

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

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

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Exhibit A - Map of Contractor's Boundaries

Exhibit B - Rates and Charges

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

4 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
5 AND
6 DAVIS WATER DISTRICT
7 PROVIDING FOR PROJECT WATER SERVICE
8 FROM THE SACRAMENTO RIVER DIVISION

9 THIS CONTRACT, made this 25th day of February, 2005,

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

19 WITNESSETH, That:

20

EXPLANATORY RECITALS

21 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
22 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
23 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
24 and restoration, generation and distribution of electric energy, salinity control, navigation and
25 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
26 and the San Joaquin River and their tributaries; and

27 [2nd] WHEREAS, the United States constructed the Red Bluff Diversion Dam, and the
28 Tehama-Colusa Canal and related delivery facilities including pumping plants, hereinafter
29 collectively referred to as the Canal Facilities, which will be used in part for the furnishing of
30 water to the Contractor pursuant to the terms of this Contract; and

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

33 [4th] WHEREAS, the Contractor and the United States entered into Contract
34 No. 14-06-200-6001A, which established terms for the delivery to the Contractor of Project
35 Water from the Canal Facilities from February 13, 1973, through February 28, 1995, and under
36 which the initial date of water delivery to the Contractor was January 1, 1984; and

37 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
38 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
39 interim renewal contract(s) identified as Contract No(s). 14-06-200-6001A-IR1, 14-06-200-
40 6001A-IR2, 14-06-200-6001A-IR3, 14-06-200-6001A-IR4, 14-06-200-6001A-IR5, 14-06-200-
41 6001A-IR6, 14-06-200-6001A-IR7, and 14-06-200-6001A-IR8, the current of which is
42 hereinafter referred to as the Existing Contract, which provided for the continued water service
43 to the Contractor from March 1, 2004, through February 28, 2006; and

44 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
45 Existing Contract following completion of appropriate environmental documentation, including a

46 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
47 Policy Act (NEPA), analyzing the direct and indirect impacts and benefits of implementing the
48 CVPIA and the potential renewal of all existing contracts for Project Water; and

49 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
50 environmental review necessary to provide for long-term renewal of the Existing Contract; and

51 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
52 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
53 of the State of California, for water service from the Project; and

54 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
55 of its obligations under the Existing Contract; and

56 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
57 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
58 reasonable and beneficial use and, based upon a needs analysis cooperatively prepared by the
59 Contracting Officer and the Contractor, has demonstrated projected future demand for water use
60 that exceeds the Contract Total to be made available to it pursuant to this Contract; and

61 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
62 agricultural areas within California for more than 50 years, and is considered by the Contractor
63 as an essential portion of its water supply; and

64 [12th] WHEREAS, the economies of regions within the Project, including the
65 Contractor's, depend upon the continued availability of water, including water service from the
66 Project; and

67 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
68 partnerships to pursue measures to improve water supply, water quality, and reliability of the
69 Project for all Project purposes; and

70 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
71 provide for reliable Project Water supplies; to control costs of those supplies; to achieve

72 repayment of the Project as required by law; to guard reasonably against Project Water
73 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
74 and to comply with all applicable environmental statutes, all consistent with the legal obligations
75 of the United States relative to the Project; and

76 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
77 relationship in order to achieve their mutual goals; and

78 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
79 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

82 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145 (s) "Project" shall mean the Central Valley Project owned by the United
146 States and managed by the Department of the Interior, Bureau of Reclamation;

147 (t) "Project Contractors" shall mean all parties who have water service
148 contracts for Project Water from the Project with the United States pursuant to Federal
149 Reclamation law;

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

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

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

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

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

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

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

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

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

175

TERM OF CONTRACT

176 2. (a) This Contract shall be effective March 1, 2005, through February 28,
177 2030, and supersedes the Existing Contract. In the event the Contractor wishes to renew this
178 Contract beyond February 28, 2030, the Contractor shall submit a request for renewal in writing
179 to the Contracting Officer no later than two years prior to the date this Contract expires. The
180 renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the
181 Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract
182 insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by
183 subdivision (c) of this Article.

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

189 (2) The conditions which must be met for this Contract to be renewed
190 are: (i) the Contractor has prepared a water conservation plan that has been determined by the
191 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and
192 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is
193 implementing an effective water conservation and efficiency program based on the Contractor's
194 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is
195 maintaining all water measuring devices and implementing all water measurement methods as
196 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor
197 has reasonably and beneficially used the Project Water supplies made available to it and, based
198 on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and
199 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal;

200 (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the
201 Contractor has the physical and legal ability to deliver Project Water.

