any Substantial Changes in the transferred  
940 works without first obtaining written consent of the Contracting Officer. The Contractor will  
941 take all reasonable measures to prevent any unauthorized encroachment on Project land and  
942 rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its  
943 existence.

944 (1) The Contracting Officer shall use its best efforts to promptly  
945 review proposals for work to be undertaken by the Contractor pursuant to this Contract, and to  
946 promptly coordinate and facilitate such work. To the extent that the approval or determination of

947 the Contracting Officer is required in connection with any such activities, such approval or  
948 determination shall not be unreasonably withheld.

949 (e) The Contractor agrees to indemnify the United States for, and hold the  
950 United States and all of its representatives harmless from, all damages resulting from suits,  
951 actions, or claims of any character, except for intentional torts committed by employees of the  
952 United States, brought on account of any injury to any person or property arising out of any act,  
953 omission, neglect, or misconduct in the manner or method of performing any construction, care,  
954 operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or  
955 the United States on transferred works required under this Contract, regardless of who performs  
956 those duties; *Provided, That* for the purposes of this Article 3(e), the term “intentional torts”  
957 includes acts or omissions under California law that constitute gross or willful misconduct, gross  
958 or willful negligence, and sole negligence; and, provided further, that the term “employees of the  
959 United States,” includes agents and independent contractors who are directly responsible to the  
960 United States.

961 (f) The Contractor will cooperate with the Contracting Officer in  
962 implementing an effective dam safety program. The United States agrees to provide the  
963 Contractor and the appropriate agency of the State or States in which the Project facilities are  
964 located with design data, designs, and an operating plan for the dam(s) and related facilities  
965 consistent with the current memorandum of understanding between the United States and the  
966 State of California relating to the coordination of planning, design, construction, operation, and  
967 maintenance processes for dams and related facilities.

968 (g) In the event the Contractor is found to be operating the transferred works  
969 or any part thereof in violation of this Contract or the Contractor is found to be failing any  
970 financial commitments or other commitments to the United States under the terms and conditions  
971 of this Contract, then upon the election of the Contracting Officer, the United States may take  
972 over from the Contractor the care, operation, and maintenance of the transferred works by giving  
973 written notice to the Contractor of such election and the effective date thereof. Thereafter,  
974 during the period of operation by the United States, upon notification by the Contracting Officer  
975 the Contractor will pay to the United States, annually in advance, the cost of Operation and  
976 Maintenance of the works as determined by the Contracting Officer. Following written  
977 notification from the Contracting Officer the care, operation, and maintenance of the works may  
978 be transferred back to the Contractor.

979 (1) If such advances payments are inadequate to properly care for,  
980 operate, and maintain the transferred works to the end of any Year, the Contracting Officer may  
981 give written notice of a supplemental Operation and Maintenance charge and the Contractor shall  
982 pay its share of such amount on or before the date specified in said notice. The Contractor shall  
983 provide for the collection of sufficient Operation and Maintenance or toll charges to pay all such

984 bills to the United States within the time stated herein in addition to providing the necessary  
985 funds to meet the other obligations of the Contractor. Any amount of such advances remaining  
986 unexpended or unobligated shall, at the option of the Contractor, either be refunded or credited  
987 upon amounts to become due to the United States from the Contractor under the provisions of  
988 this Contract in subsequent Years.

989 (h) In addition to all other payments to be made by the Contractor under this  
990 Contract, the Contractor will reimburse to the United States, following the receipt of a statement  
991 from the Contracting Officer, all miscellaneous costs incurred by the United States for any work  
992 involved in the administration and supervision of this Contract.

993 (i) Nothing in this Article will be deemed to waive the sovereign immunity of  
994 the United States.

995 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND  
996 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

997 16. (a) The Contracting Officer may, from time to time, examine the following:  
998 the Contractor's books, records, and reports; the project works being operated by the Contractor;  
999 the adequacy of the Operation and Maintenance program[s]; the reserve fund; and the water  
1000 conservation program including the water conservation fund, if applicable. Notwithstanding title  
1001 ownership, where the United States retains a financial, physical, or liability interest in facilities  
1002 either constructed by the United States or with funds provided by the United States, the  
1003 Contracting Officer may examine any or all of the project works providing such interest to the  
1004 United States.

1005 (b) The Contracting Officer may, or the Contractor may ask the Contracting  
1006 Officer to, conduct special inspections of any project works being operated by the Contractor and  
1007 special audits of the Contractor's books and records to ascertain the extent of any Operation and  
1008 Maintenance deficiencies to determine the remedial measures required for their correction and to  
1009 assist the Contractor in solving specific problems. Except in an emergency, any special  
1010 inspection or audit shall be made only after written notice thereof has been delivered to the  
1011 Contractor by the Contracting Officer.

1012 (c) The Contractor shall provide access to the project works, operate any  
1013 mechanical or electrical equipment, and be available to assist in the examination, inspection, or  
1014 audit.

1015 (d) The Contracting Officer shall prepare reports based on the examinations,  
1016 inspections, or audits and furnish copies of such reports and any recommendations to the  
1017 Contractor.

