

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
CITY OF LINDSAY  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION

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1 UNITED STATES  
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3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 CITY OF LINDSAY  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2001, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
17 hereinafter referred to as the United States, and **CITY OF LINDSAY**, hereinafter referred to as the  
18 Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to  
19 the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,  
24 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,

25 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of  
26 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River  
27 and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton  
29 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant  
30 Division facilities, which will be used in part for the furnishing of water to the Contractor pursuant to  
31 the terms of this Contract; and

32 [3<sup>rd</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
33 United States has acquired water rights and other rights to the flows of the San Joaquin River,  
34 including without limitation the permits issued as the result of Decision 935 by the California State  
35 Water Resource Control Board and the contracts described in subdivision (n) of Article 3 of this  
36 Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers Project  
37 Water stored or flowing through Millerton Lake in accordance with State and Federal law for the  
38 benefit of Project Contractors in the Friant Division; and

39 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project  
40 Water developed through the exercise of the rights described in the third (3rd) Explanatory Recital of  
41 this Contract; and

42 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
43 No. **5-07-20-W0428**, as amended, which established terms for the delivery to the Contractor of  
44 Project Water from the Friant Division from **June 13, 1985, to February 28, 2025**; and

45           **[5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to Subsection**  
46           **3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a**  
47           **Binding Agreement identified as Binding Agreement No. 5-07-20-W0428-BA, which provided**  
48           **for the non-payment of the additional mitigation and restoration charges if the Contractor**  
49           **agreed to renew their contract after completion of the Programmatic Environmental Impact**  
50           **Statement and negotiation of a renewal contract; and**

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

57           [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
58           environmental review necessary to provide for long-term renewal of the Existing Contract; and

59           [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
60           Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the  
61           State of California, for water service from the Central Valley Project; and

62           [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
63           its obligations under the Existing Contract; and

64           [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
65           Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and

66 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor  
67 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project  
68 Water to be made available to it pursuant to this Contract; and

69 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by  
70 urban and agricultural areas within California for more than fifty (50) years, and is considered by the  
71 Contractor as an essential portion of its water supply; and

72 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
73 Contractor's, depend upon the continued availability of water, including water service from the  
74 Central Valley Project; and

75 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
76 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project  
77 purposes; and

78 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
79 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of  
80 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to  
81 achieve a reasonable balance among competing demands for use of Project Water; and to comply  
82 with all applicable environmental statutes, all consistent with the legal obligations of the United  
83 States relative to the Central Valley Project; and

84 [15<sup>th</sup>] Omitted;

85 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize  
86 undependable Class 2 Water in their service areas to, among other things, assist in the management

87 and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for  
88 environmental enhancement, including restoration of the San Joaquin River below Friant Dam,  
89 minimize flooding along the San Joaquin River, encourage optimal water management, and maximize  
90 the reasonable and beneficial use of the water; and

91 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive  
92 to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in  
93 the Explanatory Recital immediately above; and

94 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
95 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

98 DEFINITIONS

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

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

103 (b) "Charges" shall mean the payments required by Federal Reclamation law in  
104 addition to the Rates and Tiered Pricing Components specified in this Contract as determined  
105 annually by the Contracting Officer pursuant to this Contract;

106 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through  
107 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of

108 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera  
109 Canals as a dependable water supply during each Year;

110 (b3) "Class 2 Water" shall mean that supply of water which can be made available  
111 subject to the contingencies hereinafter described in Articles 3, 11, and 12 of this Contract for  
112 delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of  
113 Class 1 Water. Because of its uncertainty as to availability and time of occurrence, such water will be  
114 undependable in character and will be furnished only if, as, and when it can be made available as  
115 determined by the Contracting Officer;

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

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

121 (e) "Contract Total" shall mean the maximum amount of Class 1 Water, plus the  
122 maximum amount of Class 2 Water to which the Contractor is entitled under subdivision (a) of  
123 Article 3 of this Contract;

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

128 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title XXIV

129 of the Act of October 30, 1992 (106 Stat. 4706);

130 (h) Omitted;

131 (i) Omitted;

132 (j) Omitted;

133 (k) Omitted;

134 (l) Omitted;

135 (m) “Irrigation Water” shall mean water made available from the Project that is  
136 used primarily in the production of agricultural crops or livestock, including domestic use incidental  
137 thereto, and watering of livestock. Irrigation Water shall not include water used for purposes such as  
138 the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal  
139 enjoyment or water delivered to landholdings operated in units of less than five (5) acres unless the  
140 Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to  
141 any such landholding is a use described in this subdivision of this Article;

142 (n) Omitted;

143 (n2) “Long Term Historic Average” shall mean the average of the final forecast of  
144 Water Made Available to the Contractor pursuant to this Contract and the contracts referenced in the  
145 fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) Explanatory Recitals of this Contract;

146 (o) “Municipal and Industrial (M&I) Water” shall mean water made available from  
147 the Project other than Irrigation Water made available to the Contractor. M&I Water shall include  
148 water used for human use and purposes such as the watering of landscaping or pasture for animals  
149 (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in

150 units of less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting  
151 Officer that the use of water delivered to any such landholding is a use described in subdivision (m)  
152 of this Article;