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

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

220 (d) The Contracting Officer shall make a determination ten years after the
221 date of execution of this Contract, and every five years thereafter during the term of this
222 Contract, of whether a conversion of the relevant portion of this Contract to a contract under
223 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act
224 of July 2, 1956 (70 Stat 483). The Contracting Officer shall also make a determination ten
225 years after the date of execution of this Contract and every five years thereafter during the term

226 of this Contract of whether a conversion of the relevant portion of this Contract to a contract
227 under subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.
228 Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights
229 and benefits under the Act of July 2, 1956 (70 Stat 483). The Contracting Officer anticipates that
230 during the term of this Contract, all authorized Project construction expected to occur will have
231 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all
232 costs that are properly assignable to the Contractor, and agrees further that, at any time after such
233 allocation is made, and subject to satisfaction of the condition set out in this subdivision, this
234 Contract shall, at the request of the Contractor, be converted to a contract under subsection 9(d)
235 or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to applicable
236 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the
237 Contracting Officer. A condition for such conversion to occur shall be a determination by the
238 Contracting Officer that, account being taken of the amount credited to return by the Contractor
239 as provided for under Federal Reclamation law, the remaining amount of construction costs
240 assignable for ultimate return by the Contractor can probably be repaid to the United States
241 within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the
242 remaining amount of costs that are properly assignable to the Contractor cannot be determined
243 during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide
244 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
245 make such a determination as soon thereafter as possible so as to permit, upon request of the
246 Contractor and satisfaction of the condition set out above, conversion to a contract under
247 subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of costs has
248 not been made at a time which allows conversion of this Contract during the term of this
249 Contract or the Contractor has not requested conversion of this Contract within such term, the
250 parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of

251 this Article a provision that carries forth in substantially identical terms the provisions of this
252 subdivision.

253 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

260 (b) Because the capacity of the Project to deliver Project Water has been
261 constrained in recent years and may be constrained in the future due to many factors including
262 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
263 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
264 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
265 PEIS projected that the Contract Total set forth in this Contract will not be available to the
266 Contractor in many years. During the most recent five years, the Recent Historic Average of
267 water made available to the Contractor was 3,680 acre-feet. Nothing in subdivision (b) of this
268 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

271 (d) The Contractor shall make reasonable and beneficial use of all water
272 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
273 groundwater banking programs, surface water storage programs, and other similar programs
274 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
275 Contractor's Boundaries which are consistent with applicable State law and result in use
276 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge

277 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
278 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
279 sufficient lawful uses exist in the Contractor's Boundaries so that using a long-term average, the
280 quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance
281 with Federal Reclamation law. Groundwater recharge programs, groundwater banking
282 programs, surface water storage programs, and other similar programs utilizing Project Water or
283 other water furnished pursuant to this Contract conducted outside the Contractor's Boundaries
284 may be permitted upon written approval of the Contracting Officer, which approval will be based
285 upon environmental documentation, Project Water rights, and Project operational concerns. The
286 Contracting Officer will address such concerns in regulations, policies, or guidelines.

287 (e) The Contractor shall comply with requirements applicable to the
288 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
289 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
290 as amended, that are within the Contractor's legal authority to implement. The Existing
291 Contract, which evidences in excess of 19 years of diversions for irrigation and/or M&I purposes
292 of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be
293 considered in developing an appropriate baseline for biological assessment(s) prepared pursuant
294 to the ESA, and any other needed environmental review. Nothing herein shall be construed to
295 prevent the Contractor from challenging or seeking judicial relief in a court of competent
296 jurisdiction with respect to any biological opinion or other environmental documentation referred
297 to in this Article.

298 (f) As soon as possible following each declaration of Water Made Available
299 under Article 4 of this Contract, the Contracting Officer will make a determination whether
300 Project Water, or other water available to the Project, can be made available to the Contractor in
301 addition to the Contract Total under Article 3 of this Contract during the Year without adversely
302 impacting other Project Contractors. At the request of the Contractor, the Contracting Officer

303 will consult with the Contractor prior to making such a determination. If the Contracting Officer
304 determines that Project Water, or other water available to the Project, can be made available to
305 the Contractor, the Contracting Officer will announce the availability of such water and shall so
306 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the
307 Contractor and other Project Contractors capable of taking such water to determine the most
308 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
309 quantity of such water, the Contracting Officer shall make such water available to the Contractor
310 in accordance with applicable statutes, regulations, guidelines, and policies.

311 (g) The Contractor may request permission to reschedule for use during the
312 subsequent Year some or all of the Water Made Available to the Contractor during the current
313 Year referred to as "carryover." The Contractor may request permission to use during the
314 current Year a quantity of Project Water which may be made available by the United States to
315 the Contractor during the subsequent Year referred to as "preuse." The Contracting Officer's
316 written approval may permit such uses in accordance with applicable statutes, regulations,
317 guidelines, and policies.

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

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

329 (j) The Contracting Officer shall make reasonable efforts to protect the water
330 rights necessary for the Project and to provide the water available under this Contract. The
331 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
332 extent permitted by law, in administrative proceedings related to the Project Water rights;
333 Provided, That the Contracting Officer retains the right to object to the substance of the
334 Contractor's position in such a proceeding; Provided further, That in such proceedings the
335 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
336 Contract to use Project Water.

337 TIME FOR DELIVERY OF WATER

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

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

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

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

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

362 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

363 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
364 Contract shall be delivered to the Contractor at approved turnouts on the Canal Facilities and any
365 additional point or points of delivery either on Project facilities or another location or locations
366 mutually agreed to in writing by the Contracting Officer and the Contractor. The United States
367 shall furnish such power as may be necessary to pump Project Water at the existing Tehama-
368 Colusa Canal side pumping plants and at existing relift stations at heads and elevations sufficient
369 to irrigate by gravity all areas within the Contractor's Boundaries below elevation 300 (MSL).

