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Contract No.
5-07-20-W1283

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES
AND
MONTEREY COUNTY WATER RESOURCES AGENCY
FOR A LOAN FOR CONSTRUCTION OF A SMALL RECLAMATION PROJECT

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AND THE
MONTEREY COUNTY WATER RESOURCES AGENCY
FOR A LOAN FOR CONSTRUCTION OF A SMALL RECLAMATION PROJECT

THIS CONTRACT, made this 26th day of May, 1995, pursuant to the Small Reclamation Project Act of 1956 (45 U.S.C. §422a et seq.), as amended, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the MONTEREY COUNTY WATER RESOURCES AGENCY, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in Monterey County, California.

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the Small Reclamation Projects Act of 1956 provides for participation of non-Federal agencies in Federal Reclamation projects and for Federal assistance in similar projects developed by non-federal organizations; and

1 WHEREAS, the Contractor submitted to the Secretary of the Interior a
2 proposal for the construction of a water resources project in acceptable form and
3 containing all information and showings required by the Small Reclamation Projects Act
4 of 1956 accompanied by a payment of \$5,000, setting forth a plan and estimated cost in
5 detail comparable to those included in preauthorization reports required for a Federal
6 Reclamation project; and

7 WHEREAS, said proposal was submitted to the Governor of the State of
8 California for review and was approved by the appropriate State agency as set forth in
9 the State's letter of October 2, 1992, containing the coordinated comments of various
10 other State agencies pursuant to the laws of California; and

11 WHEREAS, the United States is willing to lend money to the Contractor
12 under the terms and conditions of this contract for the construction of the water
13 resources project set forth in the proposal submitted to the Secretary of the Interior by
14 the Contractor; and

15 WHEREAS, the Contractor is willing to repay the loan within 40 years
16 from the date when principal benefits of the project first become available; and

17 WHEREAS, the Contractor plans to repay the loan from the sale of
18 reclaimed wastewater and by levying property assessments on certain of the properties
19 located within the Project Service Area, as hereafter defined, and throughout the Salinas
20 Valley; and

21 WHEREAS, the Secretary of the Interior has found the Contractor's
22 proposal to be financially feasible, has determined that the loan constitutes a reasonable

1 risk under the provisions of the Small Reclamation Projects Act of 1956, and has
2 approved the proposed project.

3 NOW, THEREFORE, in consideration of the covenants herein contained,
4 it is agreed as follows:

5 DEFINITIONS

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

8 (a) "Secretary" or "Contracting Officer" shall mean the Secretary of the
9 Interior or his or her duly authorized representative;

10 (b) "Year" shall mean the calendar year;

11 (c) "Quarter" shall mean the 3-month periods of each Year beginning
12 the first day of January, April, July, and October;

13 (d) "Project" shall mean the facilities, and the lands and interests in
14 lands required for the facilities, described in the "Final Environmental Impact
15 Statement-Salinas Valley Seawater Intrusion Program, March 1993" and as
16 updated by final plans and specifications for the Castroville Seawater Irrigation
17 Water Supply Project dated November 1994 and approved by Reclamation in
18 December 1994;

19 (e) "Irrigation Water" shall mean water which is made available and
20 used primarily in the production of agricultural crops, including domestic uses
21 incidental thereto.

1 (f) "M&I Water" shall mean water which is made available and used
2 primarily for purposes other than the production of agricultural crops. M&I
3 Water shall include, but not be limited to, water used for domestic uses,
4 landscaping, golf courses, or pasture for animals (e.g., horses) which are kept for
5 personal enjoyment, or water delivered to landholdings operated in units of less
6 than 5 (five) acres unless the Contractor establishes to the satisfaction of the
7 Contracting Officer that the use of the water delivered to any such landholding is
8 a use described in subdivision (c) of this article;

9 (g) "Individual" shall mean any natural person, including his or her
10 spouse, and including other dependents within the meaning of the Internal
11 Revenue Code of 1954 (26 U.S.C. §152);

12 (h) "Qualified Recipient" shall mean an individual who is a citizen of
13 the United States or a resident alien thereof or any legal entity established under
14 State or Federal law which benefits twenty-five (25) natural persons or less;

15 (i) "Limited Recipient" shall mean any legal entity established under
16 State or Federal law benefiting more than twenty-five (25) natural persons;

17 (j) "Excess Land" shall mean all land in the Project Service Area
18 capable of being furnished irrigation benefits which is held in private ownership
19 by a Limited Recipient or a Qualified Recipient in excess of 320 irrigable acres;

20 (k) "Project Service Area" shall mean the land shown on Exhibit A;

1 (l) "Project indebtedness" shall mean bonds, notes, leases, contracts or
2 other obligations of the Contractor, other than this contract, issued, incurred or
3 entered into to finance or refinance the construction of the Project;

4 (m) "Reclamation" shall mean the Bureau of Reclamation, U.S.
5 Department of the Interior;

6 (n) "State" shall mean the State of California and any agency thereof;

7 and

8 (o) "O&M" shall mean normal and reasonable care, control, operation,
9 repair, replacement, and maintenance of Project facilities.

10 ESTIMATED PROJECT COST-LOAN-CONTRACTOR'S CONTRIBUTION

11 2. (a) The estimated cost of the Project as shown in the Loan Application
12 Report is \$44,154,900, including costs and expenses incurred or to be incurred by the
13 United States as identified in Article 7.

14 (b) All costs and expenses of the Project, whether incurred prior to or
15 after execution of this contract, shall be limited to such as are reasonably incurred in the
16 exercise of sound engineering, construction, and business practices and are chargeable or
17 allocable to the Project.

18 (c) The contribution of the Contractor toward the construction of the
19 Project shall have the value, at a minimum, of \$10,913,900. In computing the
20 Contractor's contribution, the Contractor shall be given credit for expenditures made by
21 it for engineering and construction of Project facilities, rights-of-way acquisition,
22 obtaining of necessary permits and approvals, development of the loan application

1 report, and \$5,000 remitted by the Contractor to the United States with its application
2 and shall also be given credit for the value of rights-of-way and wells acquired for the
3 Project.

4 (d) The United States will, contingent upon the appropriation of funds
5 by the United States Congress and the necessary allotment of funds, lend to the
6 Contractor an amount of money not to exceed the lesser of \$32,600,000 or the actual
7 cost of the Project less the Contractor's actual contribution toward the construction of
8 the Project.

9 (e) All costs of the Project in excess of the amount loaned to the
10 Contractor by the United States shall be contributed by the Contractor.

11 WORK TO BE PERFORMED BY THE CONTRACTOR--PROJECT COMPLETION

12 3. (a) To the extent that funds may now or hereafter be available from the
13 United States pursuant to the terms of this contract or from other sources available to
14 the Contractor, the Contractor shall, on its own account or by contract or contracts,
15 construct the Project substantially in accordance with the documents identified in
16 subdivision (d) of Article 1 above, subject to such modifications or changes as may be
17 agreed upon by the Contractor and the Contracting Officer pursuant to subdivision (b) of
18 this article. The Contractor shall complete construction of the Project by December 31,
19 1997; Provided, That such construction period may be extended by the Contracting
20 Officer to compensate for delay in completion of the Project resulting from causes
21 beyond the control of the Contractor.