153 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined  
154 by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I  
155 facilities in service, including, O&M deficits funded, less payments, over such periods as may be  
156 required under Federal Reclamation law with interest accruing from the dates such costs were first  
157 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the  
158 calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in  
159 Section 202 (3) (B) and (C) of the RRA;

160 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable  
161 care, control, operation, repair, replacement (other than Capital replacement), and maintenance of  
162 Project facilities;

163 (r) "Operating Non-Federal Entity" shall mean the Friant Water Users Authority,  
164 a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant  
165 Division facilities pursuant to an agreement with the United States, and which may have funding  
166 obligations with respect thereto;

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

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

171 (u) "Project Water" shall mean all water that is developed, diverted, stored, or

172 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance  
173 with the terms and conditions of water rights acquired pursuant to California law;

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

177 (w) Omitted;

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

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

183 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for  
184 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

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



211 policy applicable to the delivery of Project M&I Water that would affect the term of any subsequent  
212 renewal contract with the Contractor for the furnishing of M&I Water.

213 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized  
214 Project construction expected to occur will have occurred, and on that basis the Contracting Officer  
215 agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees  
216 further that, at any time after such allocation is made, and subject to satisfaction of the conditions set  
217 out in this subdivision of this Article, this Contract shall, at the request of the Contractor, be  
218 converted to a contract under subsection (c)(1) of Section 9, of the Reclamation Project Act of 1939,  
219 subject to applicable Federal law and under stated terms and conditions mutually agreeable to the  
220 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a  
221 determination by the Contracting Officer that, account being taken of the amount credited to return by  
222 the Contractor as provided for under Reclamation law, the remaining amount of construction costs  
223 assignable for ultimate return by the Contractor can probably be repaid to the United States within the  
224 term of a contract under said subsection 9(c)(1). If the remaining amount of costs that are properly  
225 assignable to the Contractor cannot be determined by December 31, 2024, the Contracting Officer  
226 shall notify the Contractor, and provide the reason(s) why such a determination could not be made.  
227 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as  
228 to permit, upon request of the Contractor and satisfaction of the conditions set out above, conversion  
229 to a contract under said subsection 9(c)(1). In the event such determination of costs has not been  
230 made at a time which allows conversion of this Contract during the term of this Contract or the  
231 Contractor has not requested conversion of this Contract within such term, the parties shall

232 incorporate in any subsequent renewal contract as described in Article 2(c) a provision that carries  
233 forth in substantially identical terms the provisions of this Article 2(d). In the event the Contracting  
234 Officer is able to make a determination of the remaining amount of costs that are properly assignable  
235 to the Contractor before December 31, 2024, the Contracting Officer shall do so at the earliest time  
236 he/she has such ability.

237 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

238 3. (a) During each Year, consistent with all applicable State water rights, permits,  
239 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
240 Contract, the Contracting Officer shall make available for delivery to the Contractor **2,500 acre-feet**  
241 **of Class 1 Water for M&I purposes**. The quantity of Water Delivered to the Contractor in  
242 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of  
243 Articles 4 and 7 of this Contract.

244 (b) Omitted.

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

247 (d) The Contractor shall make reasonable and beneficial use of all Project Water or  
248 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater  
249 banking programs, surface water storage programs, and other similar programs utilizing Project  
250 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
251 Area which are consistent with applicable State law and result in use consistent with Reclamation law

252 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's  
253 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That  
254 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service  
255 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be  
256 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,  
257 groundwater banking programs, surface water storage programs, and other similar programs utilizing  
258 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's  
259 Service Area may be permitted upon written approval of the Contracting Officer, which approval will  
260 be based upon environmental documentation, Project Water rights, and Project operational concerns.  
261 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

262 (e) The Contractor shall comply with requirements applicable to the Contractor in  
263 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
264 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within  
265 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or  
266 requirements imposed by environmental documentation applicable to the Contractor and within its  
267 legal authority to implement regarding specific activities. Nothing herein shall be construed to  
268 prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction  
269 with respect to any biological opinion or other environmental documentation referred to in this  
270 Article.

271 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the  
272 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will

273 make a determination whether Project Water, or other water available to the Project, can be made  
274 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during  
275 the Year without adversely impacting other Project Contractors. At the request of the Contractor, the  
276 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to  
277 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that Project  
278 Water, or other water available to the Project, can be made available to the Contractor, the  
279 Contracting Officer will announce the availability of such water and shall so notify the Contractor as  
280 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project  
281 Contractors capable of taking such water to determine the most equitable and efficient allocation of  
282 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting  
283 Officer shall make such water available to the Contractor in accordance with applicable statutes,  
284 regulations, guidelines, and policies.

285 (g) The Contractor may request permission to reschedule for use during the  
286 subsequent Year some or all of the Water Made Available to the Contractor during the current Year  
287 referred to as “carryover.” The Contractor may request permission to use during the current Year a  
288 quantity of Project Water which may be made available by the United States to the Contractor during  
289 the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit  
290 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

291 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable  
292 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the  
293 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during

294 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations  
295 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the  
296 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of  
297 this Contract or applicable provisions of any subsequent renewal contracts.