370 (b) The Contracting Officer, either directly or through its written agreement(s)
371 with the Operating Non-Federal Entity/Entities shall make all reasonable efforts to maintain
372 sufficient flows and levels of water in the Project facilities to deliver Project Water to the
373 Contractor at specific turnouts established pursuant to subdivision (a) of this Article. The parties
374 acknowledge that it may be necessary from time to time to shut down some or all of Project
375 facilities for maintenance or emergencies. Except in the case of emergency, the Contracting
376 Officer shall consult with the Contractor to schedule the shutdown at such times and for such
377 duration as will allow for the work to be accomplished completely and efficiently, and with a
378 minimum of disruption of water service to the Contractor. In this regard, shutdowns will, to the
379 extent reasonably possible, be limited to the months of December and January.

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

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

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

406 Non-Federal Entity/Entities, (iii) negligence of the Contracting Officer or any of its officers,
407 employees, agents, or assigns including the Operating Non-Federal Entity/Entities, or (iv)
408 damage or claims resulting from a malfunction of facilities owned and/or operated by the United
409 States or responsible Operating Non-Federal Entity/Entities.

410 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S BOUNDARIES

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

427 (b) To the extent the information has not otherwise been provided, upon
428 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
429 report describing the measurement devices or water measuring methods being used or to be used
430 to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
431 connections or alternative measurement programs approved by the Contracting Officer, at which

432 such measurement devices or water measuring methods are being used, and, if applicable,
433 identifying the locations at which such devices and/or methods are not yet being used including a
434 time schedule for implementation at such locations. The Contracting Officer shall advise the
435 Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of
436 the measuring devices or water measuring methods identified in the Contractor's report and if the
437 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
438 Contracting Officer notifies the Contractor that the measuring devices or methods are
439 inadequate, the parties shall within 60 days following the Contracting Officer's response,
440 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
441 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
442 compliance with subdivision (a) of this Article.

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

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

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

452 RATES AND METHOD OF PAYMENT FOR WATER

453 7. (a) The Contractor shall pay the United States as provided in this Article for
454 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
455 accordance with (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and
456 the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be
457 amended, modified, or superseded only through a public notice and comment procedure; (ii)

458 applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii)
459 other applicable provisions of this Contract. Payments shall be made by cash transaction,
460 electronic funds transfer, or any other mechanism as may be agreed to in writing by the
461 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component
462 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may
463 be revised annually.

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

466 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
467 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
468 period October 1, of the current Calendar Year, through September 30, of the following Calendar
469 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
470 to review and comment on such estimates. On or before September 15 of each Calendar Year,
471 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
472 the period October 1 of the current Calendar Year, through September 30, of the following
473 Calendar Year, and such notification shall revise Exhibit "B."

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

481 (c) At the time the Contractor submits the initial schedule for the delivery of
482 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
483 Contractor shall make an advance payment to the United States equal to the total amount payable

484 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
485 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
486 Year. Before the end of the first month and before the end of each calendar month thereafter, the
487 Contractor shall make an advance payment to the United States, at the Rate(s) set under
488 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
489 during the second month immediately following. Adjustments between advance payments for
490 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
491 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
492 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
493 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
494 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
495 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
496 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
497 additional Project Water shall be delivered to the Contractor unless and until an advance
498 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
499 between the advance payments for the Water Scheduled and payments for the quantities of Water
500 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
501 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
502 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
503 day of February.

504 (d) The Contractor shall also make a payment in addition to the Rate(s) in
505 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
506 appropriate Tiered Pricing Component then in effect, before the end of the month following the
507 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
508 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
509 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the

510 water delivery report for the subject month prepared by the Operating Non-Federal
511 Entity/Entities or, if there is no Operating Non-Federal Entity/Entities, by the Contracting
512 Officer. The water delivery report shall be deemed a bill for the payment of Charges and the
513 applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or
514 underpayment of Charges shall be made through the adjustment of payments due to the United
515 States for Charges for the next month. Any amount to be paid for past due payment of Charges
516 and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

529 (h) The Contracting Officer shall keep its accounts pertaining to the
530 administration of the financial terms and conditions of its long-term contracts, in accordance
531 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
532 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
533 Contractor a detailed accounting of all Project and Contractor expense allocations, the
534 disposition of all Project and Contractor revenues, and a summary of all water delivery

535 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
536 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

544 (j) (1) Beginning at such time as deliveries of Project Water in a Year
545 exceed 80 percent of the Contract Total, then before the end of the month following the month of
546 delivery the Contractor shall make an additional payment to the United States equal to the
547 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
548 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
549 Contract Total, shall equal one-half of the difference between the Rate established under
550 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
551 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
552 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
553 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water
554 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
555 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract
556 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in
557 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

558 (2) Subject to the Contracting Officer's written approval, the
559 Contractor may request and receive an exemption from such Tiered Pricing Components for
560 Project Water delivered to produce a crop which the Contracting Officer determines will provide

561 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
562 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
563 Irrigation Water shall apply only if such habitat values can be assured consistent with the
564 purposes of the CVPIA through binding agreements executed with or approved by the
565 Contracting Officer prior to use of such water.