1 (b) The Contractor shall perform or cause to be performed all of said
2 work pursuant to detailed plans, designs, estimates, and specifications, and in accordance
3 with sound engineering and construction practices, all as approved by the Contracting
4 Officer as adequate to protect the interests of the United States in the Project. It is
5 recognized by the Contracting Officer and by the Contractor that changes to the
6 approved Project may be necessary during construction. The Contractor shall only make
7 changes to the approved Project, as defined in Article 1(d), that will not adversely impact
8 the ability of the completed facilities to produce and deliver reclaimed water of the
9 quality and in the quantity intended by the original design of the Project and that will
10 not result in any noncompliance with any required or previously prepared environmental
11 compliance or permitting document. Any changes which will have such adverse impacts
must be preapproved in writing by the Contracting Officer before they are implemented.

13 (c) The date when the principal benefits of the Project first become
14 available shall be deemed to be the date when water from the Project is first delivered
15 to the Project Service Area. The exact date shall be established by the Contracting
16 Officer and announced by written notice to the Contractor.

17 SCHEDULING OF CONSTRUCTION WORK

18 4. (a) During the construction of the Project, the Contractor shall submit
19 the following schedules to the Contracting Officer:

20 (1) A master work schedule showing the entire work to be
21 performed or caused to be performed under this contract including the amount of
22 Federal and non-Federal funds required annually;

1 (2) A detailed schedule for the initial construction Quarter
2 consistent with the master work schedule specifying the work to be performed
3 during that construction Quarter, including the amount of Federal and non-
4 Federal funds required each month during that Quarter for the work scheduled
5 and including the sums expended by the Contractor for the preparation of designs
6 and specifications, engineers' estimates, and other preconstruction activities
7 required to initiate construction if incurred subsequent to May 18, 1994.

8 (3) Subsequent detailed quarterly work schedules consistent with
9 the master work schedule specifying the work proposed to be performed or
10 initiated during each Quarter of the construction period other than the initial
11 Quarter including the amount of funds required each month during each Quarter.
12 Said schedules shall be submitted to the Contracting Officer 15 days prior to the
13 beginning of the Quarter covered by such schedule.

14 (b) The master work schedule shall be accompanied by a map of the
15 Project Service Area depicting the location of all Project facilities and indicating thereon
16 the sequence of construction of the work by stages and the construction period of each
17 stage.

18 (c) The quarterly work schedules may include as estimated costs the
19 costs of salaries of regular employees and the value of equipment of the Contractor, as
20 approved by the Contracting Officer, used in the performance of the work. To the
21 extent that the Contracting Officer determines that the work description or cost
22 estimates required for any work schedule hereunder are adequately presented in the

1 report identified in subdivision (d) of Article 1 above, such work description or estimates
2 may be incorporated in such work schedule by reference to appropriate items in said
3 report.

4 (d) The requirements of subdivisions (a), (b), and (c) of this article, and
5 of subdivisions (a) and (b) of Article 2, may be satisfied with schedules, estimates, maps,
6 reports, accounting of cost, and other materials prepared for and provided to the
7 Contractor by its construction management consultant if such materials provide
8 substantially the same information as required by the cited subdivisions.

9 (e) Prior to actual construction work during any Quarter, the Contractor
10 shall:

11 (1) Acquire by title satisfactory to the Contracting Officer the
lands and interests therein necessary for such construction work, or

13 (2) Commence appropriate eminent domain proceedings in a
14 court of competent jurisdiction for the acquisition of such lands and interests
15 therein, obtain in such proceedings the right to immediate possession thereof, and
16 diligently prosecute said proceedings to final judgment and obtain title satisfactory
17 to the Contracting Officer to the lands and interests therein to be acquired;

18 Provided, That such title acquisition shall be subject to the terms and conditions
19 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act
20 of 1970 (42 U.S.C. §4601 et seq.) and the regulations and procedures now or
21 hereafter adopted by the United States for implementing that Act.

1 ADVANCES BY THE UNITED STATES DURING CONSTRUCTION
2 OF THE PROJECT

3
4 5. (a) Upon receipt and review by the Contracting Officer of the master
5 work schedule, a detailed work schedule for the initial construction Quarter and
6 subsequent Quarters as required through the construction period, and a properly
7 executed Standard Form 1034 Public Voucher accompanied by a statement of proposed
8 expenditures, the United States will advance to the Contractor for the initial construction
9 Quarter and each month thereafter, to the extent that funds may now or hereafter be
10 available by appropriation and allocation for the purposes set forth herein, the sums of
11 money shown as the monthly requirement on the approved detailed work schedule, less
12 any balance of funds available therefor from prior advances. In the event that funds
13 advanced by the United States are expended prior to the end of the initial construction
14 Quarter or any subsequent month, additional sums may be advanced on the basis of a
15 supplemental detailed work schedule provided in like manner as the first. Each monthly
16 or other advance of funds subsequent to the advance for the initial construction period
17 shall be dependent upon the performance by the Contractor, in a manner satisfactory to
18 the Contracting Officer, of any work scheduled for prior performance, but such advance
19 shall not commit the Contracting Officer to approval of performance of such prior work.
20 The Contracting Officer, at his election, may withhold any advance of funds
21 contemplated thereunder at any time when, in his opinion, the Contractor is in default or
22 delinquent with respect to performance of any of the terms or conditions of this contract.

23 (b) The funds advanced or otherwise disbursed pursuant to this contract
24 by the United States shall be used only for costs and expenses incurred by the Contractor

1 for the performance of work described in Article 4 and shall not be used for any items
2 included in the Contractor's contribution as provided in subdivision (c) of Article 2,
3 excluding cost incurred after May 18, 1994. If the Contracting Officer determines that
4 the Contractor used funds advanced or otherwise disbursed pursuant to this contract for
5 purposes other than those provided for by this contract, the Contractor shall reimburse
6 Reclamation's loan fund account in the amount of funds so misused. In addition, the
7 Contracting Officer may assess a penalty of \$100, or 10 percent of the amount of
8 misused funds, whichever is greater, and the Contractor shall, within 30 days from the
9 date of notice of such penalty, pay the amount thereof.

10 (c) All funds advanced to the Contractor pursuant to this article by the
11 United States shall immediately be deposited by the Contractor in a special account in a
12 bank that is a member of the Federal Reserve System or, if approved by the Contracting
13 Officer, in any special fiduciary account in a manner provided by the laws of the State.
14 Such account shall be maintained until all funds so advanced shall have been expended
15 or returned to the United States. Interest earned on funds advanced to the Contractor
16 shall be considered to be advances by the United States.

17 LOAN FUNDS MADE AVAILABLE BY THE UNITED STATES AFTER
18 CONSTRUCTION OF THE PROJECT

19 6. (a) The parties acknowledge that construction of the Project is likely to
20 be undertaken and completed prior to the United States loaning to the Contractor the
21 amount of money necessary to complete the Project as specified in Article 2(d).
22 Therefore, after construction of the Project is completed, and to the extent that funds
23 become available by appropriation and allocation for the loan evidenced by this contract,

1 the United States shall make appropriate disbursements to the Contractor; Provided,
2 That the Contracting Officer, at his/her election, may withhold any funds made available
3 pursuant to this article if, in his/her opinion, the Contractor is in default or delinquent
4 with respect to performance of any of the terms or conditions of this contract.