298 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
299 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this  
300 Contract upon written approval by the Contracting Officer in accordance with the terms and  
301 conditions of such approval.

302 (j) The Contracting Officer shall make reasonable efforts to protect the water  
303 rights and other rights described in the third (3rd) Explanatory Recital of this Contract and to provide  
304 the water available under this Contract. The Contracting Officer shall not object to participation by  
305 the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings  
306 related to the water rights and other rights described in the third (3rd) Explanatory Recital of this  
307 Contract; Provided, however, That the Contracting Officer retains the right to object to the substance  
308 of the Contractor's position in such a proceeding.

309 (k) Project Water furnished to the Contractor during any month designated in a  
310 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer  
311 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1  
312 Water is called for in such schedule for such month and shall be deemed to have been accepted as  
313 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any  
314 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and

315 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,  
316 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water  
317 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply  
318 available in the current Year is not sufficient to account for such additional diversions, such  
319 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply  
320 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2  
321 Water supplies available in the current Year are not sufficient to account for such additional  
322 diversions, such additional diversions shall be charged first against the Contractor's available Class 2  
323 Water supply and then against the Contractor's available Class 1 Water supply, both for the following  
324 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of  
325 this Contract.

326 (1) If the Contracting Officer determines there is a Project Water supply available  
327 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project  
328 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be  
329 made available to the Contractor and others under Section 215 of the RRA pursuant to the priorities  
330 specified below if the Contractor enters into a temporary contract with the United States not to exceed  
331 one (1) year for the delivery of such water or, as otherwise provided for in Federal Reclamation law  
332 and associated regulations. Such water may be identified by the Contractor either (i) as additional  
333 water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant  
334 to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited  
335 against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contracting

336 Officer shall make water determined to be available pursuant to this subsection according to the  
337 following priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water within the  
338 Friant Division; second, to long-term contractors in the Cross Valley Division of the Project. The  
339 Contracting Officer will consider and seek to accommodate requests from other parties for Section  
340 215 Water for use within the area identified as the Friant Division service area in the environmental  
341 assessment developed in connection with the execution of this Contract.

342 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
343 Contracting Officer in connection with the implementation of this Contract, is intended to override,  
344 modify, supersede or otherwise interfere with any term or condition of the water rights and other  
345 rights referred in the third (3rd) Explanatory Recital of this Contract.

346 (n) The rights of the Contractor under this Contract are subject to the terms of the  
347 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and  
348 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the  
349 Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not  
350 deliver to the Exchange Contractors thereunder waters of the San Joaquin River unless and until  
351 required by the terms of said contract, and the United States further agrees that it will not voluntarily  
352 and knowingly determine itself unable to deliver to the Exchange Contractors entitled thereto from  
353 water that is available or that may become available to it from the Sacramento River and its  
354 tributaries or the Sacramento-San Joaquin Delta those quantities required to satisfy the obligations of  
355 the United States under said Exchange Contract and under Schedule 2 of the Contract for Purchase of  
356 Miller and Lux Water Rights (Contract I1r-1145, dated July 27, 1939).

TIME FOR DELIVERY OF WATER

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

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

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

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this

378 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial  
379 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written  
380 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to  
381 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total  
382 amount of water requested in that schedule or revision does not exceed the quantities announced by  
383 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3, and the Contracting  
384 Officer determines that there will be sufficient capacity available in the appropriate Friant Division  
385 facilities to deliver the water in accordance with that schedule: Provided, further, That the Contractor  
386 shall not schedule the delivery of any water during any period as to which the Contractor is notified  
387 by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make  
388 deliveries to the Contractor will not be in operation because of scheduled O&M.

389 (e) The Contractor may, during the period from and including November 1 of each  
390 Year through and including the last day of February of that Year, request delivery of any amount of  
391 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following  
392 Year. The Contractor may, during the period from and including January 1 of each Year (or such  
393 earlier date as may be determined by the Contracting Officer) through and including the last day of  
394 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting  
395 Officer to be made available to it during the following Year. Such water shall hereinafter be referred  
396 to as preuse water. Such request must be submitted in writing by the Contractor for a specified  
397 quantity of preuse and shall be subject to the approval of the Contracting Officer. Payment for preuse  
398 water so requested shall be at the appropriate rate(s) for the following Year in accordance with

399 Article 7 of this Contract and shall be made in advance of delivery of any preuse water. The  
400 Contracting Officer shall deliver such preuse water in accordance with a schedule or any revision  
401 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water  
402 is available and to the extent such deliveries will not interfere with the delivery of Project Water  
403 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.  
404 The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the  
405 quantities of water that the Contracting Officer would otherwise be obligated to make available to the  
406 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted  
407 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in  
408 the following Year shall be specified by the Contractor at the time the preuse water is requested or as  
409 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of  
410 this Article, based on the availability of the following Year water supplies as determined by the  
411 Contracting Officer.

412 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

413 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
414 Contract shall be delivered to the Contractor at a point or points of delivery either on Project facilities  
415 or another location or locations mutually agreed to in writing by the Contracting Officer and the  
416 Contractor.