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

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

579 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
580 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
581 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
582 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
583 accordance with the then applicable Project ratesetting policy. If the Contractor is receiving
584 lower Rates and Charges because of inability to pay and is transferring Project Water to another
585 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges
586 for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

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

589 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is
590 not legally obligated to repay any Project deficits claimed by the United States to have accrued
591 as of the date of this Contract or deficit-related interest charges therein. By entering into this
592 Contract, the Contractor does not waive any legal rights or remedies that it may have with
593 respect to such disputed issues. Notwithstanding the execution of this Contract, and payments
594 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
595 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
596 term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2)
597 interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in
598 the Rates; (4) the application by the United States of payments made by the Contractor under its
599 Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the
600 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
601 shall be entitled to the benefit of any administrative or judicial ruling in favor of any other
602 Project M&I contractor on any of these issues and credits for payments heretofore made,
603 Provided, That, the basis for such ruling is applicable to the Contractor.

604 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

608 SALES, TRANSFERS, OR EXCHANGES OF WATER

609 9. (a) The right to receive Project Water provided for in this Contract may be
610 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
611 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
612 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project

613 Water under this Contract may take place without the prior written approval of the Contracting
614 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
615 exchanges shall be approved absent all appropriate environmental documentation, including but
616 not limited to documents prepared pursuant to NEPA and ESA. Such environmental
617 documentation should include, as appropriate, an analysis of groundwater impacts and economic
618 and social effects, including environmental justice, of the proposed water transfers on both the
619 transferor and transferee.

620 (b) In order to facilitate efficient water management by means of water
621 transfers of the type historically carried out among Project Contractors located within the same
622 geographical area and to allow the Contractor to participate in an accelerated water transfer
623 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
624 all necessary environmental documentation including, but not limited to, documents prepared
625 pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas and the
626 Contracting Officer shall determine whether such transfers comply with applicable law.
627 Following the completion of the environmental documentation, such transfers addressed in such
628 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
629 require prior written approval by the Contracting Officer. Such environmental documentation
630 and the Contracting Officer's compliance determination shall be reviewed every five years and
631 updated, as necessary, prior to the expiration of the then-existing five-year period. All
632 subsequent environmental documentation shall include an alternative to evaluate not less than the
633 quantity of Project Water historically transferred within the same geographical area.

634 (c) For a water transfer to qualify under subdivision (b) of this Article, such
635 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
636 years, for M&I use, groundwater recharge, groundwater banking, similar groundwater activities,
637 surface water storage, or fish and wildlife resources; not lead to land conversion; and be
638 delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur

639 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
640 through existing facilities with no new construction or modifications to facilities and be between
641 existing Project Contractors and/or the Contractor and the United States, Department of the
642 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and
643 requirements imposed for protection of the environment and Indian Trust Assets, as defined
644 under Federal law.

645 (d) For the purpose of determining whether Section 3405(a)(1)(M) of the
646 CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting
647 Officer acknowledges that the Contractor is within a county, watershed, or other area of origin,
648 as those terms are utilized under California law, of water that constitutes the natural flow of the
649 Sacramento River and its tributaries above the confluence of the American and Sacramento
650 Rivers.

651 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

663 (b) All advances for miscellaneous costs incurred for work requested by the
664 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs

665 when the work has been completed. If the advances exceed the actual costs incurred, the
666 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
667 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

668 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

691 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

711 UNAVOIDABLE GROUNDWATER PERCOLATION

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

716

RULES AND REGULATIONS

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

722

WATER AND AIR POLLUTION CONTROL

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

727

QUALITY OF WATER

728 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
729 to this Contract shall be operated and maintained to enable the United States to deliver Project
730 Water to the Contractor in accordance with the water quality standards specified in subsection
731 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of
732 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
733 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
734 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
735 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

736 (b) The O&M of Project facilities shall be performed in such manner as is
737 practicable to maintain the quality of raw water made available through such facilities at the
738 highest level reasonably attainable as determined by the Contracting Officer. The Contractor
739 shall be responsible for compliance with all State and Federal water quality standards applicable
740 to surface and subsurface agricultural drainage discharges generated through the use of Federal
741 or Contractor facilities or Project Water provided by the Contractor within the Contractor's
742 Boundaries.

743 WATER ACQUIRED BY THE CONTRACTOR
744 OTHER THAN FROM THE UNITED STATES

745 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
746 other than from the United States and Irrigation Water furnished pursuant to the terms of this
747 Contract may be simultaneously transported through the same distribution facilities of the
748 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
749 and non-Project water were constructed without funds made available pursuant to Federal
750 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
751 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive
752 Irrigation Water must be established through the certification requirements as specified in the
753 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of
754 Eligible Lands within the Contractor's Boundaries can be established and the quantity of
755 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such
756 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-
757 Project water are/were constructed with funds made available pursuant to Federal Reclamation
758 law, the non-Project water will be subject to the acreage limitation provisions of Federal
759 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
760 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate
761 annually the cost to the Federal Government, including interest, on storing or delivering non-
762 Project water, which for purposes of this Contract shall be determined as follows: The quotient
763 shall be the unpaid distribution system costs divided by the total irrigable acreage within the
764 Contractor's Boundaries. The incremental fee per acre is the mathematical result of such
765 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982
766 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land
767 within the Contractor's Boundaries that receives non-Project water through Federally financed or
768 constructed facilities. The incremental fee calculation methodology will continue during the
769 term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or

770 policy adopted after the Contractor has been afforded the opportunity to review and comment on
771 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall
772 supersede this provision.