1018 (e) The costs incurred by the United States in conducting Operation and  
1019 Maintenance examinations, inspections, and audits and preparing associated reports and  
1020 recommendations related to high- and significant-hazard dams and associated facilities shall be  
1021 nonreimbursable. Associated facilities include carriage, distribution, and drainage systems;  
1022 pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and  
1023 storage dams (low-hazard); Type 2 bridges which are Bureau of Reclamation-owned bridges not  
1024 located on a public road; regulating reservoirs (low-hazard); fish passage and protective  
1025 facilities, including hatcheries; river channelization features; rural/municipal water systems;  
1026 desalting and other water treatment plants; maintenance buildings and service yards; facilities  
1027 constructed under Federal loan programs (until paid out); and recreation facilities (reserved  
1028 works only); and any other facilities as determined by the Contracting Officer.

1029 (f) Expenses incurred by the Contractor, as applicable, in participating in the  
1030 Operation and Maintenance site examination will be borne by the Contractor.

1031 (g) Requests by the Contractor for consultations, design services, or  
1032 modification reviews, and the completion of any Operation and Maintenance activities identified  
1033 in the formal recommendations resulting from the examination (unless otherwise noted) are to be  
1034 funded as Project Operation and Maintenance and are reimbursable by the Contractor to the  
1035 extent of current Project Operation and Maintenance allocations.

1036 (h) Site visit special inspections that are beyond the regularly scheduled  
1037 Operation and Maintenance examinations conducted to evaluate particular concerns or problems  
1038 and provide assistance relative to any corrective action (either as a follow up to an Operation and  
1039 Maintenance examination or when requested by the Contractor) shall be nonreimbursable.

1040 (i) The Contracting Officer may provide the State an opportunity to observe  
1041 and participate in, at its (their) own expense, the examinations and inspections. The State(s) may  
1042 be provided copies of reports and any recommendations relating to such examinations and  
1043 inspections.

1044 ADMINISTRATION OF FEDERAL PROJECT LANDS

1045 17. (a) The lands and interests in lands acquired, withdrawn, or reserved and  
1046 needed by the United States for the purposes of care, operation, and maintenance of San Felipe  
1047 Division Facilities may be used by the Contractor for such purposes. The Contractor shall ensure  
1048 that no unauthorized encroachment occurs on Federal Project lands and rights-of-way. The  
1049 Contractor does not have the authority to issue any land-use agreement or grant that conveys an  
1050 interest in Federal real property, nor to lease or dispose of any interest of the United States.

1051 (b) The United States retains responsibility for compliance with the National  
1052 Historic Preservation Act of 1966 (NHPA), and the Native American Graves Protection and  
1053 Repatriation Act of 1990 (NAGPRA). The Contractor will notify the Contracting Officer and,  
1054 only when on tribal land, also notify the appropriate tribal official, immediately upon the  
1055 discovery of any potential historic properties or Native American human remains, funerary  
1056 objects, sacred objects, or objects of cultural patrimony.

1057 (c) The Contractor, upon the effective date of the transfer, shall assume all  
1058 obligations of the United States under any contract or contracts related to the crossing of the  
1059 transferred works in, over, along, or across land or rights-of-way of public utilities, the State of  
1060 California, or agencies thereof.

1061 (d) For the purposes of this Contract, definition of the following terms are:

1062 (1) An easement is an instrument which grants an estate in the land  
1063 which is not revocable except as may be provided in the instrument. Rights of way for roads,  
1064 transmission lines, pipelines, and like uses, are granted by an easement.

1065 (2) A lease is an instrument by which lands and tenements are  
1066 conveyed for a number of years or at will. Leases may be used to convey lands for grazing,  
1067 agricultural, commercial and other uses.

1068 (3) A license is an instrument granting authority to do an act or acts on  
1069 lands without conveying an interest therein. It may be used to allow such uses as surveying,  
1070 temporary crossings, bank travel, or installation of temporary pumps. It is an instrument giving a  
1071 personal privilege which is temporary and revocable.

1072 (e) When the Contracting Officer receives a request for use of the right-of-  
1073 way transferred to the Contractor for Operation and Maintenance, he shall forward the request,  
1074 together with any comments which may be pertinent, to the Contractor. Notice of referral shall  
1075 be sent to the applicant without comment. The applicant also should be told that further  
1076 information regarding the application will emanate from the Contractor and all subsequent  
1077 inquiries concerning the application should be sent direct to the Contractor.

1078 (f) Subject to the provisions of (h) below, the Contractor may grant or deny  
1079 licenses to use the right-of-way. The Contractor will send the Contracting Officer a copy of each

1080 license granted. The Contractor will obtain the prior written approval of the Contracting Officer  
1081 for any license that involves a major installation of construction of structures in the right-of-way,  
1082 such flumes, siphons, culverts, drains, and permanent turnouts.

1083 (g) The following rights to use the right-of-way shall be granted only by the  
1084 Contracting Officer:

1085 (1) All leases and grants of easement.

1086 (2) Licenses, consents, and other forms of agreement requested by  
1087 Pacific Gas and Electric Company or any other entity which has a master contract with the  
1088 United States.

1089 (3) Licenses for removal of sand, gravel, or spoil.

1090 (4) Licenses for transmission lines with voltage in excess of 33 kV If  
1091 the application is one which can only be granted by the Contracting Officer, then the Contractor  
1092 shall furnish a copy of the application and comments thereon to the Contracting Officer. If the  
1093 request is compatible with the Operation and Maintenance of the transferred works and if the  
1094 Contractor has indicated approval, the Contracting Officer will send the appropriate executed  
1095 documents to the Contractor for transmittal to the applicant.