5 (b) Within 90 days of the receipt of funds from the United States
6 pursuant to this article, the Contractor shall use such funds exclusively for repaying
7 Project Indebtedness; Provided, That no such funds may be used by the Contractor to
8 repay any debt to the State.

9 (c) While being held by the Contractor, funds made available pursuant
10 to this article shall be deposited by the Contractor in the same manner as provided for
11 by Article 5(c).

COSTS INCURRED BY THE UNITED STATES

13 7. All costs heretofore and hereafter incurred by the United States prior to
14 the date when the principal benefits of the Project first become available for examination
15 of the Contractor's proposal, surveys, investigations, construction documents, contract
16 negotiations, for performance and administration of this contract, and the reasonable
17 cost of any plans, specifications, and unpublished material furnished to the Contractor by
18 the United States shall be charged to the amount of the loan. The term "costs" shall be
19 deemed to include, but not be limited to, the portions of the salaries, travel, per diem,
20 and leave of employees, and the legal, overhead, and general expenses, which are
21 allocable to the inspection and approval of work performed hereunder by the Contractor,
22 the examination of title to lands or interests in lands, or the inspection and auditing of

1 accounts and records of the Contractor relating to such work. All costs incurred by the
2 United States shall be held to the minimum amount deemed necessary by the
3 Contracting Officer for protection of the interests of the United States. After the
4 execution of this contract, and until completion of the work hereunder, the United States
5 shall furnish to the Contractor quarterly reports of all such costs.

6 PROGRESS REPORTS, DRAWINGS, INSPECTIONS, AND SERVICES

7 8. (a) While the Project is under construction, the Contractor shall prepare
8 and furnish to the Contracting Officer, by the last calendar day of the subsequent month,
9 a monthly progress report, including monthly cost statements for the preceding month
10 and trial balances for the 30 day period preceding the last day of the subsequent month,
11 fully describing the status, progress, and cost of work performed by the Contractor or for
12 which costs have been incurred or funds obligated by the Contractor pursuant to this
13 contract.

14 (b) At the conclusion of construction of the Project as determined by
15 the Contracting Officer, the Contractor shall also furnish the Contracting Officer an
16 accounting of the final costs of the Project, including an account of each separable
17 portion of the Project facilities.

18 (c) Any and all work undertaken by the Contractor pursuant to this
19 contract shall be open and subject to inspection by the Contracting Officer or his
20 designated representative at all times during the progress thereof and on completion.
21 Should the Contracting Officer determine that any such work is not being performed, or
22 has not been completed, in accordance with applicable schedules, approved plans,

1 approved designs and specifications, or any other requirement of this contract, then the
2 Contracting Officer shall give the Contractor written notice thereof within a reasonable
3 time after inspection. This notice shall specify the corrective actions which the
4 Contractor must take and the schedule for their completion, and the Contractor shall
5 proceed accordingly.

6 (d) In connection with the performance of work under this contract, the
7 Contractor may utilize such independent expert consulting services as it may deem
8 necessary, and the reasonable cost of such services shall be considered a part of the cost
9 of the work performed.

10 REPAYMENT BY THE CONTRACTOR

11 9. (a) The Contractor shall return to the United States, as determined by
12 the Contracting Officer, any unexpended, unobligated, or unencumbered balance of
13 funds provided by the United States to the Contractor pursuant to this contract not
14 necessary for the retirement of Project Indebtedness or completion of the construction of
15 the Project.

16 (b) The principal amount owed by the Contractor to the United States
17 shall be the sum of all advances made pursuant to Article 5, all disbursements made
18 pursuant to Article 6, and all costs incurred by the United States as prescribed by Article
19 7. The following portions of the principal shall bear interest computed as simple interest
20 at the rate of 7.625 percent per annum:

21 (1) That portion of the unpaid loan principal attributable to
22 Excess Lands, with the amount of the annual interest payment to be determined

1 as follows: (i) the total acres of Excess Lands in the Project Service Area shall be
2 divided by the total acreage in the Project Service Area capable of being
3 furnished irrigation benefits to determine the applicable annual percentage for
4 Excess Lands, (ii) the applicable annual percentage so determined shall be
5 multiplied by that portion of the unpaid loan principal allocated to irrigation, and
6 (iii) this amount shall then be multiplied by the 7.625 percent annual interest rate
7 to determine the annual interest payment due for Excess Lands; and

8 (2) That portion of the unpaid loan principal attributable to M&I
9 Water, with the amount of the annual interest payment to be determined as
10 follows: (i) the total amount of M&I Water delivered shall be divided by the
11 total amount of water available for delivery for all purposes, to determine the
12 applicable annual percentage for M&I Water, (ii) the applicable annual
13 percentage so determined shall then be multiplied by the unpaid loan principal
14 allocated to M&I Water, and (iii) this amount will then be multiplied by the 7.625
15 percent interest rate to determine the annual interest payment due for M&I
16 Water deliveries.

17 (c) In addition to principal and interest owed by the Contractor to the
18 United States pursuant to subdivision (b) above, the Contractor shall also owe to the
19 United States the reimbursable portion of the Federal Interest during construction (IDC)
20 which accrues between the date that the first advance is made to the Contractor pursuant
21 to Article 5 and December 31 of the Year immediately preceding the April 1 on which
22 the first payment is due and payable to the United States pursuant to subdivision (d) of

1 this article. The annual payment of the reimbursable portion of IDC shall be computed
2 as follows:

3 (1) The total IDC, as determined by the Contracting Officer,
4 shall be multiplied by the factor required to amortize, at 7.625 percent per
5 annum, the IDC amount over the number of Years remaining in the repayment
6 period. The resulting "annual payment" shall then be used as the basis for
7 computing the annual IDC payments for Excess Lands and for M&I Water
8 deliveries.

9 (2) The annual IDC payment for Excess Lands shall be
10 determined as follows: (i) the annual payment determined under subdivision
11 (c)(1) shall be multiplied by the applicable annual percentage computed under
12 subdivision (b)(1) above (total acres of Excess Land divided by the total acres in
13 the Project Service Area), (ii) the resulting amount shall then be multiplied by
14 the annual percentage based on the ratio of Irrigation Water deliveries to total
15 amount of water available for all purposes, and (iii) the resulting amount is the
16 annual IDC payment due for Excess Lands.

17 (3) The annual IDC payment for M&I Water deliveries shall be
18 determined as follows: (i) the annual payment determined under subdivision
19 (c)(1) shall be multiplied by the percentage based on the ratio of total M&I
20 Water deliveries to the total amount of water available for delivery for all
21 purposes, and (ii) the resulting amount is the annual IDC payment due for M&I
22 Water deliveries.

1 (d) The first installment of the monies (principal, interest, and IDC)
2 owed by the Contractor to the United States pursuant to this contract shall become due
3 and payable on April 1, 2003, or on the April 1 next succeeding the end of the Federal
4 fiscal year in which the applicable sum specified in Article 2(d) has been received by the
5 Contractor pursuant to Articles 5 and 6, whichever occurs first. Successive annual
6 installments shall be due and payable on each April 1 thereafter, Provided, That the
7 Contracting Officer may, upon a written request from the Contractor, provide for other
8 dates on which the installments are due. Interest shall not begin to accrue until the Year
9 immediately preceding the April 1 on which the first installment is due and payable.
10 The final payment shall be due 40 years from the date when the principal benefits of the
11 Project first become available as specified in Article 3(c).