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

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

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

790 (3) Neither the United States nor the Operating Non-Federal Entity
791 shall be responsible for control, care, or distribution of the non-Project water before it is
792 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
793 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
794 their respective officers, agents, and employees, from any claim for damage to persons or
795 property, direct or indirect, arising out of or relating to acts of the Contractor, its officers',

796 employees', agents', or assigns', act(s) in (i) extracting or diverting non-Project water from any
797 source, or (ii) diverting such non-Project water into Project facilities.

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

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

806 OPINIONS AND DETERMINATIONS

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

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

822

COORDINATION AND COOPERATION

823

19. (a) In order to further their mutual goals and objectives, the Contracting

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Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and

825

with other affected Project Contractors, in order to improve the operation and management of the

826

Project. The communication, coordination, and cooperation regarding operations and

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management shall include, but not be limited to, any action which will or may materially affect

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the quantity or quality of Project Water supply, the allocation of Project Water supply, and

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Project financial matters including, but not limited to, budget issues. The communication,

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coordination, and cooperation provided for hereunder shall extend to all provisions of this

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Contract. Each party shall retain exclusive decision making authority for all actions, opinions,

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and determinations to be made by the respective party.

833

(b) Within 120 days following the effective date of this Contract, the

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Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet

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with interested Project Contractors to develop a mutually agreeable, written Project-wide

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process, which may be amended as necessary separate and apart from this Contract. The goal of

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this process shall be to provide, to the extent practicable, the means of mutual communication

838

and interaction regarding significant decisions concerning Project operation and management on

839

a real-time basis.

840

(c) In light of the factors referred to in subdivision (b) of Article 3 of this

841

Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this

842

intent:

843

(1) The Contracting Officer will, at the request of the Contractor,

844

assist in the development of integrated resource management plans for the Contractor. Further,

845

the Contracting Officer will, as appropriate, seek authorizations for implementation of

846

partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

862 CHARGES FOR DELINQUENT PAYMENTS

863 20. (a) The Contractor shall be subject to interest, administrative and penalty
864 charges on delinquent installments or payments. When a payment is not received by the due
865 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
866 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
867 administrative charge to cover additional costs of billing and processing the delinquent payment.
868 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
869 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
870 due date. Further, the Contractor shall pay any fees incurred for debt collection services
871 associated with a delinquent payment.

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

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

880 EQUAL OPPORTUNITY

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

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

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

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

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

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

910 (f) In the event of the Contractor's noncompliance with the nondiscrimination
911 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
912 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared
913 ineligible for further Government contracts in accordance with procedures authorized in said
914 amended Executive Order, and such other sanctions may be imposed and remedies invoked as

915 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as
916 otherwise provided by law.

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

926 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

939 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

940 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
941 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
942 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
943 laws, as well as with their respective implementing regulations and guidelines imposed by the
944 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

959 PRIVACY ACT COMPLIANCE

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

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

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

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

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

985 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

986 25. In addition to all other payments to be made by the Contractor pursuant to this
987 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and

988 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
989 of direct cost incurred by the United States for work requested by the Contractor associated with
990 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
991 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
992 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
993 contract administration.

994 WATER CONSERVATION

995 26. (a) Prior to the delivery of water provided from or conveyed through
996 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
997 shall be implementing an effective water conservation and efficiency program based on the
998 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
999 the conservation and efficiency criteria for evaluating water conservation plans established under
1000 Federal law. The water conservation and efficiency program shall contain definite water
1001 conservation objectives, appropriate economically feasible water conservation measures, and
1002 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1003 Contract shall be contingent upon the Contractor's continued implementation of such water
1004 conservation program. In the event the Contractor's water conservation plan or any revised water
1005 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
1006 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1007 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
1008 shall be made under this Contract so long as the Contractor diligently works with the Contracting
1009 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
1010 immediately begins implementing its water conservation and efficiency program in accordance
1011 with the time schedules therein.

1012 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1013 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall

1014 implement the Best Management Practices identified by the time frames issued by the California
1015 Urban Water Conservation Council for such M&I Water unless any such practice is determined
1016 by the Contracting Officer to be inappropriate for the Contractor.

1017 (c) The Contractor shall submit to the Contracting Officer a report on the
1018 status of its implementation of the water conservation plan on the reporting dates specified in the
1019 then existing conservation and efficiency criteria established under Federal law.

1020 (d) At five-year intervals, the Contractor shall revise its water conservation
1021 plan to reflect the then-current conservation and efficiency criteria for evaluating water
1022 conservation plans established under Federal law and submit such revised water management
1023 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
1024 determine if the water conservation plan meets Reclamation's then-current conservation and
1025 efficiency criteria for evaluating water conservation plans established under Federal law.