417 (b) The Contracting Officer, the Operating Non-Federal Entity, or other  
418 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in  
419 the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts established

420 pursuant to subdivision (a) of this Article.

421 (c) The Contractor shall not deliver Project Water to land outside the Contractor's  
422 Service Area unless approved in advance by the Contracting Officer.

423 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
424 measured and recorded with equipment furnished, installed, operated, and maintained by the United  
425 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting  
426 Officer (hereafter "other appropriate entity") at the point or points of delivery established pursuant to  
427 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting  
428 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,  
429 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing  
430 therein. For any period of time when accurate measurements have not been made, the Contracting  
431 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to  
432 making a final determination of the quantity delivered for that period of time.

433 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
434 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water  
435 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in  
436 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,  
437 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever  
438 for which there is legal responsibility, including property damage, personal injury, or death arising out  
439 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project  
440 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or

441 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including  
442 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any  
443 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,  
444 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the  
445 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible  
446 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities  
447 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,  
448 That the Contractor is not the Operating Non-Federal Entity that owned or operated the  
449 malfunctioning facility(ies) from which the damage claim arose.

450 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

451 6. (a) **The Contractor established a measurement program satisfactory to the**  
452 **Contracting Officer.** All surface water delivered for municipal and industrial purposes is measured  
453 at each municipal and industrial service connection. The water measuring devices or water measuring  
454 methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor  
455 shall be responsible for installing, operating, and maintaining and repairing all such measuring  
456 devices and implementing all such water measuring methods at no cost to the United States. The  
457 Contractor shall use the information obtained from such water measuring devices or water measuring  
458 methods to ensure its proper management of the water, to bill water users for water delivered by the  
459 Contractor; and, if applicable, to record water delivered for municipal and industrial purposes by  
460 customer class as defined in the Contractor's water conservation plan provided for in Article 26 of  
461 this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing  
462 and collecting any charges, assessments, or other revenues authorized by California law. The

463 Contractor shall include a summary of all its annual surface water deliveries in the annual report  
464 described in subdivision (c) of Article 26 of this Contract.

465 (b) To the extent the information has not otherwise been provided, upon execution  
466 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the  
467 measurement devices or water measuring methods being used or to be used to implement subdivision  
468 (a) of this Article and identifying the municipal and industrial service connections or alternative  
469 measurement programs approved by the Contracting Officer, at which such measurement devices or  
470 water measuring methods are being used, and, if applicable, identifying the locations at which such  
471 devices and/or methods are not yet being used including a time schedule for implementation at such  
472 locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to  
473 the adequacy of, and necessary modifications, if any, of the measuring devices or water measuring  
474 methods identified in the Contractor's report and if the Contracting Officer does not respond in such  
475 time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the  
476 measuring devices or methods are inadequate, the parties shall within sixty (60) days following the  
477 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the  
478 Contractor shall modify said measuring devices and/or measuring methods as required by the  
479 Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

483 (d) The Contractor shall inform the Contracting Officer and the State of California

484 in writing by April 30 of each Year of the monthly volume of surface water delivered within the  
485 Contractor’s Service Area during the previous Year.

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

489 RATES AND METHOD OF PAYMENT FOR WATER

490 7. (a) The Contractor shall pay the United States as provided in this Article for all  
491 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with  
492 the Secretary’s then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be  
493 amended, modified, or superseded only through a public notice and comment procedure; (ii)  
494 applicable Reclamation law and associated rules and regulations, or policies; and (iii) other applicable  
495 provisions of this Contract. Payments shall be made by cash transaction, wire, or any other  
496 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates,  
497 Charges, and Tiered Pricing Components applicable to the Contractor upon execution of this Contract  
498 are set forth in Exhibit “B”, as may be revised annually.

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

501 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
502 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
503 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
504 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review

505 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
506 Officer shall notify the Contractor in writing of the Charges to be in effect during the period  
507 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and  
508 such notification shall revise Exhibit “B.”

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

516 (c) At the time the Contractor submits the initial schedule for the delivery of  
517 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
518 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
519 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
520 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the  
521 end of the first month and before the end of each calendar month thereafter, the Contractor shall make  
522 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
523 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
524 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
525 for Water Delivered shall be made before the end of the following month; Provided, That any revised

526 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
527 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
528 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
529 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered  
530 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the  
531 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an  
532 advance payment at the Rates then in effect for such additional Project Water is made. Final  
533 adjustment between the advance payments for the Water Scheduled and payments for the quantities  
534 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
535 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project  
536 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by  
537 the last day of February.

538 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
539 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
540 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
541 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
542 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent  
543 with the quantities of M&I Water Delivered as shown in the water delivery report for the subject  
544 month prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity,  
545 by the Contracting Officer. Such water delivery report shall be the basis for payment of Charges and  
546 Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the

547 Operating Non-Federal Entity or the Contracting Officer (as applicable) within five (5) days after the  
548 end of the month of delivery. The water delivery report shall be deemed a bill for the payment of  
549 Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for  
550 overpayment or underpayment of Charges shall be made through the adjustment of payments due to  
551 the United States for Charges for the next month. Any amount to be paid for past due payment of  
552 Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

564 (h) The Contracting Officer shall keep its accounts pertaining to the administration  
565 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal  
566 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer  
567 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all

568 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,  
569 and a summary of all water delivery information. The Contracting Officer and the Contractor shall  
570 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,  
571 reports, or information.