 (e) In order to determine the amount of principal and interest due for
13 the first installment to be paid by the Contractor, it shall be assumed that the principal
14 outstanding on the preceding December 31 is the total principal amount which the
15 Contractor owes and the first installment shall be computed based upon this amount
16 being amortized in equal annual installments over the full repayment period specified in
17 subdivision (d) above. Thereafter, if the Contractor receives additional disbursements
18 from the United States pursuant to Article 6, then the principal outstanding on the
19 December 31 preceding the next April 1 due date shall be assumed to be the total
20 principal amount which the Contractor owes and the installment shall be recomputed
21 based upon this new amount being amortized in equal annual installments over the then
22 remaining Years of the repayment period.

1 (f) Principal payments received by the United States will be applied
2 against the unpaid loan obligation prorated among the allocations for M&I use only,
3 joint use, and irrigation use only in the same ratio as the total loan obligation has been
4 allocated to these uses.

5 (g) The irrigators' payment capacity will be reviewed every 5 years after
6 the first installment becomes due if, in the opinion of the Contracting Officer, there is a
7 reasonable likelihood that the payment capacity has become greater than the annual
8 payments required of the Contractor to retire Project Indebtedness, obligations of this
9 contract, and any other debt incurred to finance the project and to fund annual O&M of
10 the Project. If the updated payment capacity exceeds the annual payments described in
11 this article, then the amount of annual installments shall be increased sufficiently to
12 utilize full payment capacity, with the increased payments being applied as a tail end
13 credit.

14 (h) The Contractor may at any time, without penalty or additional
15 interest charges, prepay all or part of the funds owed to the United States under this
16 contract; Provided, That all accrued interest due hereunder is paid at the same time.
17 Any partial prepayment shall be applied to the balance of the loan obligation as directed
18 by the Contractor.

19 (i) The Contractor hereby pledges to the payment of the principal,
20 interest, and IDC owed to the United States pursuant to this contract the revenues
21 arising from the property assessments and water delivery charges authorized and
22 approved by the Contractor's Ordinance No.s 3535, 3536, and 3789; Provided, That the

1 obligation of the Contractor to pay the United States as provided in this contract shall be
2 payable only from the net revenues of the Contractor remaining after payment therefrom
3 of O&M of Project facilities, operation and maintenance costs payable by the Contractor
4 to the Monterey Regional Water Pollution Control Agency for the purchase of reclaimed
5 wastewater, and Project Indebtedness. The Contractor warrants and guarantees to the
6 United States that it will, if needed to meet its repayment obligations to the United
7 States, increase the aforementioned property assessments to the maximum amounts
8 authorized by the pertinent ordinances and increase the water delivery charges as
9 necessary.

10 (j) The Contractor warrants and represents to the United States that, as
11 of the date of this contract, it has not issued, incurred, or entered into contracts or other
12 obligations with the State to finance or refinance the construction cost of the Project.

13 USE OF PROJECT WATER

14 10. (a) Until the loan obligation evidenced by this contract is fully repaid,
15 the Contractor cannot provide Project water for any use other than as Irrigation Water
16 within the Project Service Area except as provided below in this article.

17 (b) Project water may be delivered, on a temporary or long term basis,
18 for use as M&I Water within or outside of the Project Service Area only after the
19 appropriate environmental reviews and compliance actions have been completed,
20 including, but not limited to, compliance with the National Environmental Policy Act and
21 the Endangered Species Act. The Contractor cannot proceed with deliveries of M&I

1 Water until the Contracting Officer gives written notice that such reviews and actions
2 have been completed to the Contracting Officer's satisfaction.

3 (c) If the Contractor, subject to subdivision (b) above, delivers Project
4 water to any party for use as M&I Water, either within or outside of the Project Service
5 Area, on a one-time, temporary basis not exceeding one year, then there will be no
6 reallocation of the then outstanding, unamortized balance of the loan from the function
7 of providing Irrigation Water to the function of providing M&I Water. However, if the
8 Contractor, subject to subdivision (b) above, commits to deliver Project water for more
9 than one year to any party for use as M&I Water, even if such deliveries will be
10 interruptable and/or seasonal in nature, then the Contracting Officer will reallocate the
11 then outstanding, unamortized balance of the loan from the function of providing
12 Irrigation Water to the function of providing M&I Water and the amounts so reallocated
13 will bear interest in accordance with Article 9(b). Said reallocation shall become
14 effective for the Year in which the Contractor agrees to initiate deliveries of M&I
15 Water.

16 CHARGES FOR DELINQUENT PAYMENTS

17 11. (a) The Contractor shall be subject to interest, administrative and
18 penalty charges on delinquent installments or payments. When a payment is not
19 received by the due date, the Contractor shall pay an interest charge for each day the
20 payment is delinquent beyond the due date. When a payment becomes 60 days
21 delinquent, the Contractor shall pay an administrative charge to cover additional costs of
22 billing and processing the delinquent payment. When a payment is delinquent 90 days or
23 more, the Contractor shall pay an additional penalty charge of 6 percent per Year for
24 each day the payment is delinquent beyond the due date. Further, the Contractor shall
25 pay any fees incurred for debt collection services associated with a delinquent payment.

26 (b) The interest charge rate shall be the greater of the rate prescribed
27 quarterly in the Federal Register by the Department of the Treasury for application to

1 overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6
2 of the Reclamation Project Act of 1939 (43 U.S.C. §485e). The interest charge rate shall
3 be determined as of the due date and remain fixed for the duration of the delinquent
4 period.

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

8 EXCESS LANDS

9 12. Each owner of land in the Project Service Area receiving irrigation benefits
10 shall be required by the Contractor to certify to the Contractor the extent of his total
11 ownership of such land and the number of acres of Excess Land. Each owner who, by
12 the acquisition of additional lands after the making of his last certification, becomes an
13 owner of Excess Land shall promptly make similar certification. The Contractor shall
14 maintain records of the ownership of Excess Land and shall submit, by means of the
15 form provided by the Contracting Officer, a report showing, for each such ownership, the
16 total acreage receiving irrigation benefits and the Excess Land held at any time during a
17 Year. The report shall be submitted by the February 1 following the Year in which the
18 principal benefits first become available as determined pursuant to Article 3(c) and by
19 each February 1 thereafter, and shall cover the preceding Year.

20 RULES AND REGULATIONS—SMALL RECLAMATION PROJECTS ACT

21 13. The Secretary may from time to time promulgate proposed and final rules
22 and regulations to implement the Small Reclamation Projects Act of 1956. The
23 Contracting Officer agrees to provide a copy of all proposed and final rules, as hereafter
24 published in the Federal Register, to the Contractor. The Contractor agrees to abide by
25 all final rules and regulations now or hereafter in force. This contract is subject to all

1 rules and regulations in effect as of the date of this contract. This contract is also
2 subject to such final rules and regulations as may hereafter be lawfully adopted when not
3 inconsistent with any express and specific provisions contained herein. All such existing
4 and future rules and regulations are hereby made a part of this contract.