1026 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1027 shall be described in the Contractor's water conservation plan.

1028 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1029 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1030 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1031 hereafter acquired by the Contractor or any user of such water within the Contractor's
1032 Boundaries. Any such water shall not be considered Project Water under this Contract. In
1033 addition, this Contract shall not be construed as limiting or curtailing any rights which the
1034 Contractor or any water user within the Contractor's Boundaries acquires or has available under
1035 any other contract pursuant to Federal Reclamation law.

1036 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1037 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1038 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1039 Operating Non-Federal Entity by separate agreement between the United States and the

1040 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
1041 rights or obligations of the Contractor or the United States hereunder.

1042 (b) The Contracting Officer has previously notified the Contractor in writing
1043 that the O&M of a portion of the Project facilities which serve the Contractor has been
1044 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1045 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer
1046 under the terms and conditions of the separate agreement between the United States and the
1047 Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or
1048 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1049 Federal Entity or such successor determines, sets, or establishes for the O&M of the portion of
1050 the Project facilities operated and maintained by the Operating Non-Federal Entity or such
1051 successor. Such direct payments to the Operating Non-Federal Entity or such successor shall not
1052 relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1053 of the Project Rates, Charges, and Tiered Pricing Component(s) except to the extent the
1054 Operating Non-Federal Entity collects payments on behalf of the United States in accordance
1055 with the separate agreement identified in subdivision (a) of this Article.

1056 (c) For so long as the O&M of any portion of the Project facilities serving the
1057 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1058 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1059 Contract representing the cost associated with the activity being performed by the Operating
1060 Non-Federal Entity or its successor.

1061 (d) In the event the O&M of the Project facilities operated and maintained by
1062 the Operating Non-Federal Entity is reassumed by the United States during the term of this
1063 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1064 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1065 Contractor for Project Water under this Contract representing the O&M costs of the portion of

1066 such Project facilities which have been reassumed. The Contractor shall, thereafter, in the
1067 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1068 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the
1069 United States in compliance with Article 7 of this Contract.

1070 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1071 29. The expenditure or advance of any money or the performance of any obligation of
1072 the United States under this Contract shall be contingent upon appropriation or allotment of
1073 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1074 obligations under this Contract. No liability shall accrue to the United States in case funds are
1075 not appropriated or allotted.

1076 BOOKS, RECORDS, AND REPORTS

1077 30. (a) The Contractor shall establish and maintain accounts and other books and
1078 records pertaining to administration of the terms and conditions of this Contract, including: the
1079 Contractor's financial transactions, water supply data, and Project land and right-of-way
1080 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1081 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1082 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1083 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1084 Contract shall have the right during office hours to examine and make copies of the other party's
1085 books and records relating to matters covered by this Contract.

1086 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1087 books, records, or other information shall be requested from the Contractor by the Contracting
1088 Officer unless such books, records, or information are reasonably related to the administration or
1089 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1090 time within which to provide the requested books, records, or information.

1091 (c) At such time as the Contractor provides information to the Contracting
1092 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1093 to the Operating Non-Federal Entity.

1094 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1095 31. (a) The provisions of this Contract shall apply to and bind the successors and
1096 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1097 therein shall be valid until approved in writing by the Contracting Officer.

1098 (b) The assignment of any right or interest in this Contract by either party
1099 shall not interfere with the rights or obligations of the other party to this Contract absent the
1100 written concurrence of said other party.

1101 (c) The Contracting Officer shall not unreasonably condition or withhold his
1102 approval of any proposed assignment.

1103 SEVERABILITY

1104 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1105 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1106 an association or other form of organization whose primary function is to represent parties to
1107 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1108 enforceability of a provision included in this Contract and said person, entity, association, or
1109 organization obtains a final court decision holding that such provision is legally invalid or
1110 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1111 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1112 final court decision identify by mutual agreement the provisions in this Contract which must be
1113 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1114 The time periods specified above may be extended by mutual agreement of the parties. Pending
1115 the completion of the actions designated above, to the extent it can do so without violating any
1116 applicable provisions of law, the United States shall continue to make the quantities of Project
1117 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1118 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1119 RESOLUTION OF DISPUTES

1120 33. Should any dispute arise concerning any provisions of this Contract, or the
1121 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1122 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1123 Officer referring any matter to Department of Justice, the party shall provide to the other party

1124 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1125 required where a delay in commencing an action would prejudice the interests of the party that
1126 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1127 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1128 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1129 United States may have.

1130

OFFICIALS NOT TO BENEFIT

1131 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1132 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1133 manner as other water users or landowners.

1134

CHANGES IN CONTRACTOR'S BOUNDARIES

1135 35. (a) While this Contract is in effect, no change may be made in the
1136 Contractor's Boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1137 or otherwise, except upon the Contracting Officer's written consent.

1138 (b) Within 30 days of receipt of a request for such a change, the Contracting
1139 Officer will notify the Contractor of any additional information required by the Contracting
1140 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1141 schedule for timely completion of the process. Such process will analyze whether the proposed
1142 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1143 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1144 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1145 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1146 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1147 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1148 be paid in accordance with Article 25 of this Contract.