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

579 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water  
580 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of  
581 the month following the month of delivery the Contractor shall make an additional payment to the  
582 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for  
583 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the  
584 Contract Total, but less than or equal to ninety (90%) percent of the Contract Total, shall equal the  
585 one-half of the difference between the Rate established under subdivision (a) of Article 7 of this  
586 Contract and the M&I Full Cost Water Rate. The Tiered Pricing Component for the total of the  
587 deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the Contract  
588 Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7 of  
589 this Contract and (ii) the M&I Full Cost Water Rate.

590 (2) Omitted.

591 (3) For purposes of determining the applicability of the Tiered Pricing  
592 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
593 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

594 (k) For the term of this Contract, Rates under the respective ratesetting policies  
595 will be established to recover only reimbursable “operation and maintenance” (including any deficits)  
596 and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies,  
597 and interest, where appropriate, except in instances where a minimum Rate is applicable in  
598 accordance with the relevant Project ratesetting policy. Changes of significance in practices which  
599 implement the Contracting Officer’s ratesetting policies will not be implemented until the  
600 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
601 impact of the proposed change.

602 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,  
603 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates adjusted  
604 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water  
605 to the transferee’s point of delivery in accordance with the then applicable CVP Ratesetting Policy.

606 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting  
607 Officer is authorized to adjust determination of ability to pay every five (5) years.

608 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

609 8. The Contractor and the Contracting Officer concur that, as of the effective date of this  
610 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall

611 have no further liability therefor.

612 SALES, TRANSFERS, OR EXCHANGES OF WATER

613 9. (a) The right to receive Project Water provided for in this Contract may be sold,  
614 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if  
615 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable  
616 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this  
617 Contract may take place without the prior written approval of the Contracting Officer, except as  
618 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be  
619 approved absent compliance with appropriate environmental documentation including but not limited  
620 to the National Environmental Policy Act and the Endangered Species Act. Such environmental  
621 documentation should include, as appropriate, an analysis of groundwater impacts and economic and  
622 social effects, including environmental justice, of the proposed water transfers on both the transferor  
623 and transferee.

624 (b) In order to facilitate efficient water management by means of water transfers of  
625 the type historically carried out among Project Contractors located within the same geographical area  
626 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
627 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental  
628 documentation including, but not limited to, the National Environmental Policy Act and the  
629 Endangered Species Act analyzing annual transfers within such geographical areas and the  
630 Contracting Officer shall determine whether such transfers comply with applicable law. Following  
631 the completion of the environmental documentation, such transfers addressed in such documentation

632 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written  
633 approval by the Contracting Officer. Such environmental documentation and the Contracting  
634 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,  
635 prior to the expiration of the then existing five (5) -year period. All subsequent environmental  
636 documentation shall include an alternative to evaluate not less than the quantity of Project Water  
637 historically transferred within the same geographical area.

638 (c) For a water transfer to qualify under subdivision (b) of this Article, such water  
639 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for  
640 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface water  
641 storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established  
642 cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a  
643 single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through  
644 existing facilities with no new construction or modifications to facilities and be between existing  
645 Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v)  
646 comply with all applicable Federal, State, and local or tribal laws and requirements imposed for  
647 protection of the environment and Indian Trust Assets, as defined under Federal law.

648 APPLICATION OF PAYMENTS AND ADJUSTMENTS

649 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
650 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
651 the Contractor arising out of this Contract then due and payable. Overpayments of more than One  
652 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any  
653 amount of such overpayment at the option of the Contractor, may be credited against amounts to

654 become due to the United States by the Contractor. With respect to overpayment, such refund or  
655 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have  
656 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of  
657 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as  
658 to how to credit or refund such overpayment in response to the notice to the Contractor that it has  
659 finalized the accounts for the Year in which the overpayment was made.

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

665 TEMPORARY REDUCTIONS--RETURN FLOWS

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

671 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
672 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the  
673 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project  
674 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as

675 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice  
676 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case  
677 no notice need be given; Provided, That the United States shall use its best efforts to avoid any  
678 discontinuance or reduction in such service. Upon resumption of service after such reduction or  
679 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the  
680 quantity of Project Water which would have been delivered hereunder in the absence of such  
681 discontinuance or reduction.

682 (c) The United States reserves the right to all seepage and return flow water  
683 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the  
684 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States  
685 any right as seepage or return flow to water being used pursuant to this Contract for surface irrigation  
686 or underground storage either being put to reasonable and beneficial use pursuant to this Contract  
687 within the Contractor's Service Area by the Contractor or those claiming by, through, or under the  
688 Contractor. For purposes of this subdivision, groundwater recharge, groundwater banking and all  
689 similar groundwater activities will be deemed to be underground storage.