5 CONTRACTS WITH THIRD PARTIES

6 14. (a) The Contractor shall advertise each construction, equipment, or
7 supply contract exceeding \$25,000 for competitive bidding. Upon receipt of bids, any
8 action proposed by the Contractor other than making the award to the lowest responsible
9 bidder shall be subject to review by the Contracting Officer.

10 (b) For all construction contracts exceeding \$25,000, the Contractor
11 shall require construction contractors to furnish performance bonds equal to 100 percent
12 of the contract price and payment bonds equal to or in excess of: (1) 50 percent of the
13 contract price for contracts not exceeding \$1,000,000, (2) 40 percent of the contract price
14 for contracts exceeding \$1,000,000 but not exceeding \$5,000,000 and (3) \$2,500,000 for
15 contracts exceeding \$5,000,000. Supply and equipment contractors may be required to
furnish performance bonds on supply or equipment contracts exceeding \$25,000 when the
contract calls for substantial progress payments before delivery of end items.

18 (c) The United States shall not be a party to or obligated in any
19 manner by contracts entered into between the Contractor and other parties.

20 FAILURE TO COMPLETE WORK

21 15. (a) In the event that the Contractor fails, for any reason other than the
22 failure of the United States to appropriate and allocate funds, to complete the work to
23 be performed pursuant to this contract, the Contractor shall, upon receipt of written
24 notice from the Contracting Officer, return to the United States any unexpended,
25 unobligated and unencumbered balances of funds advanced by or disbursed under this
26 Contract by the United States and contributed by the Contractor. Following delivery of
27 the notice, the Contracting Officer may adopt either of the following alternatives:

28 (1) Perform or cause to be performed all or any part of the work
29 remaining to be performed under and within the limits of the funds provided
30 herein by the United States and by the Contractor for the Project, and operate
31 and maintain the Project facilities concurrently therewith, in which event the
32 Contractor shall transfer to the United States custody and use of all equipment,
33 materials and supplies used or useful in the performance of such work; permit the
34 United States, its contractors and its agents ingress to and egress from the lands,

1 Project facilities and facilities of the Contractor for the performance of such work;
2 and assign to the United States its interest in any contract for the performance of
3 work or the supplying of equipment or material in connection with such work
4 where requested by the United States and agreed to by the other contracting
5 party; or

6 (2) Declare the Project completed within the provisions of this
7 contract by giving written notice to the Contractor, in which event repayment of
8 the loan obligation, including the determination of the amount thereof, shall be
9 carried out in accordance with the provisions of this contract.

10 (b) In the event that the United States shall proceed as provided in
11 (a)(1) of this article, the United States may, at any time and regardless of the progress of
12 work performed thereunder, declare the Project completed by giving written notice
13 thereof to the Contractor, in which event the provisions of (a)(2) of this article shall
14 apply: Provided, That the loan obligation shall not exceed the limitation specified in this
15 contract including all expenditures made pursuant to the provisions of (a)(1) of this
16 article.

17 (c) Upon the giving of the written notice to the Contractor as provided
18 above, the United States shall have the right, without further notice, to take over the
19 care, operation, and maintenance of the Project facilities, pursuant to the applicable
provisions of this contract.

21 OPERATION AND MAINTENANCE OF PROJECT FACILITIES

22 16. (a) The Contractor, without expense to the United States, shall care for,
23 operate, and maintain the Project facilities in full compliance with the terms of this
24 contract, and in such manner that the Project facilities remain in good and efficient
25 condition.

26 (b) Necessary repairs of the Project facilities shall be made promptly by
27 the Contractor. In case of unusual conditions or serious deficiencies in the care,
28 operation, and maintenance of the Project facilities threatening or causing interruption of
29 water service, the Contracting Officer may issue to the Contractor a special written
30 notice of the necessary repairs. Within 60 days of receipt of such notice, the Contractor
31 shall either make the repairs or submit a plan acceptable to the Contracting Officer for
32 accomplishing said repairs. If the Contractor fails to do either within 60 days of receipt
33 of said notice, the Contracting Officer may cause the repairs to be made and the cost
34 thereof shall be paid by the Contractor as directed by the Contracting Officer.

35 (c) After construction of the Project is completed, the Contractor shall
36 make no substantial change in the Project facilities without first obtaining the written
37 consent of the Contracting Officer.

1 (d) In the event the Contractor is found to be operating the Project
2 facilities or any part thereof in violation of this contract, then, upon the election of the
3 Contracting Officer, the United States may take over from the Contractor the care,
4 operation, and maintenance of such Project facilities by giving written notice to the
5 Contractor of such election and of the effective date thereof. Thereafter, during the
6 period of operation by the United States, upon notification by the Contracting Officer,
7 the Contractor shall pay to the United States, annually in advance, the cost of operation
8 and maintenance of the works as determined by the Contracting Officer. Following
9 written notification from the Contracting Officer, the responsibility for the care,
10 operation, and maintenance of the works may be transferred to the Contractor.

11 PAYMENT OF MISCELLANEOUS COSTS

12 17. In addition to all other payments to be made by the Contractor under this
13 contract, the Contractor shall reimburse the United States, following the receipt of a
14 statement from the Contracting Officer, for all miscellaneous costs incurred by the
15 United States for unusual work involved in the administration and supervision of this
16 contract.

17 EXAMINATION AND INSPECTION OF PROJECT FACILITIES FOR 18 DETERMINING ADEQUACY OF OPERATION, MAINTENANCE

19 18. (a) The Contracting Officer may, from time to time, examine and audit
20 the Contractor's books, records and reports, and inspect the Project facilities being
21 operated by the Contractor, in order to determine the condition of the Project facilities
22 and the adequacy of the operation and maintenance program, the reserve fund, and the
23 water conservation program. The Contracting Officer may examine any or all of the
24 Project facilities which were constructed by the United States and transferred to the
25 Contractor, or Project facilities which were constructed by the Contractor with funds
26 advanced or reimbursed by the United States. Except in an emergency, an inspection,
27 examination, or audit shall be made only after written notice thereof has been delivered
28 to the Contractor by the Contracting Officer.

29 (b) The Contractor may request the Contracting Officer to, conduct
30 special inspections of any Project facilities being operated by the Contractor and special
31 audits of the Contractor's books and records to ascertain the extent of any operation and
32 maintenance deficiencies, to determine the remedial measures required for their
33 correction, and to assist the Contractor in solving specific problems. Except in an
34 emergency, any special inspection or audit shall be made only after written notice thereof
35 has been delivered to the Contractor by the Contracting Officer.

36 (c) The Contractor shall provide the Contracting Officer with access to
37 the Project facilities, operate any mechanical or electrical equipment at the request of

1 the Contracting Officer, and be available to assist the Contracting Officer in any
2 examination, inspection or audit.

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

6 (e) The Contractor shall reimburse the actual cost incurred by the
7 United States in making operation and maintenance examinations, inspections, and
8 audits, and preparing associated reports and recommendations.

9 (f) The Contracting Officer may provide the State an opportunity to
10 observe and participate, at its own expense, in the examinations and inspections. The
11 State may be provided copies of reports and any recommendations relating to such
12 examinations and inspections.