1096 (h) In granting permission to use the right-of-way care shall be exercised to  
1097 assure that:

1098 (1) The encroachment is held to the minimum practical,

1099 (2) There is no interference with water supply operations on the right  
1100 of way,

1101 (3) A license is not issued as a substitute for an easement or lease, and

1102 (4) Disposal of land by the United States is not being contemplated.

1103 When there is doubt on any of these matters, the application shall be sent to the Contracting  
1104 Officer.

1105 (i) Charges will normally be made for easements, leases, and licenses to use  
1106 the right of way.

1107 (1) The charge shall be based on the fair value of the right granted  
1108 with a minimum sufficient to cover the administration expenses involved. The Contractor may  
1109 establish uniform charges for servicing licenses.

1110 (2) No charge will be made by the United States for rights granted to  
1111 governmental entities or to such quasi-governmental agencies or nonprofit organizations as the  
1112 parties shall agree upon. However, if a governmental entity requests a right for the specific  
1113 benefit of a private entity, charges will be imposed and will be paid to the Contractor direct as  
1114 though the grant were to the private entity.

1115 (j) The parties agree that the procedures set forth in subdivisions (c) through  
1116 (i) appear desirable and feasible at this time. However, the effectiveness of these procedures is  
1117 subject to review during operations. Necessary or desirable changes will be made by agreement  
1118 of the parties when the need therefor becomes evident.

1119 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

1120 18. (a) The Contractor shall not allow contamination or pollution of Federal  
1121 project lands, Project Waters, or project works of the United States or administered by the United  
1122 States and for which the Contractor has the responsibility for care, operation, and maintenance  
1123 by its employees or agents. The Contractor shall also take reasonable precautions to prevent  
1124 such contamination or pollution by third parties.

1125 (b) The Contractor shall comply with all applicable Federal, State, and local  
1126 laws and regulations and Bureau of Reclamation policies and instructions existing, or hereafter  
1127 enacted or promulgated, concerning any hazardous material that will be used, produced,  
1128 transported, stored, released, or disposed of on or in Federal Project lands, Project Waters, or  
1129 project works.



1130 (c) "Hazardous material" means (1) any substance falling within the  
1131 definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the  
1132 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §  
1133 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and  
1134 the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage  
1135 effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste,  
1136 and (4) any other substance regulated as hazardous or toxic under Federal, State, local or Tribal  
1137 law.

1138 (d) Upon discovery of any event which may or does result in contamination or  
1139 pollution of Federal Project lands, Project Water, or project works, the Contractor shall  
1140 immediately undertake all measures necessary to protect public health and the environment,  
1141 including measures necessary to contain or abate any such contamination or pollution, and shall  
1142 report such discovery with full details of the actions taken to the Contracting Officer. Reporting  
1143 shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery  
1144 if it is an emergency and the first working day following discovery in the event of a non-  
1145 emergency.

1146 (e) If violation of the provisions of this Article occurs and the Contractor does  
1147 not take immediate corrective action, as determined by the Contracting Officer, the Contractor  
1148 may be subject to remedies imposed by the Contracting Officer, which may include termination  
1149 of this Contract.

1150 (f) The Contractor shall be liable for any response action or corrective  
1151 measure necessary to protect public health and the environment or to restore Federal Project  
1152 lands, Project Waters, or project works that are adversely affected as a result of such violation,  
1153 and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State,  
1154 local, or Tribal laws and regulations concerning hazardous material. At the discretion of the  
1155 Contracting Officer, the United States may also terminate this Contract, as a result of such  
1156 violation.

1157 (g) The Contractor shall defend, indemnify, protect and save the United States  
1158 harmless from and against any costs, expenses, claims, damages, demands, or other liability  
1159 arising from or relating to Contractor's violation of this Article.

1160 (h) The Bureau of Reclamation agrees to provide information necessary for  
1161 the Contractor, using reasonable diligence, to comply with the provisions of this Article.

1162 CLEAN AIR AND WATER

1163 19. (a) The Contractor agrees as follows:

1164 (1) To comply with all the requirements of Section 114 of the Clean  
1165 Air Act, as amended (42 U.S.C. § 7414), and Section 308 of the Clean Water Act (33 U.S.C. §  
1166 1318), relating to inspection, monitoring, entry, reports, and information, as well as other  
1167 requirements specified in those sections, and all applicable regulations and guidelines issued  
1168 thereunder.

1169 (2) That no portion of the work required by this contract will be  
1170 performed in a facility listed on the Environmental Protection Agency List of Violating Facilities  
1171 on the date when this contract was executed unless and until the Environmental Protection  
1172 Agency eliminates the name of such facility or facilities from such listing.

1173 (3) To use its best efforts to comply with clean air standards and clean  
1174 water standards at the facility where the contract work is being performed.

1175 (4) To insert the substance of the provisions of this article into any  
1176 nonexempt subcontract, including this subparagraph (a)(4).

1177 (b) The following definitions apply for purposes of this article:

1178 (1) The term “Clean Air Act” means the Act enacted by Pub. L. 88-  
1179 206 of Dec. 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

1180 (2) The term “Clean Water Act” means the Act enacted by Pub. L. 92-  
1181 500 of Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

1182 (3) The term “clean air standards” refers to all enforceable rules,  
1183 regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other  
1184 requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean  
1185 Air Act or Executive Order 11738, an applicable implementation plan as described in Section  
1186 110 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or plan  
1187 under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or (d)),  
1188 or an approved implementation procedure under subsection 112(d) of the Clean Air Act (42  
1189 U.S.C. § 7412(d)).