690 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

696 (b) If there is a Condition of Shortage because of errors in physical operations of

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

701 (c) The United States shall not execute contracts which together with this  
702 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals  
703 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of  
704 1,401,475 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract,  
705 the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering  
706 into temporary contracts of one year or less in duration for delivery of Project Water to other entities  
707 if such water is not necessary to meet the schedules as may be submitted by all Friant Division long-  
708 term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under their  
709 water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to  
710 take actions that result in the availability of new water supplies to be used for Project purposes and  
711 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until  
712 after consultation with the Friant Division Project Contractors.

713 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or  
714 any other contract for water service heretofore or hereafter entered into any Year unless and until the  
715 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in  
716 subdivision (c) of this Article will be available for delivery in said Year. If the Contracting Officer  
717 determines there is or will be a shortage in any Year in the quantity of Class 1 Water available for

718 delivery, the Contracting Officer shall apportion the available Class 1 Water among all contractors  
719 entitled to receive such water that will be made available at Friant Dam in accordance with the  
720 following:

721 (1) A determination shall be made of the total quantity of Class 1 Water at  
722 Friant Dam which is available for meeting Class 1 Water contractual commitments, the amount so  
723 determined being herein referred to as the available supply.

724 (2) The total available Class 1 supply shall be divided by the Class 1 Water  
725 contractual commitments, the quotient thus obtained being herein referred to as the Class 1  
726 apportionment coefficient.

727 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
728 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of  
729 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the respective  
730 Year, but in no event shall such amount exceed the total quantity of Class 1 Water specified in  
731 subdivision (a) of Article 3 of this Contract.

732 (e) If the Contracting Officer determines there is less than the quantity of Class 2  
733 Water which the Contractor otherwise would be entitled to receive pursuant to Article 3 of this  
734 Contract, the quantity of Class 2 Water which shall be furnished to the Contractor by the Contracting  
735 Officer will be determined in the manner set forth in paragraphs (1), (2), and (3), of subdivision (d) of  
736 this Article substituting the term "Class 2" for the term "Class 1."

737 (f) In the event that in any Year there is made available to the Contractor, by  
738 reason of any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or

739 any discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this  
740 Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive  
741 hereunder, there shall be made an adjustment on account of the amounts already paid to the  
742 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in  
743 accordance with Article 10 of this Contract.

744 UNAVOIDABLE GROUNDWATER PERCOLATION

745 13. Omitted.

746 RULES AND REGULATIONS

747 14. (a) The parties agree that the delivery of Water or use of Federal facilities pursuant  
748 to this Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules  
749 and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

750 (b) The terms of this Contract are subject to any enforceable order, judgment  
751 and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified  
752 as necessary to effectuate or facilitate any final order, judgment or settlement in said litigation.

753 (c) The parties acknowledge that, as of the effective date of this Contract, active  
754 settlement discussions are underway in NRDC v. Patterson between Friant Division water service  
755 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The  
756 mutual goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a  
757 mutually acceptable basis, instream and related measures that will restore ecological functions and  
758 hydrologic and geomorphologic processes of the San Joaquin River below Friant Dam to a level that  
759 restores and maintains fish populations in good condition, including but not limited to naturally-  
760 reproducing, self-sustaining populations of chinook salmon and (ii) to accomplish these restoration

761 goals while not adversely impacting the overall sufficiency, reliability and cost of water supplies to  
762 Friant Division water users. The Contractor has been actively participating, and intends to continue  
763 to participate in such settlement discussions. Except as provided in this Contract, this Contract does  
764 not add to the obligations of the parties, if any, relating to the San Joaquin River. This Contract does  
765 not limit or detract from the obligations of the parties, if any, relating to the San Joaquin River.

766 WATER AND AIR POLLUTION CONTROL

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

770 QUALITY OF WATER

771 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
772 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
773 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
774 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
775 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish  
776 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor  
777 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the  
778 Contractor pursuant to this Contract.

779 (b) The Operation and Maintenance of Project facilities shall be performed in such  
780 manner as is practicable to maintain the quality of raw water made available through such facilities at  
781 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall  
782 be responsible for compliance with all State and Federal water quality standards applicable to surface

783 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor  
784 facilities or Project Water provided by the Contractor within the Contractor’s Service Area.

785 WATER ACQUIRED BY THE CONTRACTOR  
786 OTHER THAN FROM THE UNITED STATES

787 17. (a) Omitted.

788 (b) Water or water rights now owned or hereafter acquired by the Contractor, other  
789 than from the United States or adverse to the Project or its contractors (i.e., non-project water), may  
790 be stored, conveyed and/or diverted through Project facilities, subject to the completion of  
791 appropriate environmental documentation, with the approval of the Contracting Officer and the  
792 execution of any contract determined by the Contracting Officer to be necessary, consistent with the  
793 following provisions:

794 (1) The Contractor may introduce non-project water into Project facilities  
795 and deliver said water within the Contractor’s Service Area subject to payment to the United States  
796 and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the  
797 CVP Ratesetting Policy, as amended, modified or superseded from time to time. In addition, if  
798 electrical power is required to pump non-project water through the facilities, the Contractor shall be  
799 responsible for obtaining the necessary power and paying the necessary charges therefor.

800 (2) Delivery of such non-project water in and through Project facilities  
801 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as  
802 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other  
803 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to

804 any other Project water service contractors; or (iv) interfere with the physical maintenance of the  
805 Project facilities.