13 INDEMNIFICATION OF THE UNITED STATES

14 19. The Contractor agrees to indemnify the United States and its officers,
15 employees, and agents for, and to hold the United States and its officers, employees, and
16 agents harmless from liability for all damages and costs, including the United States's
17 costs of defending itself (such costs to include, but not be limited to, attorney's fees,
18 court costs, document and exhibit preparation costs, costs of retaining and preparing
19 expert witnesses, and witness fees), resulting from suits, actions, or claims of any
20 character brought against the United States on account of any injury to any person or
21 property: (i) arising out of any act, omission, neglect, or misconduct of the Contractor in
22 the manner or method of performing any construction, care, operation, maintenance,
23 supervision, examination, inspection, or other duties of the Contractor required under
24 this contract, regardless of who performs those duties, or (ii) arising out of any act or
25 conduct of the United States and its officer, employees and agents, except for negligent

1 acts or conduct or for willful misconduct, in performing any activity or taking any action
2 required or permitted under this contract.

3 EMERGENCY RESERVE FUND

4 20. (a) Commencing with the Year in which this contract is executed, the
5 Contractor shall accumulate and maintain a reserve fund which shall be kept available to
6 meet the costs of caring for, operating, and maintaining the Project as provided in (e)
7 below.

8 (b) The Contractor shall accumulate the reserve fund by making annual
9 deposits or investments of not less than \$25,000 to a Federally insured interest- or
10 dividend-bearing account, or in securities guaranteed by the Federal Government, and by
11 accumulating all interest earnings and dividends on said deposits or investments in the
12 reserve fund; Provided, That money in the reserve fund shall be available within a
13 reasonable time to meet expenses for the purposes identified in paragraph (e) of this
14 article. Such annual deposits or investments, and the accumulation of all interest
15 earnings and dividends thereon, shall continue until the amount of \$250,000 is
16 accumulated. After the amount of \$250,000 is accumulated, the annual deposits or
17 investments may be discontinued, but the interest earnings and dividends shall continue
18 to accumulate and shall be paid to the United States in accordance with paragraph (g) of
19 this article.

20 (c) Following an expenditure from the reserve fund in accordance with
21 paragraph (e) of this article, the annual deposits or investments shall be reinstated in
22 the Year next following the Year in which the reserve fund is drawn below \$250,000 and
23 they shall continue until the balance in the reserve fund is restored to \$250,000.

1 (d) Upon mutual agreement between the Contractor and the
2 Contracting Officer, the amount of the reserve fund may be adjusted to account for risk
3 and uncertainty stemming from the size and complexity of the project, the size of the
4 annual operation and maintenance budget, additions to, deletions from, or changes in
5 Project facilities, and operations and maintenance costs not contemplated when this
6 contract was executed. If the amount of the reserve fund is adjusted downward, the
7 Contractor shall forward the excess increment of the fund to the United States within 60
8 days of the date of adjustment. Such excess increment shall be applied as a tail-end
9 credit to the principal owed by the Contractor, thereby reducing the repayment period
10 but not the annual payments due to the United States.

11 (e) The Contractor may make expenditures from such reserve fund only
12 for meeting: (i) usual operation and maintenance costs incurred during periods of
13 damaging droughts, storms, earthquakes, floods, or other emergencies threatening or
14 causing interruption of water service, (ii) unforeseen extraordinary operation and
15 maintenance costs, (iii) unusual or extraordinary repair or replacement costs, and (iv)
16 betterment costs (in situations where recurrence of severe problems can be eliminated)
17 during periods of damaging droughts, storms, earthquakes, floods, or other emergencies
18 threatening or causing interruption of water service. The Contractor shall promptly
19 notify the Contracting Officer when any expenditure is made from the reserve fund
20 pursuant to this paragraph.

1 (f) During any period in which any of the Project works are operated
2 and maintained by the United States, the reserve fund shall be available for like use by
3 the United States.

4 (g) Whenever the reserve fund exceeds the amount of \$250,000 or such
5 other amount as has been agreed to pursuant to paragraph (d) of this article, the excess
6 in the reserve fund on the last day of the Year shall be paid by the Contractor to the
7 United States on or before the next April 1 and shall be applied by the United States as
8 a tail-end credit to the principal owed by the Contractor, thereby reducing the repayment
9 period but not the annual payments due to the United States.

10 (h) On or before February 1 of each Year, the Contractor shall provide
11 to the Contracting Officer an annual statement of the expenditures from the reserve fund
12 during the preceding Year, the interest and dividends earned during the preceding, and
13 the balance in the reserve fund on the last day of the preceding Year.

14 PROTECTION OF WATER SUPPLY

15 21. With respect to any existing or future disputes as to the character, extent,
16 priority, or validity of the Contractor's rights, including contractual rights, to divert, store,
17 and use the water supply claimed by the Contractor for the Project, the Contractor shall
18 promptly bring and diligently prosecute, or defend itself in, judicial proceedings for the
19 determination of any such dispute, and it shall take all other measures necessary to
20 defend and protect the water supply for the Project and the Contractor's rights thereto,
21 including any contractual rights.

1 RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

2 22. When acquiring title to lands and interests in land and relocating persons
3 or personal property in connection with the Project, the Contractor shall comply with the
4 provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies
5 Act of 1970 (42 U.S.C. §4601 et seq.), with Department of the Interior regulations (41
6 CFR 114-50), and with relevant State laws and regulations.

7
8 EQUAL OPPORTUNITY

9 23. (a) The Contractor hereby agrees to incorporate, or cause to be
10 incorporated, into any contract for construction work, or modification thereof, as defined
11 in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in
12 whole or in part, with funds obtained from the Federal Government or borrowed on the
13 credit of the Federal Government pursuant to grant, contract, loan, insurance, or
14 guarantee, or undertaken pursuant to any Federal program involving such grant, contract,
15 loan, insurance, or guarantee, the following Equal Opportunity (Federally Assisted
16 Construction) clause:

17 Equal Opportunity
18 (Federally Assisted Construction)

During the performance of this contract, the Contractor agrees as follows:

20 (1) The Contractor will not discriminate against any employee or
21 applicant for employment because of race, color, religion, sex, or national origin.
22 The Contractor will take affirmative action to ensure that applicants are
23 employed, and that employees are treated during employment without regard to
24 their race, color, religion, sex, or national origin. Such action shall include, but
25 not be limited to, the following: Employment, upgrading, demotion, or transfer;
26 recruitment or recruitment advertising; layoff or termination; rates of pay or other
27 forms of compensation; and selection for training, including apprenticeship. The
28 Contractor agrees to post in conspicuous places, available to employees and
29 applicants for employment, notices to be provided setting forth the provisions of
30 this nondiscrimination (Federally Assisted Construction) clause.

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

35 (3) The Contractor will send to each labor union or
36 representative of workers, with which it has a collective bargaining agreement or
37 other contract or understanding, a notice to be provided advising the said labor

1 union or workers' representative of the Contractor's commitments under this
2 section, and shall post copies of the notice in conspicuous places available to
3 employees and applicants for employment.

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

7 (5) The Contractor will furnish all information and reports
8 require by said amended Executive Order and by the rules, regulations, and
9 orders of the Secretary of Labor, or pursuant thereto, and will permit access to its
10 books, records, and accounts by the Contracting Officer and the Secretary of
11 Labor for purposes of investigation to ascertain compliance with such rules,
12 regulations and orders.