1190 (4) The term “clean water standards” refers to all enforceable  
1191 limitations, controls, conditions, prohibitions, standards, and other requirements which are  
1192 promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by  
1193 the Environmental Protection Agency or by a state under an approved program, as authorized by  
1194 Section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure  
1195 compliance with pretreatment regulations as required by Section 307 of the Clean Water Act (33  
1196 U.S.C. § 1317).

1197 (5) The term “comply” refers to compliance with clean air or water  
1198 standards. It also refers to compliance with a schedule or plan ordered or approved by a court of  
1199 competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control  
1200 agency in accordance with the requirements of the Clean Air Act or Clean Water Act and  
1201 regulations issued pursuant thereto.

1202 (6) The term “facility” means any building, plant, installation,  
1203 structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or  
1204 supervised by a contractor or subcontractor to be utilized in the performance of a contract or  
1205 subcontract. Where a location or site of operations contains or includes more than one building,  
1206 plant, installation, or structure, the entire location or site shall be deemed to be a facility except

1207 where the Director, Office of Federal Activities, Environmental Protection Agency, determines  
1208 that independent facilities are collocated in one geographical area.

1209 RIGHT TO RECOVER COSTS INCURRED BY SAN BENITO COUNTY WATER  
1210 DISTRICT

1211 20. (a) In addition to operation and maintenance charges, the Contractor, as the  
1212 Operating Non-Federal Entity for the San Benito Facilities, has the right to impose upon any  
1213 entity a charge to recover costs incurred by the Contractor in accordance with this Contract,  
1214 provided such charges are just and reasonable.

1215 (b) In any contract with an entity or individual to deliver Project water or non-  
1216 Project water through the San Benito Facilities, the Contracting Officer shall require that such  
1217 entity or individual enter into an agreement with the Contractor to pay such charges as are just  
1218 and reasonable for use of the San Benito Facilities.

1219 RIGHT TO RECOVER COSTS INCURRED BY SANTA CLARA VALLEY WATER  
1220 DISTRICT

1221 21. (a) Santa Clara Valley Water District, as the Operating Non-Federal Entity  
1222 has the right to require any entity to pay Santa Clara Valley Water District an amount(s) to  
1223 recover costs incurred by Santa Clara Valley Water District for Reach 1 Facilities, Reach 2  
1224 Facilities and Reach 3 Facilities, in addition to O&M costs, provided that such amount(s) are just  
1225 and reasonable. In any contract or approval by the Contracting Officer to deliver water through  
1226 such Facilities, the Contracting Officer shall require the entity or individual to pay such  
1227 amount(s) to the Contractor, upon presentation of Santa Clara Valley Water District's invoice  
1228 therefore.

1229 (b) Unless otherwise agreed, the Santa Clara Valley Water District's right to  
1230 recover capital costs from the Contractor is limited to such capital costs for its share of Reach 1  
1231 Facilities that are not paid directly to the United States by the Contractor under the terms of this

1232 Contract as may be further amended. The Contractor's share of Reach 1 Facilities shall be based  
1233 on Article 3(b) of Contract No. 6-07-20-X0290 entitled Contract for the Operation and  
1234 Maintenance of Certain San Felipe Facilities between the United States and Santa Clara Valley  
1235 Water District dated September 8, 1986, or as otherwise mutually agreed upon by the Contractor  
1236 and Santa Clara Valley Water District in a separate contract.

1237 PEST MANAGEMENT

1238 22. (a) The Contractor is responsible for complying with applicable Federal,  
1239 State, and local laws, rules, and regulations related to pest management in performing its  
1240 responsibilities under this Contract.

1241 (b) The Contractor is responsible for effectively avoiding the introduction and  
1242 spread of, and for otherwise controlling, undesirable plants and animals, as defined by the  
1243 Contracting Officer, on or in Federal Project lands, Federal Project Waters, and Federal project  
1244 works for which and to the extent that the Contractor has Operation and Maintenance  
1245 responsibility. The Contractor is responsible for exercising the level of precaution necessary in  
1246 meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for  
1247 reproductive and vegetative parts, foreign soil, mud, or other debris that may cause the spread of  
1248 weeds, invasive species and other pests, and removing such materials before moving its vehicles,  
1249 watercraft, and equipment onto any Federal land, into any Federal Project facility waters, or out  
1250 of any area on Federal Project land where work is performed.

1251 (c) Where decontamination of the Contractor's vehicles, watercraft, or  
1252 equipment is required prior to entering Federal Project land or waters, the decontamination shall  
1253 be performed by the Contractor at the point of prior use, or at an approved offsite facility able to  
1254 process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the  
1255 completion of work, the Contractor will perform any required decontamination within the work  
1256 area before moving the vehicles, watercraft, and equipment from Federal Project lands and  
1257 waters.

1258 (d) Programs for the control of undesirable plants and animals on Federal  
1259 Project lands, and in Federal Project Waters and Federal project works for which the Contractor  
1260 has Operation and Maintenance responsibility will incorporate Integrated Pest Management  
1261 (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible  
1262 program to maintain pest populations within economically and environmentally tolerable levels.  
1263 In implementing an IPM program, the Contractor will adhere to applicable Federal and State  
1264 laws and regulations and Department of the Interior and Bureau of Reclamation policies,  
1265 directives, guidelines, and manuals, including but not limited to, the Department of the Interior  
1266 Manual, Part 517 Integrated Pest Management Policy and Part 609 Weed Control Program, the  
1267 Plant Protection Act of June 20, 2000 (Pub. L. 106 224), and Executive Order 13112 of February  
1268 3, 1999.