806 (3) Neither the United States nor the Operating Non-Federal Entity shall be  
807 responsible for control, care or distribution of the non-project water before it is introduced into or  
808 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend  
809 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,  
810 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting  
811 from Contractor's diversion or extraction of non-project water from any source.

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

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

OPINIONS AND DETERMINATIONS

821 18. (a) Where the terms of this Contract provide for actions to be based upon the  
822 opinion or determination of either party to this Contract, said terms shall not be construed as  
823 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
824 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve

825 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or  
826 unreasonable opinion or determination. Each opinion or determination by either party shall be  
827 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to  
828 or shall affect or alter the standard of judicial review applicable under federal law to any opinion or  
829 determination implementing a specific provision of federal law embodied in statute or regulation.

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

835 COORDINATION AND COOPERATION

836 19. (a) In order to further their mutual goals and objectives, the Contracting Officer  
837 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
838 affected Project Contractors, in order to improve the operation and management of the Project. The  
839 communication, coordination, and cooperation regarding operations and management shall include,  
840 but not be limited to, any action which will or may materially affect the quantity or quality of Project  
841 Water supply, the allocation of Project Water supply, and Project financial matters including, but not  
842 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder  
843 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making  
844 authority for all actions, opinion, and determinations to be made by the respective party.

845 (b) Within one-hundred twenty (120) days following the effective date of this  
846 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange

847 to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide  
848 process, which may be amended as necessary separate and apart from this Contract. The goal of this  
849 process shall be to provide, to the extent practicable, the means of mutual communication and  
850 interaction regarding significant decisions concerning Project operation and management on a real-  
851 time basis.

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

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

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

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

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

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

868 (d) Without limiting the contractual obligations of the Contracting Officer  
869 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's  
870 ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders  
871 or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of  
872 structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

873 CHARGES FOR DELINQUENT PAYMENTS

874 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
875 on delinquent installments or payments. When a payment is not received by the due date, the  
876 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
877 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
878 charge to cover additional costs of billing and processing the delinquent payment. When a payment is  
879 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)  
880 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor  
881 shall pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

890 EQUAL OPPORTUNITY

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

892 (a) The Contractor will not discriminate against any employee or applicant for  
893 employment because of race, color, religion, sex, or national origin. The Contractor will take  
894 affirmative action to ensure that applicants are employed, and that employees are treated during  
895 employment, without regard to their race, color, religion, sex, or national origin. Such action shall  
896 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;  
897 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of

898 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in  
899 conspicuous places, available to employees and applicants for employment, notices to be provided by  
900 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

933 enter into such litigation to protect the interests of the United States.

934 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

947 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

959 (c) The Contractor makes this agreement in consideration of and for the purpose of  
960 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
961 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
962 installment payments after such date on account of arrangements for Federal financial assistance  
963 which were approved before such date. The Contractor recognizes and agrees that such Federal  
964 assistance will be extended in reliance on the representations and agreements made in this Article,

965 and that the United States reserves the right to seek judicial enforcement thereof.

966 PRIVACY ACT COMPLIANCE

967 24. Omitted.

968 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

969 25. In addition to all other payments to be made by the Contractor pursuant to this  
970 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill  
971 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
972 of direct cost incurred by the United States for work requested by the Contractor associated with this  
973 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
974 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
975 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
976 administration.

977 WATER CONSERVATION

978 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
979 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
980 implementing an effective water conservation and efficiency program based on the Contractor's water  
981 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
982 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
983 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
984 economically feasible water conservation measures, and time schedules for meeting those objectives.  
985 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
986 continued implementation of such water conservation program. In the event the Contractor's water

987 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
988 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
989 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
990 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
991 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
992 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
993 program in accordance with the time schedules therein.

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

999 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1000 its implementation of the water conservation plan on the reporting dates specified in the then existing  
1001 conservation and efficiency criteria established under Federal law.

1002 (d) At five (5) -year intervals, the Contractor shall revise its water conservation  
1003 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1004 plans established under Federal law and submit such revised water management plan to the  
1005 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1006 water conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1007 evaluating water conservation plans established under Federal law.

1008                   (e)     If the Contractor is engaged in direct groundwater recharge, such activity shall  
1009 be described in the Contractor's water conservation plan.

1010                                   EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1011                   27.     Except as specifically provided in Article 17 of this Contract, the provisions of this  
1012 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter  
1013 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
1014 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
1015 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
1016 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1017 Reclamation law.

1018                                   OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1019                   28.     (a)     The Operation and Maintenance of a portion of the Project facilities which  
1020 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and  
1021 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement  
1022 between the United States and the Operating Non-Federal Entity. That separate agreement shall not  
1023 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1024                   (b)     The Contracting Officer has previously notified the Contractor in writing that  
1025 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has  
1026 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly  
1027 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under  
1028 the terms and conditions of the separate agreement between the United States and the Operating Non-

1029 Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any  
1030 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such  
1031 successor determines, sets or establishes for (i) the Operation and Maintenance of the portion of the  
1032 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor, or  
1033 (ii) the Friant Division’s share of the operation, maintenance and replacement costs for physical  
1034 works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the  
1035 O’Neill Pumping/Generating Plant, the federal share of the O’Neill Forebay, the Mendota Pool, and  
1036 the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such  
1037 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the  
1038 Contractor of its obligation to pay directly to the United States the Contractor’s share of the Project  
1039 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal  
1040 Entity collects payments on behalf of the United States in accordance with the separate agreement  
1041 identified in subdivision (a) of this Article.