1149

FEDERAL LAWS

1150 36. By entering into this Contract, the Contractor does not waive its rights to contest
1151 the validity or application in connection with the performance of the terms and conditions of this
1152 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1153 the terms and conditions of this Contract unless and until relief from application of such Federal
1154 law or regulation to the implementing provision of the Contract is granted by a court of
1155 competent jurisdiction.

1156

NOTICES

1157 37. Any notice, demand, or request authorized or required by this Contract shall be
1158 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1159 delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349
1160 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when
1161 mailed, postage prepaid, or delivered to the Board of Directors of the Davis Water District, P. O.
1162 Box 83, 1241 Putnam Way, Arbuckle, California 95912. The designation of the addressee or
1163 the address may be changed by notice given in the same manner as provided in this Article for
1164 other notices.

1165

CONFIRMATION OF CONTRACT

1166 38. The Contractor, after the execution of this Contract, shall promptly seek to secure
1167 a decree of a court of competent jurisdiction of the State of California, confirming the execution
1168 of this Contract. The Contractor shall furnish the United States a certified copy of the final
1169 decree, the validation proceedings, and all pertinent supporting records of the court approving
1170 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on
1171 the Contractor.

1172 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1173 the day and year first above written.

1174

THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James E. Tamm
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

1175
1176
1177

By: *[Signature]*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

1178 (SEAL)

1179

DAVIS WATER DISTRICT

1180
1181

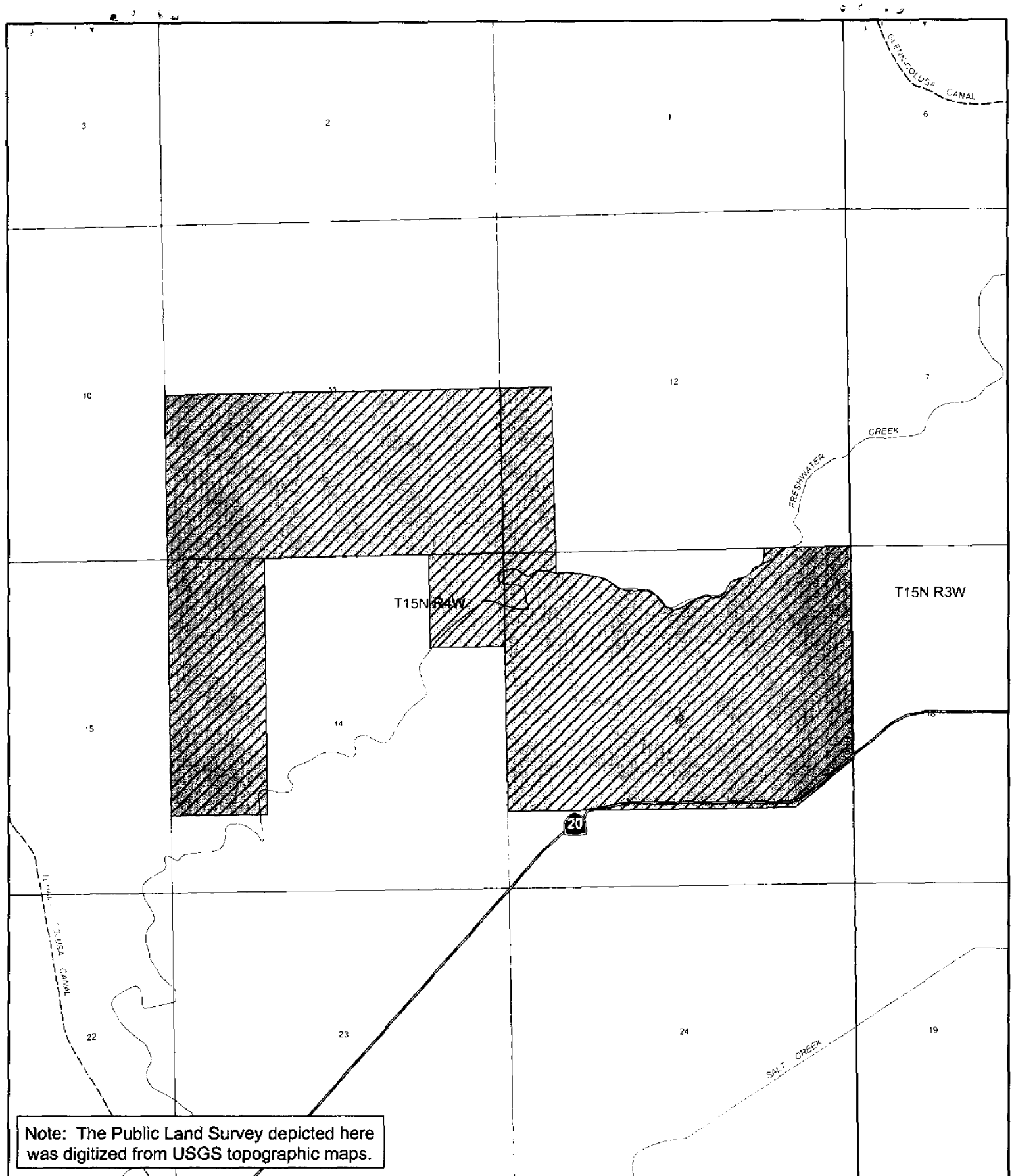
By: *[Signature]*
President of the Board of Directors