1269                    CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO  
 1270                    TRANSFERRED WORKS

1271                    23.      During the time the transferred works are operated and maintained by the  
 1272 Contractor, in addition to all other payments to be made by the Contractor under this Contract,  
 1273 the Contractor shall pay to the United States within 60 days following the receipt of a detailed  
 1274 cost statement such specific items of direct cost incurred by the United States for work  
 1275 associated with this Contract as are normally charged by the United States to water users and  
 1276 properly and equitably chargeable to the Contractor plus a percentage of direct costs for  
 1277 administrative and general overhead in accordance with the procedures approved by the  
 1278 Contracting Officer, *Provided, That* costs incurred by the United States as a result of disaster or  
 1279 obsolescence in accordance with subdivision (b) of Article 15 are not considered to be costs  
 1280 within the meaning of this Article.

1281                    EMERGENCY RESERVE FUND

1282                    24.      (a)      Commencing with the year following the transfer of Operation and  
 1283 Maintenance of the transferred works to the Contractor, the Contractor shall accumulate and  
 1284 maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other  
 1285 funds are available for use as an emergency reserve fund. The Contractor shall establish and  
 1286 maintain that emergency reserve fund to meet costs incurred during periods of special stress  
 1287 caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or  
 1288 causing interruption of water service.

1289                    (b)      The Contractor shall accumulate the reserve fund with annual deposits or  
 1290 investments of not less than \$50,000 to a Federally insured, interest- or dividend-bearing account  
 1291 or in securities guaranteed by the Federal Government: *Provided, That* money in the reserve  
 1292 fund, including accrued interest, shall be available within a reasonable time to meet expenses for  
 1293 such purposes as those identified in paragraph (d) herein. Such annual deposits and the  
 1294 accumulation of interest to the reserve fund shall continue until the basic amount of \$250,000 is  
 1295 accumulated. Following an emergency expenditure from the fund, the annual deposits shall  
 1296 continue from the year following the emergency expenditure until the previous balance is  
 1297 restored. After the initial amount is accumulated or after the previous balance is restored, the  
 1298 annual deposits may be discontinued, and the interest earnings shall continue to accumulate and  
 1299 be retained as part of the reserve fund.

1300                    (c)      Upon mutual written agreement between the Contractor and the  
 1301 Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to

1302 account for risk and uncertainty stemming from the size and complexity of the Project; the size  
1303 of the annual Operation and Maintenance budget; additions to, deletions from, or changes in  
1304 project works; and Operation and Maintenance costs not contemplated when this Contract was  
1305 executed.

1306 (d) The Contractor may make expenditures from the reserve fund only for  
1307 meeting routine or recurring Operation and Maintenance costs incurred during periods of special  
1308 stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary Operation  
1309 and Maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or  
1310 for meeting betterment costs (in situations where recurrence of severe problems can be  
1311 eliminated) during periods of special stress. Proposed expenditures from the fund shall be  
1312 submitted to the Contracting Officer in writing for review and written approval prior to  
1313 disbursement. Whenever the reserve fund is reduced below the current balance by expenditures  
1314 therefrom, the Contractor shall restore that balance by the accumulation of annual deposits as  
1315 specified in paragraph (b) herein.

1316 (e) During any period in which any of the project works are operated and  
1317 maintained by the United States, the Contractor agrees the reserve fund shall be available for like  
1318 use by the United States.

1319 (f) On or before November 1 of each year, the Contractor shall provide a  
1320 current statement of the principal and accumulated interest of the reserve fund account to the  
1321 Contracting Officer.

1322 PROTECTION OF WATER AND AIR QUALITY

1323 25. (a) The Contractor, without expense to the United States, will care for,  
1324 operate and maintain transferred works in a manner that preserves the quality of the water at the  
1325 highest feasible level as determined by the Contracting Officer.

1326 (b) The United States will care for, operate and maintain reserved works in a  
1327 manner that preserves the quality of the water at the highest feasible level as determined by the  
1328 Contracting Officer. The United States does not warrant the quality of the Water Delivered to  
1329 the Contractor and is under no obligation to furnish or construct water treatment facilities to  
1330 maintain or improve the quality of Water Delivered to the Contractor.

1331 (c) The Contractor shall comply with all applicable water and air pollution  
1332 laws and regulations of the United States and the State of California; and shall obtain all required  
1333 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
1334 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,  
1335 State, and local water quality standards applicable to surface and subsurface drainage and/or  
1336 discharges generated through the use of Federal or Contractor facilities or Project Water  
1337 provided by the Contractor within the Contractor's Project Water Service Area.

1338 (d) This Article will not affect or alter any legal obligations of the Secretary to  
1339 provide drainage or other discharge services.

1340 DRAINAGE STUDIES AND FACILITIES

1341 26. To aid in determining the source and solution of future potential drainage  
1342 problems, the Contractor shall initiate and maintain, in a manner satisfactory to the Contracting  
1343 Officer, a program of groundwater observation in order to delineate shallow water-table areas  
1344 and furnish annually to the Contracting Officer, during the term of this Contract and any renewal  
1345 thereof, records, and analyses of such observations as they relate to potential drainage problems.

1346 RIGHT TO RETURN FLOWS

1347 27. The United States reserves the right to all waste, seepage, and return-flow waters  
1348 derived from water furnished to the Contractor which escapes or is discharged beyond the  
1349 Contractor's Service Area. Nothing herein shall be construed as claiming for the United States  
1350 any right, as waste, seepage, or return flow, to water being used pursuant to this Contract for  
1351 surface irrigation or underground storage within the Contractor's Service Area by the Contractor,  
1352 or those claiming by or through the Contractor.

1353 REPEAL OF AMENDMENT OF FEDERAL RECLAMATION LAWS

1354 28. In the event that the Congress of the United States amends the excess land  
1355 provisions or other provisions of the Federal reclamation laws, the United States agrees, at the  
1356 option of the Contractor, to negotiate amendments of appropriate Articles of this Contract, all  
1357 consistent with the provisions of such amendment.

1358 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

1359 29. (a) The obligation of the Contractor to pay the United States as provided in  
1360 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
1361 obligation may be distributed among the Contractor's water users and notwithstanding the default  
1362 of individual water users in their obligation to the Contractor.

1363 (b) The payment of charges becoming due pursuant to this Contract is a  
1364 condition precedent to receiving benefits under this Contract. The United States shall not make  
1365 water available to the Contractor through Project facilities during any period in which the  
1366 Contractor is in arrears in the advance payment of water rates due the United States. The

1367 Contractor shall not deliver water under the terms and conditions of this Contract for lands or  
1368 parties that are in arrears in the advance payment of water rates as levied or established by the  
1369 Contractor.

1370 (c) The Contractor shall cause to be levied and collected all necessary taxes,  
1371 tolls, assessments, or other charges against properties in Zone 6 and shall use all of the authority  
1372 and resources of the District within the said zone necessary to meet these obligations hereunder.

1373 CHANGES IN THE CONTRACTOR'S ORGANIZATION OR SERVICE AREA

1374 30. While this Contract is in effect, no change may be made in the Contractor's  
1375 Service Area or organization, by inclusion or exclusion of lands or by any other changes which  
1376 may affect the respective rights, obligations, privileges, and duties of either the United States or  
1377 the Contractor under this Contract including, but not limited to, dissolution, consolidation, or  
1378 merger, except upon the Contracting Officer's written consent.

1379 BOOKS, RECORDS, AND REPORTS

1380 31. (a) The Contractor shall establish and maintain accounts and other books and  
1381 records pertaining to administration of the terms and conditions of this Contract, including the  
1382 Contractor's financial transactions; water supply data; project operation, maintenance, and  
1383 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
1384 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
1385 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
1386 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws  
1387 and regulations, each party to this Contract shall have the right during office hours to examine  
1388 and make copies of the other party's books and records relating to matters covered by this  
1389 Contract.

1390 (b) Nothing in this Article 31 shall be construed to limit or constrain the  
1391 ability of the Bureau of Reclamation to conduct contract compliance reviews of this Contract in  
1392 accordance with Reclamation Manual Directives and Standards PEC 05-08, last revised October  
1393 11, 2019, as may be further revised, amended, modified, or superseded.

1394 RULES, REGULATIONS, AND DETERMINATIONS

1395 32. (a) The parties agree that the delivery of water or the use of Federal facilities  
1396 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,  
1397 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
1398 Reclamation law.



1399 (b) The Contracting Officer shall have the right to make determinations  
1400 necessary to administer this Contract that are consistent with its provisions, the laws of the  
1401 United States, and the State of California and the rules and regulations promulgated by the  
1402 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

1403 (c) Except as provided by the San Felipe Division Act of August 28, 1967 (81  
1404 Stat. 173), the parties agree that the delivery of Agricultural Water or use of Federal facilities  
1405 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the  
1406 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and  
1407 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation  
1408 law.

1409 DETERMINATION OF FINDINGS OF FACTS

1410 33. Where the terms of this Contract provide for action to be based upon the opinion  
1411 or determination of either party to this Contract, said terms shall not be construed as permitting  
1412 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1413 determination, whether or not stated to be conclusive. If the Contractor questions any  
1414 determination made by the Contracting Officer, the findings of facts shall be made by the  
1415 Secretary of Interior after consultation with the Contractor and shall be binding upon the parties.

1416 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1417 34. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1418 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
1419 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
1420 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.  
1421 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
1422 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
1423 Interior and/or Bureau of Reclamation.

1424 (b) These statutes prohibit any person in the United States from being  
1425 excluded from participation in, being denied the benefits of, or being otherwise subjected to  
1426 discrimination under any program or activity receiving financial assistance from the Bureau of  
1427 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this  
1428 Contract, the Contractor agrees to immediately take any measures necessary to implement this  
1429 obligation, including permitting officials of the United States to inspect premises, programs, and  
1430 documents.

1431 (c) The Contractor makes this Contract in consideration of and for the  
1432 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1433 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of

1434 Reclamation, including installment payments after such date on account of arrangements for  
1435 Federal financial assistance which were approved before such date. The Contractor recognizes  
1436 and agrees that such Federal assistance will be extended in reliance on the representations and  
1437 agreements made in this Article and that the United States reserves the right to seek judicial  
1438 enforcement thereof.

1439 (d) Complaints of discrimination against the Contractor shall be investigated  
1440 by the Contracting Officer's Office of Civil Rights.

1441 EQUAL EMPLOYMENT OPPORTUNITY

1442 35. During the performance of this Contract, the Contractor agrees as follows:

1443 (a) The Contractor will not discriminate against any employee or applicant for  
1444 employment because of race, color, religion, sex, sexual orientation, gender identity, or national  
1445 origin. The Contractor will take affirmative action to ensure that applicants are employed, and  
1446 that employees are treated during employment, without regard to their race, color, religion, sex,  
1447 sexual orientation, gender identity, or national origin. Such action shall include, but not be  
1448 limited to the following: employment, upgrading, demotion, or transfer; recruitment or  
1449 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and  
1450 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous  
1451 places, available to employees and applicants for employment, notices to be provided by the  
1452 Contracting Officer setting forth the provisions of this nondiscrimination clause.

1453 (b) The Contractor will, in all solicitations or advertisements for employees  
1454 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
1455 consideration for employment without regard to race, color, religion, sex, sexual orientation,  
1456 gender identity, or national origin.

1457 (c) The Contractor will not discharge or in any other manner discriminate  
1458 against any employee or applicant for employment because such employee or applicant has  
1459 inquired about, discussed, or disclosed the compensation of the employee or applicant or another  
1460 employee or applicant. This provision shall not apply to instances in which an employee who  
1461 has access to the compensation information of other employees or applicants as part of such  
1462 employee's essential job functions discloses the compensation of such other employees or  
1463 applicants to individuals who do not otherwise have access to such information, unless such  
1464 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,  
1465 proceeding, hearing, or action, including an investigation conducted by the employer, or is  
1466 consistent with the Contractor's legal duty to furnish information.

1467 (d) The Contractor will send to each labor union or representative of workers  
1468 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1469 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1470 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1471 1965, and shall post copies of the notice in conspicuous places available to employees and  
1472 applicants for employment.

1473 (e) The Contractor will comply with all provisions of Executive Order No.  
1474 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1475 of Labor.

1476 (f) The Contractor will furnish all information and reports required by  
1477 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1478 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1479 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1480 ascertain compliance with such rules, regulations, and orders.

1481 (g) In the event of the Contractor's noncompliance with the nondiscrimination  
1482 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be  
1483 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1484 ineligible for further Government Contracts in accordance with procedures authorized in  
1485 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1486 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1487 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1488 (h) The Contractor will include the provisions of paragraphs (a) through (g) in  
1489 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1490 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1491 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1492 will take such action with respect to any subcontract or purchase order as may be directed by the  
1493 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1494 noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is  
1495 threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
1496 Contractor may request the United States to enter into such litigation to protect the interests of  
1497 the United States."

1498 CONTRACTOR'S RIGHTS TO WATER

1499 36. (a) The right to the beneficial use of water furnished to the Contractor  
1500 pursuant to this Contract shall not be disturbed so long as the Contractor fulfills all of its  
1501 obligations under this Contract.

1502 (b) Except as provided by Section 14 of the Reclamation Project Act of 1939,  
1503 or as otherwise provided by law, the Contracting Officer shall not furnish water to other  
1504 contractors or water users for use within the County of San Benito without the prior written  
1505 approval of the Contractor unless the Contractor determines that it is unable or unwilling to  
1506 furnish such water.

1507 (c) The provisions of this Contract shall not be applicable to or affect water or  
1508 water rights now owned or hereafter acquired by the Contractor or any landowner therein other  
1509 than from the United States.

1510 RENEGOTIATION

1511 37. If hereafter the United States enters into, renews, or amends any contract for  
1512 water from the Project which, because of a change in general Reclamation law or generally  
1513 applicable policy, contains terms and conditions which would be substantially more favorable to  
1514 the Contractor with respect to matters similar to those contained in this Contract, the United  
1515 States upon the Contractor's request, will renegotiate this Contract for the purpose of providing  
1516 comparable terms in accordance with the new law or policy.

1517 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1518 38. The expenditure or advance of any money or the performance of any obligation of  
1519 the United States under this Contract shall be contingent upon appropriation or allotment of  
1520 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1521 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1522 not appropriated or allotted.

1523 OFFICIALS NOT TO BENEFIT

1524 39. (a) No Member of or Delegate to the Congress, Resident Commissioner, or  
1525 official of the Contractor shall benefit from this Contract other than as a water user or landowner  
1526 in the same manner as other water users or landowners.

1527 (b) No official of the Contractor shall receive any benefit that may arise by  
1528 reason of this Contract other than as a landowner within the Project and in the same manner as  
1529 other landowners within the Contractor's Service Area.

1530 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1531 40. The provisions of this Contract shall apply to and bind the successors and assigns  
1532 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein  
1533 by either party shall be valid until approved in writing by the other party.

1534

NOTICES

1535 41. Any notice, demand, or request authorized or required by this Contract shall be  
1536 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1537 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
1538 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1539 to San Benito County Water District, P.O. Box 899, Hollister, California 95024. The designation  
1540 of the addressee or the address may be changed by notice given in the same manner as provided  
1541 in this Article for other notices.

1542

CONFIRMATION OF CONTRACT

1543 42. Promptly after the execution of this Contract, the Contractor will provide  
1544 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the  
1545 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the  
1546 Contractor. This Contract will not be binding on the United States until the Contractor provides  
1547 evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet  
1548 the requirements of this Article, the Contractor may provide or the Contracting Officer may  
1549 require a certified copy of a final decree of a court of competent jurisdiction in the State of  
1550 California, confirming the proceedings on the part of the Contractor for the authorization of the  
1551 execution of this Contract.

1552

WATER CONSERVATION

1553 43. (a) Prior to the delivery of water provided from or conveyed through federally  
1554 constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop  
1555 a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of  
1556 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

1557 Additionally, an effective water conservation and efficiency program shall be based on the  
1558 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
1559 the conservation and efficiency criteria for evaluating water conservation plans established under  
1560 Federal law. The water conservation and efficiency program shall contain definite water  
1561 conservation objectives, appropriate economically feasible water conservation measures, and  
1562 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1563 Contract shall be contingent upon the Contractor's continued implementation of such water  
1564 conservation program. In the event the Contractor's water conservation plan or any revised water  
1565 conservation plan completed pursuant to this Contract have not yet been determined by the

1566 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer  
1567 determines are beyond the control of the Contractor, water deliveries shall be made under this  
1568 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such  
1569 determination at the earliest practicable date, and thereafter the Contractor immediately begins  
1570 implementing its water conservation and efficiency program in accordance with the time  
1571 schedules therein.

1572 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1573 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall  
1574 implement the Best Management Practices identified by the time frames issued by the California  
1575 Urban Water Conservation Council for such M&I Water unless any such practice is determined  
1576 by the Contracting Officer to be inappropriate for the Contractor.

1577 (c) The Contractor shall submit to the Contracting Officer a report on the  
1578 status of its implementation of the water conservation plan on the reporting dates specified in the  
1579 then existing conservation and efficiency criteria established under Federal law.

1580 (d) At 5-year intervals, the Contractor shall revise its water conservation plan  
1581 to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1582 plans established under Federal law and submit such revised water management plan to the  
1583 Contracting Officer for review and evaluation. The Contracting Officer will then determine if  
1584 the water conservation plan meets Reclamation's then current conservation and efficiency criteria  
1585 for evaluating water conservation plans established under Federal law.

1586 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1587 shall be described in the Contractor's water conservation plan.

1588 RECLAMATION REFORM ACT OF 1982

1589 44. (a) Upon a Contractor's compliance with and discharge of the San Felipe  
1590 Division Repayment Obligation and the WIIN Repayment Obligation pursuant to this Contract,  
1591 subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269)  
1592 shall apply to affected lands.

1593 (b) The obligation of a Contractor to pay the Additional Capital Obligation  
1594 shall not affect the Contractor's status as having repaid all of the construction costs assignable to  
1595 the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation  
1596 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1597 PRIVACY ACT COMPLIANCE

1598 45. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act) 5  
1599 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act  
1600 (43 C.F.R. § 2.45, et seq.) in maintaining landholder certification and reporting records required  
1601 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the  
1602 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43  
1603 C.F.R. § 426.18.

1604 (b) With respect to the application and administration of the criminal penalty  
1605 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's  
1606 employees who are responsible for maintaining the certification and reporting records referenced  
1607 in paragraph (a) above are considered to be employees of the Department of the Interior. See 5  
1608 U.S.C. § 552a(m).

1609 (c) The Contracting Officer or a designated representative shall provide the  
1610 Contractor with current copies of the Department of the Interior Privacy Act regulations and the  
1611 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-  
1612 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of  
1613 information contained in the landholders' certification and reporting records.

1614 (d) The Contracting Officer shall designate a full-time employee of the  
1615 Bureau of Reclamation to be the System Manager responsible for making decisions on denials  
1616 pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72.  
1617 The Contractor is authorized to grant requests by individuals for access to their own records.

1618 (e) The Contractor shall forward promptly to the System Manager each  
1619 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records  
1620 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the

1621 System Manager with information and records necessary to prepare an appropriate response to  
1622 the requester. These requirements do not apply to individuals seeking access to their own  
1623 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless  
1624 the requester elects to cite the Privacy Act as authority for the request.

1625 MEDIUM FOR TRANSMITTING PAYMENTS

1626 46. (a) All payments from the Contractor to the United States under this Contract  
1627 shall be by the medium requested by the United States on or before the date payment is due. The  
1628 required method of payment may include checks, wire transfers, or other types of payment  
1629 specified by the United States.

1630 (b) Upon execution of the Contract, the Contractor shall furnish the  
1631 Contracting Officer with the Contractor’s taxpayer’s identification number (TIN). The purpose  
1632 for requiring the Contractor’s TIN is for collecting and reporting any delinquent amounts arising  
1633 out of the Contractor’s relationship with the United States.

1634 CONTRACT DRAFTING CONSIDERATIONS

1635 47. This Contract has been, negotiated and reviewed by the parties hereto, each of  
1636 whom is sophisticated in the matters to which this Contract pertains. The double spaced Articles  
1637 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party  
1638 shall be considered to have drafted the stated Articles. Single-spaced Articles are standard  
1639 Articles pursuant to Bureau of Reclamation policy.

1640 IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 7-07-20-  
1641 W0023A-P on the day and year first above written.

1642 THE UNITED STATES OF AMERICA

1643 By: \_\_\_\_\_  
1644 Regional Director  
1645 Interior Region 10: California-Great Basin  
1646 Bureau of Reclamation

1647 SAN BENITO COUNTY WATER DISTRICT

1648 By: \_\_\_\_\_  
1649 President, Board of Directors



1650 ATTEST:

1651 By: \_\_\_\_\_  
1652 Board Secretary