1042 (c) For so long as the Operation and Maintenance of any portion of the Project  
1043 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor  
1044 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under  
1045 this Contract representing the cost associated with the activity being performed by the Operating Non-  
1046 Federal Entity or its successor.

1047 (d) In the event the Operation and Maintenance of the Project facilities operated  
1048 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the  
1049 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to  
1050 the Contractor a revised Exhibit “B” which shall include the portion of the Rates to be paid by the

1051 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of  
1052 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in  
1053 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,  
1054 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit “B” directly to the United  
1055 States in compliance with Article 7 of this Contract.

1056 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1057 29. The expenditure or advance of any money or the performance of any obligation of the  
1058 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1059 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1060 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1061 or allotted.

1062 BOOKS, RECORDS, AND REPORTS

1063 30. (a) The Contractor shall establish and maintain accounts and other books and  
1064 records pertaining to administration of the terms and conditions of this Contract, including: the  
1065 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1066 water use data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1067 furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer  
1068 may require. Subject to applicable Federal laws and regulations, each party to this Contract shall  
1069 have the right during office hours to examine and make copies of the other party's books and records  
1070 relating to matters covered by this Contract.

1071 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1072 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1073 such books, records, or information are reasonably related to the administration or performance of  
1074 this Contract. Any such request shall allow the Contractor a reasonable period of time within which  
1075 to provide the requested books, records, or information.

1076 (c) At such time as the Contractor provides information to the Contracting Officer

1077 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1078 Operating Non-Federal Entity.

1079 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1080 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1081 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1082 therein shall be valid until approved in writing by the Contracting Officer.

1083 (b) The assignment of any right or interest in this Contract by either party shall not  
1084 interfere with the rights or obligations of the other party to this Contract absent the written  
1085 concurrence of said other party.

1086 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1087 of any proposed assignment.

1088 SEVERABILITY

1089 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1090 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1091 association or other form of organization whose primary function is to represent parties to Project  
1092 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1093 enforceability of a provision included in this Contract and said person, entity, association, or  
1094 organization obtains a final court decision holding that such provision is legally invalid or  
1095 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1096 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final  
1097 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1098 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time

1099 periods specified above may be extended by mutual agreement of the parties. Pending the completion  
1100 of the actions designated above, to the extent it can do so without violating any applicable provisions  
1101 of law, the United States shall continue to make the quantities of Project Water specified in this  
1102 Contract available to the Contractor pursuant to the provisions of this Contract which were not found  
1103 to be legally invalid or unenforceable in the final court decision.

1104 RESOLUTION OF DISPUTES

1105 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1106 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1107 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1108 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written  
1109 notice of the intent to take such action; Provided, That such notice shall not be required where a delay  
1110 in commencing an action would prejudice the interests of the party that intends to file suit. During  
1111 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1112 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive  
1113 or abridge any right or remedy that the Contractor or the United States may have.

1114 OFFICIALS NOT TO BENEFIT

1115 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1116 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1117 manner as other water users or landowners.

1118 CHANGES IN CONTRACTOR'S SERVICE AREA

1119 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1120 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or  
1121 otherwise, except upon the Contracting Officer's written consent.

1122 (b) Within thirty (30) days of receipt of a request for such a change, the

1123 Contracting Officer will notify the Contractor of any additional information required by the  
1124 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1125 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1126 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1127 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1128 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and  
1129 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the  
1130 Contracting Officer shall comply with the National Environmental Policy Act and the Endangered  
1131 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in  
1132 this process, and such costs will be paid in accordance with Article 25 of this Contract.

1133 FEDERAL LAWS

1134 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1135 validity or application in connection with the performance of the terms and conditions of this  
1136 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1137 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1138 regulation to the implementing provision of the Contract is granted by a court of competent  
1139 jurisdiction.

1140 NOTICES

1141 37. Any notice, demand, or request authorized or required by this Contract shall be  
1142 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1143 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California  
1144 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the **City**  
1145 **Council of the City of Lindsay, PO Box 369, Lindsay, California 93247**. The designation of the

1146 addressee or the address may be changed by notice given in the same manner as provided in this  
1147 Article for other notices.

1148 CONFIRMATION OF CONTRACT

1149           38.     The Contractor, after the execution of this Contract, shall promptly seek to secure a  
1150 decree of a court of competent jurisdiction of the State of California, confirming the execution of this  
1151 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the  
1152 validation proceedings, and all pertinent supporting records of the court approving and confirming  
1153 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1154            IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1155            year first above written.

THE UNITED STATES OF AMERICA

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

(SEAL)

CITY OF LINDSAY

By: \_\_\_\_\_  
**Mayor**

Attest:

By: \_\_\_\_\_  
**City Clerk**