13 (6) In the event of the Contractor's noncompliance with the
14 nondiscrimination (Federally Assisted Construction) clauses of this contract or
15 with any of the said rules, regulations, or orders, this contract may be canceled,
16 terminated, or suspended, in whole or in part, and the Contractor may be
17 declared ineligible for further Government contracts or Federally assisted
18 construction contracts in accordance with procedures authorized in said amended
19 Executive Order and such other sanctions may be imposed and remedies invoked
20 as provided in said Executive Order, or by rule, regulation, or order of the
21 Secretary of Labor, or as otherwise provided by law.

22 (7) The Contractor will include the portion of the sentence
23 immediately preceding paragraph (1) and the provisions of paragraphs (1) through
24 (7) in every subcontract or purchase order unless exempted by the rules,
25 regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of
26 said amended Executive Order so that such provisions will be binding upon each
27 subcontractor or vendor. The Contractor will take such action with respect to any
28 subcontract or purchase order as the Contracting Officer may direct as a means of
29 enforcing such provisions, including sanctions for noncompliance: Provided,
30 however, That in the event the Contractor becomes involved in, or is threatened
31 with litigation with a subcontractor or vendor as a result of such direction by the
32 Contracting Officer, the Contractor may request the United States to enter into
33 such litigation to protect the interests of the United States.

34 (b) The Contractor further agrees that it will be bound by the above
35 Equal Opportunity (Federally Assisted Construction) clause with respect to its own
36 employment practices when it participates in Federally assisted construction work:
37 Provided, That if the Contractor so participating is a State or local Government, the
38 above Equal Opportunity clause is not applicable to any agency, instrumentality or

1 subdivision of such government which does not participate in work on or under the
2 contract.

3 (c) The Contractor agrees that it will assist and cooperate actively with
4 the Contracting Officer and the Secretary of Labor in obtaining the compliance of
5 contractors and subcontractors with the Equal Opportunity (Federally Assisted
6 Construction) clause and the rules, regulations, and relevant orders of the Secretary of
7 Labor, that it will furnish the Contracting Officer and the Secretary of Labor such
8 information as they may require for the supervision of such compliance, and that it will
9 otherwise assist the Contracting Officer in the discharge of his primary responsibility for
10 securing compliance.

11 (d) The Contractor further agrees that it will refrain from entering into
12 any contract or contract modification subject to said amended Executive Order with a
13 contractor debarred from, or who has not demonstrated eligibility for, Government
14 contracts and Federally assisted construction contracts pursuant to said amended
15 Executive Order and will carry out such sanctions and penalties for violation of the
16 Equal Opportunity (Federally Assisted Construction) clause as may be imposed upon
17 contractors and subcontractors by the Contracting Officer or the Secretary of Labor
18 pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor
19 agrees that if it fails or refuses to comply with these undertakings, the Contracting
20 Officer may take any or all of the following actions: Cancel, terminate, or suspend, in
21 whole or in part, this contract; refrain from extending any further assistance to the
22 Contractor under the program with respect to which its failure or refusal occurred until
23 satisfactory assurance of future compliance has been received from such Contractor; and
24 refer the case to the Department of Justice for appropriate legal proceedings.

25 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

26 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of
27 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as
28 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other
29 applicable civil rights laws, as well as with their respective implementing regulations and
30 guidelines imposed by the U.S. Department of the Interior and/or Bureau of
31 Reclamation.

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

1 (e) The Contractor makes this agreement in consideration of and for
2 the purpose of obtaining any and all Federal grants, loans, contracts, property discounts
3 or other Federal financial assistance extended after the date hereof to the Contractor by
4 the Bureau of Reclamation, including installment payments after such date on account of
5 arrangements for Federal financial assistance which were approved before such date.
6 The Contractor recognizes and agrees that such Federal assistance will be extended in
7 reliance on the representations and agreements made in this article, and that the United
8 States reserves the right to seek judicial enforcement thereof.

9 CERTIFICATION OF NONSEGREGATED FACILITIES

10 25. The Contractor hereby certifies that it does not maintain or provide for its
11 employees any segregated facilities at any of its establishments, and that it does not
12 permit its employees to perform their services at any location, under its control, where
13 segregated facilities are maintained. It certifies further that it will not maintain or
14 provide for its employees any segregated facilities at any of its establishments, and that it
15 will not permit its employees to perform their services at any location, under its control,
16 where segregated facilities are maintained. The Contractor agrees that a breach of this
17 certification is a violation of the Equal Opportunity clause in this contract. As used in
18 this certification, the term "segregated facilities" means any waiting rooms, work areas,
19 restrooms, and washrooms, restaurants and other eating areas, time clocks, locker rooms
20 and other storage or dressing areas, parking lots, drinking fountains, recreation or
21 entertainment areas, transportation, and housing facilities provided for employees which
22 are segregated by explicit directive or are in fact segregated on the basis of race, creed,
23 color, or national origin, because of habit, local custom, or otherwise. The Contractor
24 further agrees that (except where it has obtained identical certifications from proposed
25 subcontractors for specific time periods) it will obtain identical certifications from
26 proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are
27 not exempt from the provisions of the Equal Opportunity clause; that it will retain such
28 certifications in its files; and that it will forward the following notice to such proposed
29 subcontractors (except where the proposed subcontractors have submitted identical
30 certifications for specific periods):

31 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
32 FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

33 A Certification of Nonsegregated Facilities must be submitted prior to the
34 award of a subcontract exceeding \$10,000 which is not exempt from the provisions
35 of the Equal Opportunity clause. The certification may be submitted either for
36 each subcontract or for all subcontracts during a period (i.e., quarterly,
37 semiannually, or annually). Note: The penalty for making false statements in
38 offers is prescribed in 18 U.S.C. 1001.

1 BOOKS, RECORDS, AND REPORTS--LAND AND WATER USE REPORTS

2 26. (a) During the performance of construction under this contract the
3 Contractor shall maintain books of account and keep them and all other books, records,
4 and memoranda which support in any way the entries in such books of account so as to
5 be able to furnish readily full information as to any item included in any account. Each
6 entry shall be supported by such detailed information as will permit a ready
7 identification, analysis, and verification of all of the facts relevant therein. Any such
8 books and records which support entries to the accounts shall be retained until
9 destruction is permitted by the Contracting Officer. The books of account maintained by
10 the Contractor and by the United States relating to matters covered by this contract shall
11 be open to inspection and audit by representatives of either party at all times during its
regular office hours.

13 (b) The Contractor also shall establish and maintain accounts and other
14 books and records pertaining to its financial transactions, land use and crop census,
15 water supply, water use, changes to the Project, and to other matters as the Contracting
16 Officer may require. Reports thereon shall be furnished to the Contracting Officer in
17 such form and on such date or dates as he may require. Subject to applicable Federal
18 Laws and regulations, each party shall have the right during office hours to examine and
19 make copies of each other's books and official records relating to matters covered by this
20 contract.

1 CHANGES IN CONTRACTOR'S ORGANIZATION

2 27. While this contract is in effect, no change may be made in the Contractor's
3 organization by inclusion or exclusion of lands, dissolution, consolidation, merger or
4 other action that would impair the Contractor's ability to repay the obligation evidenced
5 by this contract, except upon the Contracting Officer's written consent.