1182 Attest:



1183
1184



By: *[Signature]*
Secretary of the Board of Directors

1185 (H:\public\Willows Final LTRC's\2005-01-31 Davis WD Final LTRC Draft Contract.doc)



Davis Water District
 Contract No. 14-06-200-6001A-LTR1
 Exhibit A

 Contractor's Service Area
 District Boundary



 602-202-2

Date: October 19, 2004
 File Name: N:\districts\contracts\davis_tcdavis_lr.mxd

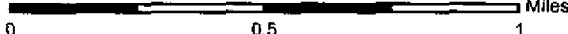
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EXHIBIT B

DAVIS WATER DISTRICT
2005 Water Rates and Charges per Acre-Foot

	<u>Cost of Service</u>		Calculated Payment Capacity 1/ <u>Irrigation</u>
	<u>Irrigation</u>	<u>M&I</u>	
<u>COST OF SERVICE RATES:</u>			
Capital Rates	\$ 9.43	2/	\$ 0.00
O&M Rates:			
Water Marketing	6.61		6.61
Storage	5.93		5.93
Deficit Rates:			
Interest Bearing	3.21		3.21
CFO/PFR Adjustment Rate 3/	<u>2.65</u>		<u>2.65</u>
TOTAL	<u>\$27.83</u>	<u>2/</u>	<u>\$18.40</u>

FULL-COST RATES:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.

	<u>\$41.16</u>		<u>\$41.16</u>
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Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.

	<u>\$51.04</u>		<u>\$51.04</u>
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TIERED PRICING COMPONENTS:

Tiered Pricing Component >80% <=90% of Contract
 Total [Full Cost Rate – COS Rate / 2]

	<u>\$6.67</u>	2/	<u>\$11.38</u>
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Tiered Pricing Component >90% of Contract
 Total [Full Cost Rate – COS Rate]

	<u>\$13.33</u>	2/	<u>\$22.76</u>
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CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 4/

Restoration Payments (3407(d)(2)(A))	<u>\$ 7.93</u>	2/	<u>\$ 0.00</u>
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1/ Established pursuant to the results of the Payment Capacity Analysis for the Tehama-Colusa Water Users Association Service Area as announced by letter dated February 10, 1995.

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

3/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

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

**BOARD OF DIRECTORS
DAVIS WATER DISTRICT**

RESOLUTION NO. 05-1

**RESOLUTION APPROVING FORM OF LONG-TERM RENEWAL WATER
SERVICE CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND
DAVIS WATER DISTRICT
(LONG-TERM RENEWAL CONTRACT NO. 14-06-200-6001A-LTR1)**

As a basis and premise for this Resolution, the Board of Directors of DAVIS WATER DISTRICT finds and states as follows:

1. The District entered into a "Contract Between the United States and the Davis Water District Providing for Water Service," Contract No. 14-06-200-6001A-LTR1;
2. It is in the best interest of the District and its landowners that the District renew its water service contract with the United States of America pursuant to the Act of Congress of July 2, 1956 (70 Stat. 483) and the Act of Congress of October 30, 1992 (96 Stat. 1262), thereby providing continued water services to the District's lands;
3. The Bureau of Reclamation has submitted a contract to the District entitled "Long-Term Renewal Contract Between the United States and the DAVIS WATER DISTRICT Providing for Project Water Service," renewal Contract No. 14-06-200-6001-LTR1;
4. This Board has reviewed the terms and conditions of the renewal contract and finds that the form and content thereof are acceptable.

Now, therefore, be it resolved by this Board of Directors, as follows:

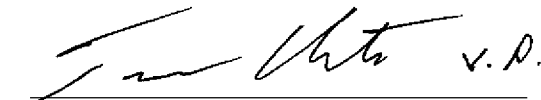
1. DAVIS WATER DISTRICT approves the renewal contract, entitled "Long-Term Renewal Contract Between the United States and the DAVIS WATER DISTRICT Providing for Project Water Service," renewal Contract No. 14-06-200-6001A-LTR1, in substantially the form presented at this meeting, and authorizes the Vice President, Tom Charter and Secretary, Shelby Nation to execute the same on the District's behalf.
2. The Secretary shall forthwith prepare and transmit a certified copy of this resolution to the Bureau of Reclamation.
3. The District's officers, staff and consultants are authorized and directed to do all things necessary and appropriate to carry out the foregoing and to ensure continued water service to the District under the renewal contract.

Passed and adopted on February 18, 2005 at a meeting of the Board of Directors
by the following vote:

AYES: P. CHARTER, T. CHARTER, D. CHARTER, J. CHARTER, B.
CHARTER JR.

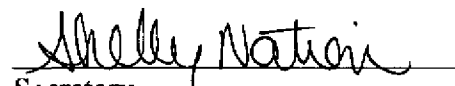
NOES: NONE

ABSENT: NONE



President

ATTEST;



Secretary