6 ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED

7 28. The provisions of this contract shall apply to and bind the successors and
8 assigns of the parties hereto, but no assignment or transfer of this contract or any right
9 or interest therein shall be valid until approved in writing by the Contracting Officer.

10 OFFICIALS NOT TO BENEFIT

11 29. No Member of, or Delegate to Congress, Resident Commissioner, or
12 official of the Contractor shall benefit from this contract other than as a water user or
13 landowner in the same manner as other water users or landowners.

14 WATER CONSERVATION

15 30. (a) The United States acknowledges that, as of the effective date of this
16 contract, the Contractor has developed a water conservation plan which is acceptable to
17 the Contracting Officer.

18 (b) The Contractor shall annually submit to the Contracting Officer a
19 report on the status of implementation of its water conservation plan. The Contracting
20 Officer will provide the Contractor information to be included in this report and the date
21 the report must be received by the Contracting Officer.

1 (c) During the term of this contract, the Contractor may be required to
2 revise the water conservation plan described in (a) above. The revised plan shall be
3 evaluated in accordance with applicable rules and regulations or guidelines and criteria
4 then in effect for the evaluation of water conservation plans. In the event that a revised
5 plan is required, the Contracting Officer shall notify the Contractor of the criteria to
6 include in the revised plan and the date the revised plan is to be received by the
7 Contracting Officer.

8 CLEAN AIR AND WATER

9 31. (a) The Contractor agrees as follows:

10 (1) To comply with all the requirements of Section 114 of the
11 Clean Air Act, as amended (42 U.S.C., 1857 *et seq.*, as amended by Public Law
12 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C.,
13 1251 *et seq.*, as amended by Public Law 92-500), respectively, relating to
14 inspection, monitoring, entry, reports, and information, as well as other
15 requirements specified in Section 114 and Section 308 of the Air Act and the
16 Water Act, respectively, and all regulations and guidelines issued thereunder
17 before the execution of this contract.

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

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

24 (4) To insert the substance of the provisions of this article into
25 any nonexempt subcontract, including this paragraph (a)(4).

26 (b) The terms used in this article have the following meanings:

27 (1) The term "Air Act" means the Clean Air Act, as amended (42
28 U.S.C. 1857 *et seq.*, as amended by Public Law 91-604).

1 (2) The term "Water Act" means Federal Water Pollution
2 Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Public Law
3 92-500).

4 (3) The term "clean air standards" means any enforceable rules,
5 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or
6 other requirements which are contained in, issued under, or otherwise adopted
7 pursuant to the Air Act or Executive Order 11738, an applicable implementation
8 plan as described in Section 110(d) of the Clean Air Act [42 U.S.C. 1857c-5(d)],
9 an approved implementation procedure or plan under Section 111(c) or Section
10 111(d), respectively, of the Air Act [42 U.S.C. 1857c-6(c) or (d)], or an approved
11 implementation procedure under Section 112(d) of the Air Act [42 U.S.C.
12 1857c-7(d)].

13 (4) The term "clean water standards" means any enforceable
14 limitation, control, condition, prohibition, standard, or other requirement which is
15 promulgated pursuant to the Water Act or contained in a permit issued to a
16 discharger by the Environmental Protection Agency or by a State under an
17 approved program, as authorized by Section 402 of the Water Act (33 U.S.C.
18 1342), or by local government to ensure compliance with pretreatment regulations
19 as required by Section 307 of the Water Act (33 U.S.C. 1317).

20 (5) The term "comply" means compliance with clean air or water
21 standards. Comply shall also mean compliance with a schedule or plan ordered
22 or approved by a court of competent jurisdiction, the Environmental Protection
23 Agency or an air or water pollution control agency in accordance with the
24 requirements of the Air Act or Water Act and regulations issued pursuant thereto.

25 (6) The term "facility" means any building, plant, installation,
26 structure, mine, vessel or other floating craft, location or site of operations,
27 owned, leased, or supervised by a contractor or subcontractor, to be utilized in the
28 performance of a contract or subcontract. Where a location or site of operations
29 contains or includes more than one building, plant, installation, or structure, the
30 entire location or site shall be deemed to be a facility except where the Director,
31 Office of Federal Activities, Environmental Protection Agency, determines that
32 independent facilities are collocated in one geographical area.

33 CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

34 32. The expenditure or advance of any money or the performance of any
35 obligation of the United States under this contract shall be contingent upon
36 appropriation or allotment of funds. Absence of appropriation or allotment of funds
37 shall not relieve the Contractor from any obligations under this contract. No liability
38 shall accrue to the United States in case funds are not appropriated or allotted.

1 PRIVACY ACT COMPLIANCE

2 33. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C.
3 552a) (the Act) and the Department of the Interior rules and regulations under the Act
4 (43 CFR 2.45 *et seq.*) in maintaining landholder acreage certification and reporting
5 records, required to be submitted to the Contractor for compliance with sections 206 and
6 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §390aa *et seq.*) and its
7 implementing regulations.

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

13 (c) The Contracting Officer or a designated representative shall provide
14 the Contractor with current copies of the Interior Department Privacy Act regulations
15 and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice
16 (Acreage Limitation-Interior, Reclamation-31) which govern the maintenance,
17 safeguarding, and disclosure of information contained in the landholders' certification
18 and reporting records.

19 (d) The Contracting Officer shall designate a full-time employee of the
20 Bureau of Reclamation to be the System Manager who shall be responsible for making
21 decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to
22 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to
23 their own records.

24 (e) The Contractor shall forward promptly to the System Manager each
25 proposed denial of access under 43 CFR 2.64, and each request for amendment of
26 records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and
27 provide the System Manager with information and records necessary to prepare an
28 appropriate response to the requester. These requirements do not apply to certification
29 and reporting forms filed with the Contractor pursuant to 43 CFR 426.10, unless the
30 requester elects to cite the Privacy Act as authority for the request.

31 NOTICES

32 34. Any notice, demand, or request authorized or required by this contract
33 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage
34 prepaid, or delivered to the Regional Director, Mid-Pacific Region, Bureau of
35 Reclamation, 2800 Cottage Way, Sacramento, California 95825 1898, and on behalf of
36 the United States, when mailed, postage prepaid, or delivered to the General Manager
37 of the Monterey County Water Resources Agency, P.O. Box 930, Salinas, CA 93902.

1 The designation of the addressee or the address may be changed by notice given in the
2 same manner as provided in this article for other notices.

3 IN WITNESS WHEREOF, the parties hereto have executed this contract the day
4 and year first written.

5 APPROVED AS TO LEGAL
FORM AND EFFICIENCY

THE UNITED STATES OF AMERICA

6 *J. William McDonald*
7 OFFICE OF REGIONAL SOLICITOR
8 DEPARTMENT OF THE INTERIOR

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

9 [SEAL]

MONTEREY COUNTY WATER RESOURCES AGENCY

10
11 By *Tom Perkins*
12 Title Supervisor Tom Perkins, Chair
Monterey County Board of Supervisors

13 Attest:

14 *Nancy Lubowitz*
15 Secretary

16 (IMC950314.RC4)

6/11/95
APPROVED AS TO FORM
William K. Reedy
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY