

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 LINDSAY-STRATHMORE IRRIGATION DISTRICT
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 XXXIV 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 LINDSAY-STRATHMORE IRRIGATION
18 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly
19 organized, existing, and acting pursuant to the laws thereof, with its principal place of business in
20 California;

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

23 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
24 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,

25 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,
26 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of
27 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River
28 and their tributaries; and

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

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

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

43 [4th] WHEREAS, the Contractor and the United States entered into Contract No. I75r-1514
44 , as amended, which established terms for the delivery to the Contractor of Project Water from the
45 Friant Division from March 15, 1950, through February 28, 1990; and

46 [5th] WHEREAS, the Contractor and the United States entered into Renewal Contract No.
47 I75r-1514R, which provided for continued water service to the Contractor from the Friant Division
48 from March 1, 1990, through February 28, 2029, but, in light of the Ninth Circuit Court of Appeals
49 Opinion in the lawsuit entitled Natural Resources Defense Council, et al. v. Roger Patterson, et al.,
50 that contract was replaced by Interim Renewal Contract No. I75r-1514-IR1, dated July 10, 1998,
51 which provides for continued water service to the Contractor from the Friant Division from
52 September 14, 1998, through February 28, 2001; and

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

59 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
60 environmental review necessary to provide for long-term renewal of the Existing Contract; and

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

64 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
65 its obligations under the Existing Contract; and

66 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting

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

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

74 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
75 Contractor's, depend upon the continued availability of water, including water service from the
76 Central Valley Project; and

77 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
78 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
79 purposes; and

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

86 [15th] WHEREAS, Omitted; and

87 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize

88 undependable Class 2 Water in their service areas to, among other things, assist in the management
89 and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
90 environmental enhancement, including restoration of the San Joaquin River below Friant Dam,
91 minimize flooding along the San Joaquin River, encourage optimal water management, and maximize
92 the reasonable and beneficial use of the water; and

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

96 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
97 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

100 DEFINITIONS

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

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

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

108 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through

109 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of
110 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera
111 Canals as a dependable water supply during each Year;

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

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

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

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

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

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

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

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

138 (j) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or
139 202(3) of the RRA, whichever is applicable;

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

142 (l) “Irrigation Full Cost Water Rate” shall have the same meaning as “full cost” as
143 that term is used in paragraph (3) of Section 202 of the RRA;

144 (m) “Irrigation Water” shall mean water made available from the Project that is
145 used primarily in the production of agricultural crops or livestock, including domestic use incidental
146 thereto, and watering of livestock;

147 (n) “Landholder” shall mean a party that directly or indirectly owns or leases
148 nonexempt land, as provided in 43 CFR 426.2;

149 (n2) “Long Term Historic Average” shall mean the average of the final forecast of
150 Water Made Available to the Contractor pursuant to this Contract and the contracts referenced in the

151 fourth (4th) and fifth (5th) Explanatory Recitals of this Contract;

152 (o) "Municipal and Industrial (M&I) Water" shall mean water made available from
153 the Project other than Irrigation Water made available to the Contractor. M&I Water shall include
154 water used for human use and purposes such as the watering of landscaping or pasture for animals
155 (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in
156 units of less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting
157 Officer that the use of water delivered to any such landholding is a use described in subdivision (m)
158 of this Article;

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

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

169 (r) "Operating Non-Federal Entity" shall mean the Friant Water Users Authority, a
170 Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant
171 Division facilities pursuant to an agreement with the United States, and which may have funding

172 obligations with respect thereto;

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

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

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

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

183 (w) Omitted;

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

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

189 (y2) "Uncontrolled Season" is any time during the Year the Contracting Officer
190 determines that a need exists to evacuate water from Millerton Lake in order to prevent or minimize
191 spill or to meet flood control criteria, taking into consideration, among other things, anticipated
192 upstream reservoir operations and the most probable forecast of snowmelt and runoff projections for

193 the upper San Joaquin River;

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

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

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

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

204 TERM OF CONTRACT

205 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In
206 the event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall
207 submit a request for renewal in writing to the Contracting Officer no later than two (2) years prior to
208 the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of
209 Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the
210 renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall
211 be governed by subdivision (c) of this Article.

212 (b) (1) Under terms and conditions of a renewal contract that are mutually
213 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of

214 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to
215 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the
216 Contractor, shall be renewed for a period of twenty-five (25) years.

217 (2) The conditions which must be met for this Contract to be renewed are:

218 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
219 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
220 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
221 effective water conservation and efficiency program based on the Contractor's water conservation
222 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all
223 water measuring devices and implementing all water measurement methods as approved by the
224 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and
225 beneficially used the Project Water supplies made available to it and, based on projected demands, is
226 reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of
227 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying
228 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal
229 ability to deliver Project Water.

230 (3) The terms and conditions of the renewal contract described in
231 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
232 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
233 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
234 Contractor's need for continued delivery of Project Water; environmental conditions affected by

235 implementation of the Contract to be renewed, and specifically changes in those conditions that
236 occurred during the life of the Contract to be renewed; the Secretary’s progress toward achieving the
237 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
238 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

239 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
240 Contractor, shall be renewed for a period of twenty five (25) years and thereafter shall be renewed for
241 successive periods of up to forty (40) years each, which periods shall be consistent with the then-
242 existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and
243 consistent with Federal and State law. The present Reclamation-wide policy, dated March 20, 2000,
244 provides that the term of such contracts shall be no more than twenty five (25) years each, subject to a
245 variance to allow a longer term in appropriate circumstances. The Contractor shall be afforded the
246 opportunity to comment to the Contracting Officer on the proposed adoption and application of any
247 revised Reclamation-wide policy applicable to the delivery of Project M&I Water that would limit the
248 term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less
249 than twenty five (25) years.

250 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized
251 project construction expected to occur will have occurred, and on that basis the Contracting Officer
252 agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees
253 further that, at any time after such allocation is made, and subject to satisfaction of the condition set
254 out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract
255 under subsection (d) , Section 9 of the Reclamation Project Act of 1939, subject to applicable Federal

256 law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting
257 Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer
258 that, account being taken of the amount credited to return by the Contractor as provided for under
259 Reclamation law, the remaining amount of construction costs assignable for ultimate return by the
260 Contractor can probably be repaid to the United States within the term of a contract under said
261 subsection (d). If the remaining amount of costs that are properly assignable to the Contractor cannot
262 be determined by December 31, 2024, the Contracting Officer shall notify the Contractor, and provide
263 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
264 make such a determination as soon thereafter as possible so as to permit, upon request of the
265 Contractor and satisfaction of the condition set out above, conversion to a contract under said
266 subsection (d). In the event such determination of costs has not been made at a time which allows
267 conversion of this Contract during the term of this Contract or the Contractor has not requested
268 conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal
269 contract as described in subdivision (b) of this Article a provision that carries forth in substantially
270 identical terms the provisions of this subdivision. In the event the Contracting Officer is able to make
271 a determination of the remaining amount of costs that are properly assignable to the Contractor before
272 December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting Officer
273 has such ability.

274 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

275 3. (a) During each Year, consistent with all applicable State water rights, permits,
276 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract,

277 the Contracting Officer shall make available for delivery to the Contractor 27,500 acre-feet of Class 1
278 Water for irrigation and M&I purposes. The quantity of Water Delivered to the Contractor in
279 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
280 Articles 4 and 7 of this Contract.

281 (b) Omitted.

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

284 (d) The Contractor shall make reasonable and beneficial use of all Project Water or
285 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater
286 banking programs, surface water storage programs, and other similar programs utilizing Project
287 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
288 Area which are consistent with applicable State law and result in use consistent with Reclamation law
289 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's
290 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That
291 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service
292 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
293 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,
294 groundwater banking programs, surface water storage programs, and other similar programs utilizing
295 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's
296 Service Area may be permitted upon written approval of the Contracting Officer, which approval will
297 be based upon environmental documentation, Project Water rights, and Project operational concerns.

298 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

299 (e) The Contractor shall comply with requirements applicable to the Contractor in
300 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
301 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
302 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or
303 requirements imposed by environmental documentation applicable to the Contractor and within its
304 legal authority to implement regarding specific activities, including conversion of Irrigation Water to
305 M&I Water. Nothing herein shall be construed to prevent the Contractor from challenging or seeking
306 judicial relief in a court of competent jurisdiction with respect to any biological opinion or other
307 environmental documentation referred to in this Article.

308 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
309 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will
310 make a determination whether Project Water, or other water available to the Project, can be made
311 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during
312 the Year without adversely impacting other Project Contractors. At the request of the Contractor, the
313 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to
314 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that Project
315 Water, or other water available to the Project, can be made available to the Contractor, the
316 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
317 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project
318 Contractors capable of taking such water to determine the most equitable and efficient allocation of

319 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting
320 Officer shall make such water available to the Contractor in accordance with applicable statutes,
321 regulations, guidelines, and policies.

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

328 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
329 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the
330 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
331 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
332 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the
333 Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
334 this Contract or applicable provisions of any subsequent renewal contracts.

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

339 (j) The Contracting Officer shall make reasonable efforts to protect the water

340 rights and other rights described in the third (3rd) Explanatory Recital of this Contract and to provide
341 the water available under this Contract. The Contracting Officer shall not object to participation by
342 the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings
343 related to the water rights and other rights described in the third (3rd) Explanatory Recital of this
344 Contract; Provided, however, That the Contracting Officer retains the right to object to the substance
345 of the Contractor's position in such a proceeding.

346 (k) Project Water furnished to the Contractor during any month designated in a
347 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer
348 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1
349 Water is called for in such schedule for such month and shall be deemed to have been accepted as
350 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any
351 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and
352 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,
353 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water
354 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply
355 available in the current Year is not sufficient to account for such additional diversions, such
356 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply
357 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2
358 Water supplies available in the current Year are not sufficient to account for such additional
359 diversions, such additional diversions shall be charged first against the Contractor's available Class 2
360 Water supply and then against the Contractor's available Class 1 Water supply, both for the following

361 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
362 this Contract.

363 (l) If the Contracting Officer determines there is a Project Water supply available
364 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project
365 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be
366 made available to the Contractor and others under Section 215 of the RRA pursuant to the priorities
367 specified below if the Contractor enters into a temporary contract with the United States not to exceed
368 one (1) year for the delivery of such water or, as otherwise provided for in Federal Reclamation law
369 and associated regulations. Such water may be identified by the Contractor either (i) as additional
370 water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant
371 to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited
372 against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contractor
373 shall deliver such water to Eligible Lands, or to Excess Lands in accordance with this Article. The
374 Contracting Officer shall make water determined to be available pursuant to this subsection according
375 to the following priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water
376 within the Friant Division; second, to long-term contractors in the Cross Valley Division of the
377 Project. The Contracting Officer will consider and seek to accommodate requests from other parties
378 for Section 215 Water for use within the area identified as the Friant Division service area in the
379 environmental assessment developed in connection with the execution of this Contract.

380 (m) Nothing in this Contract, nor any action or inaction of the Contractor or
381 Contracting Officer in connection with the implementation of this Contract, is intended to override,

382 modify, supersede or otherwise interfere with any term or condition of the water rights and other
383 rights referred in the third (3rd) Explanatory Recital of this Contract.

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

395 TIME FOR DELIVERY OF WATER

396 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
397 announce the Contracting Officer's expected declaration of the Water Made Available. The
398 declaration will be updated monthly, and more frequently if necessary, based on then-current
399 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
400 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
401 basis of the estimate, with relevant supporting information, upon the written request of the
402 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer

403 shall provide the Contractor with the updated Long Term Historic Average. The declaration of
404 Project operations will be expressed in terms of both Water Made Available and the Long Term
405 Historic Average.

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

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

415 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
416 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
417 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
418 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to
419 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total
420 amount of water requested in that schedule or revision does not exceed the quantities announced by
421 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3, and the Contracting
422 Officer determines that there will be sufficient capacity available in the appropriate Friant Division
423 facilities to deliver the water in accordance with that schedule: Provided, further, That the Contractor

424 shall not schedule the delivery of any water during any period as to which the Contractor is notified
425 by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make
426 deliveries to the Contractor will not be in operation because of scheduled O&M.

427 (e) The Contractor may, during the period from and including November 1 of each
428 Year through and including the last day of February of that Year, request delivery of any amount of
429 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following
430 Year. The Contractor may, during the period from and including January 1 of each Year (or such
431 earlier date as may be determined by the Contracting Officer) through and including the last day of
432 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting
433 Officer to be made available to it during the following Year. Such water shall hereinafter be referred
434 to as preuse water. Such request must be submitted in writing by the Contractor for a specified
435 quantity of preuse and shall be subject to the approval of the Contracting Officer. Payment for preuse
436 water so requested shall be at the appropriate rate(s) for the following Year in accordance with
437 Article 7 of this Contract and shall be made in advance of delivery of any preuse water. The
438 Contracting Officer shall deliver such preuse water in accordance with a schedule or any revision
439 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water
440 is available and to the extent such deliveries will not interfere with the delivery of Project Water
441 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.
442 The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
443 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
444 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted

445 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in
446 the following Year shall be specified by the Contractor at the time the preuse water is requested or as
447 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of
448 this Article, based on the availability of the following Year water supplies as determined by the
449 Contracting Officer.

450 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

455 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
456 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
457 the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts established
458 pursuant to subdivision (a) of this Article.

459 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable
460 land classification provisions of Federal Reclamation law and the associated regulations. The
461 Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
462 approved in advance by the Contracting Officer.

463 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
464 measured and recorded with equipment furnished, installed, operated, and maintained by the United
465 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting

466 Officer (hereafter “other appropriate entity”) at the point or points of delivery established pursuant to
467 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
468 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,
469 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
470 therein. For any period of time when accurate measurements have not been made, the Contracting
471 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to
472 making a final determination of the quantity delivered for that period of time.

473 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
474 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
475 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
476 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
477 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
478 for which there is legal responsibility, including property damage, personal injury, or death arising out
479 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project
480 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or
481 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
482 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any
483 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,
484 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the
485 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible
486 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities

487 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,
488 That the Contractor is not the Operating Non-Federal Entity that owned or operated the
489 malfunctioning facility(ies) from which the damage claim arose.

490 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

491 6. (a) The Contractor established a measurement program satisfactory to the
492 Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Service
493 Area is measured at each agricultural turnout and such water delivered for municipal and industrial
494 purposes is measured at each municipal and industrial service connection. The water measuring
495 devices or water measuring methods of comparable effectiveness must be acceptable to the
496 Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining
497 and repairing all such measuring devices and implementing all such water measuring methods at no
498 cost to the United States. The Contractor shall use the information obtained from such water
499 measuring devices or water measuring methods to ensure its proper management of the water, to bill
500 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
501 municipal and industrial purposes by customer class as defined in the Contractor's water conservation
502 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude
503 the Contractor from establishing and collecting any charges, assessments, or other revenues
504 authorized by California law. The Contractor shall include a summary of all its annual surface water
505 deliveries in the annual report described in subdivision (c) of Article 26.

506 (b) To the extent the information has not otherwise been provided, upon execution
507 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the

508 measurement devices or water measuring methods being used or to be used to implement subdivision
509 (a) of this Article and identifying the agricultural turnouts and the municipal and industrial service
510 connections or alternative measurement programs approved by the Contracting Officer, at which such
511 measurement devices or water measuring methods are being used, and, if applicable, identifying the
512 locations at which such devices and/or methods are not yet being used including a time schedule for
513 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
514 within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring
515 devices or water measuring methods identified in the Contractor's report and if the Contracting
516 Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer
517 notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within
518 sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest
519 practicable date by which the Contractor shall modify said measuring devices and/or measuring
520 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this
521 Article.

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

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

528 (e) The Contractor shall inform the Contracting Officer and the Operating Non-

529 Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of
530 Irrigation and M&I Water taken during the preceding month.

531 RATES AND METHOD OF PAYMENT FOR WATER

532 7. (a) The Contractor shall pay the United States as provided in this Article for all
533 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
534 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
535 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified,
536 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law
537 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
538 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in
539 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
540 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit “B”,
541 as may be revised annually.

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

544 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
545 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
546 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
547 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review
548 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
549 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October

550 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
551 notification shall revise Exhibit “B.”

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

559 (c) At the time the Contractor submits the initial schedule for the delivery of
560 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
561 shall make an advance payment to the United States equal to the total amount payable pursuant to the
562 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
563 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
564 end of the first month and before the end of each calendar month thereafter, the Contractor shall make
565 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
566 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
567 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
568 for Water Delivered shall be made before the end of the following month; Provided, That any revised
569 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
570 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with

571 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
572 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
573 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
574 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an
575 advance payment at the Rates then in effect for such additional Project Water is made. Final
576 adjustment between the advance payments for the Water Scheduled and payments for the quantities
577 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
578 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project
579 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by
580 the last day of February.

581 (d) The Contractor shall also make a payment in addition to the Rate(s) in
582 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
583 appropriate Tiered Pricing Component then in effect, before the end of the month following the
584 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
585 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
586 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
587 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating
588 Non-Federal Entity, by the Contracting Officer. Such water delivery report shall be the basis for
589 payment of Charges and Tiered Pricing Components by the Contractor, and shall be provided to the
590 Contractor by the Operating Non-Federal Entity or the Contracting Officer (as applicable) within five
591 (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill for

592 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
593 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
594 payments due to the United States for Charges for the next month. Any amount to be paid for past
595 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
596 of this Contract.

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

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

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

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

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

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

624 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water
625 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of
626 the month following the month of delivery the Contractor shall make an additional payment to the
627 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for
628 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80) percent of the
629 Contract Total, but less than or equal to ninety (90) percent of the Contract Total, shall equal the one-
630 half of the difference between the Rate established under subdivision (a) of Article 7 of this Contract
631 and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The
632 Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which
633 exceeds ninety (90) percent of the Contract Total shall equal the difference between (i) the Rate

634 established under subdivision (a) of Article 7 of this Contract and (ii) the Irrigation Full Cost Water
635 Rate or M&I Full Cost Water Rate, whichever is applicable. For purposes of this subdivision, Class 2
636 Water taken by the Contractor during an Uncontrolled Season shall not be included in the total of the
637 deliveries of Class 1 Water and Class 2 Water.

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

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

648 (k) For the term of this Contract, Rates under the respective ratesetting policies
649 will be established to recover only reimbursable Operation and Maintenance (including any deficits)
650 and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies,
651 and interest, where appropriate, except in instances where a minimum Rate is applicable in
652 accordance with the relevant Project ratesetting policy. Changes of significance in practices which
653 implement the Contracting Officer's ratesetting policies will not be implemented until the
654 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and

655 impact of the proposed change.

656 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
657 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
658 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water
659 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If
660 the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring
661 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
662 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges
663 unadjusted for ability to pay.

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

666 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

667 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
668 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall
669 have no further liability therefor.

670 SALES, TRANSFERS, OR EXCHANGES OF WATER

671 9. (a) The right to receive Project Water provided for in this Contract may be sold,
672 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
673 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
674 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
675 Contract may take place without the prior written approval of the Contracting Officer, except as

676 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
677 approved absent compliance with appropriate environmental documentation including but not limited
678 to the National Environmental Policy Act and the Endangered Species Act. Such environmental
679 documentation should include, as appropriate, an analysis of groundwater impacts and economic and
680 social effects, including environmental justice, of the proposed water transfers on both the transferor
681 and transferee.

682 (b) In order to facilitate efficient water management by means of water transfers of
683 the type historically carried out among Project Contractors located within the same geographical area
684 and to allow the Contractor to participate in an accelerated water transfer program during the term of
685 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental
686 documentation including, but not limited to, the National Environmental Policy Act and the
687 Endangered Species Act analyzing annual transfers within such geographical areas and the
688 Contracting Officer shall determine whether such transfers comply with applicable law. Following
689 the completion of the environmental documentation, such transfers addressed in such documentation
690 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written
691 approval by the Contracting Officer. Such environmental documentation and the Contracting
692 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,
693 prior to the expiration of the then existing five (5) -year period. All subsequent environmental
694 documentation shall include an alternative to evaluate not less than the quantity of Project Water
695 historically transferred within the same geographical area.

696 (c) For a water transfer to qualify under subdivision (b) of this Article, such water

697 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for
698 M&I use, groundwater recharge, groundwater banking, similar groundwater activities, surface water
699 storage, or fish and wildlife resources; not lead to land conversion; and be delivered to established
700 cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a
701 single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through
702 existing facilities with no new construction or modifications to facilities and be between existing
703 Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v)
704 comply with all applicable Federal, State, and local or tribal laws and requirements imposed for
705 protection of the environment and Indian Trust Assets, as defined under Federal law.

706 APPLICATION OF PAYMENTS AND ADJUSTMENTS

707 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
708 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
709 the Contractor arising out of this Contract then due and payable. Overpayments of more than One
710 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
711 amount of such overpayment at the option of the Contractor, may be credited against amounts to
712 become due to the United States by the Contractor. With respect to overpayment, such refund or
713 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
714 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of
715 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as
716 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
717 finalized the accounts for the Year in which the overpayment was made.

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

723 TEMPORARY REDUCTIONS--RETURN FLOWS

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

729 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
730 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
731 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
732 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
733 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice
734 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case
735 no notice need be given; Provided, That the United States shall use its best efforts to avoid any
736 discontinuance or reduction in such service. Upon resumption of service after such reduction or
737 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
738 quantity of Project Water which would have been delivered hereunder in the absence of such

739 discontinuance or reduction.

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

748 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

759 (c) The United States shall not execute contracts which together with this

760 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals
761 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of
762 1,401,475 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract,
763 the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering
764 into temporary contracts of one year or less in duration for delivery of Project Water to other entities
765 if such water is not necessary to meet the schedules as may be submitted by all Friant Division long-
766 term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under their
767 water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to
768 take actions that result in the availability of new water supplies to be used for Project purposes and
769 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until
770 after consultation with the Friant Division Project Contractors.

771 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or
772 any other contract for water service heretofore or hereafter entered into any Year unless and until the
773 Contracting Officer determines that the cumulative total quantity of Class 1 Water specified in
774 subdivision (c) of this Article will be available for delivery in said Year. If the Contracting Officer
775 determines there is or will be a shortage in any Year in the quantity of Class 1 Water available for
776 delivery, the Contracting Officer shall apportion the available Class 1 Water among all contractors
777 entitled to receive such water that will be made available at Friant Dam in accordance with the
778 following:

779 (1) A determination shall be made of the total quantity of Class 1 Water at
780 Friant Dam which is available for meeting Class 1 Water contractual commitments, the amount so

781 determined being herein referred to as the available supply.

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

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

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

795 (f) In the event that in any Year there is made available to the Contractor, by
796 reason of any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or
797 any discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this
798 Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive
799 hereunder, there shall be made an adjustment on account of the amounts already paid to the
800 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in
801 accordance with Article 10 of this Contract.

802 UNAVOIDABLE GROUNDWATER PERCOLATION

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

807 RULES AND REGULATIONS

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

812 (b) If the April 4, 1989, order denying plaintiffs' motion for preliminary injunction
813 is applicable to this Contract, the terms of this Contract are subject to the final Order in NRDC v.
814 Houston, No. CIVS 88-1658-LKK-EM.

815 WATER AND AIR POLLUTION CONTROL

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

819 QUALITY OF WATER

820 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
821 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
822 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
823 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
824 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish

825 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
826 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
827 Contractor pursuant to this Contract.

828 (b) The Operation and Maintenance of Project facilities shall be performed in such
829 manner as is practicable to maintain the quality of raw water made available through such facilities at
830 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall
831 be responsible for compliance with all State and Federal water quality standards applicable to surface
832 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
833 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

834 WATER ACQUIRED BY THE CONTRACTOR
835 OTHER THAN FROM THE UNITED STATES

836 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
837 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
838 be simultaneously transported through the same distribution facilities of the Contractor subject to the
839 following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were
840 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
841 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
842 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
843 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
844 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
845 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
846 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation

847 Water and non-project water are/were constructed with funds made available pursuant to Federal
848 Reclamation law, the non-project water will be subject to the acreage limitation provisions of Federal
849 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
850 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
851 cost to the Federal Government, including interest of storing or delivering non-Project Water, which
852 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
853 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
854 The incremental fee per acre is the mathematical result of such quotient times the interest rate
855 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
856 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
857 receives non-project water through Federally financed or constructed facilities. The incremental fee
858 calculation methodology will continue during the term of this Contract absent the promulgation of a
859 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
860 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
861 regulation or policy is adopted it shall supersede this provision.

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

868 (1) The Contractor may introduce non-project water into Project facilities
869 and deliver said water to lands within the Contractor’s Service Area, including Ineligible Lands,
870 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
871 appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended,
872 modified or superceded from time to time. In addition, if electrical power is required to pump non-
873 project water through the facilities, the Contractor shall be responsible for obtaining the necessary
874 power and paying the necessary charges therefor.

875 (2) Delivery of such non-project Water in and through Project facilities
876 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
877 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
878 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to
879 any other Project water service contractors; or (iv) interfere with the physical maintenance of the
880 Project facilities.

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

887 (4) Diversion of such non-Project Water into Project facilities shall be
888 consistent with all applicable laws, and if involving groundwater, consistent with any groundwater

889 management plan for the area from which it was extracted.

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

895 OPINIONS AND DETERMINATIONS

896 18. (a) Where the terms of this Contract provide for actions to be based upon the
897 opinion or determination of either party to this Contract, said terms shall not be construed as
898 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
899 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
900 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
901 unreasonable opinion or determination. Each opinion or determination by either party shall be
902 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
903 or shall affect or alter the standard of judicial review applicable under federal law to any opinion or
904 determination implementing a specific provision of federal law embodied in statute or regulation.

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

910 COORDINATION AND COOPERATION

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

920 (b) Within one-hundred twenty (120) days following the effective date of this
921 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange
922 to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide
923 process, which may be amended as necessary separate and apart from this Contract. The goal of this
924 process shall be to provide, to the extent practicable, the means of mutual communication and
925 interaction regarding significant decisions concerning Project operation and management on a real-
926 time basis.

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

929 (1) The Contracting Officer will, at the request of the Contractor, assist in
930 the development of integrated resource management plans for the Contractor. Further, the

931 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
932 improve water supply, water quality, and reliability.

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

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

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

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

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

948 CHARGES FOR DELINQUENT PAYMENTS

949 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
950 on delinquent installments or payments. When a payment is not received by the due date, the
951 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
952 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
953 charge to cover additional costs of billing and processing the delinquent payment. When a payment is
954 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)

955 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
956 shall pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

965 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

1000 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1001 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1002 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1003 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
1004 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
1005 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That
1006 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor
1007 or vendor as a result of such direction, the Contractor may request the United States to enter into such
1008 litigation to protect the interests of the United States.

1009 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1010 22. (a) The obligation of the Contractor to pay the United States as provided in this
1011 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation
1012 may be distributed among the Contractor's water users and notwithstanding the default of individual
1013 water users in their obligations to the Contractor.

1014 (b) The payment of charges becoming due hereunder is a condition precedent to
1015 receiving benefits under this Contract. The United States shall not make water available to the
1016 Contractor through Project facilities during any period in which the Contractor may be in arrears in
1017 the advance payment of water rates due the United States. The Contractor shall not furnish water
1018 made available pursuant to this Contract for lands or parties which are in arrears in the advance
1019 payment of water rates levied or established by the Contractor.

1020 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1021 obligation to require advance payment for water rates which it levies.

1022 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1023 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
1024 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1025 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1026 well as with their respective implementing regulations and guidelines imposed by the U.S.
1027 Department of the Interior and/or Bureau of Reclamation.

1028 (b) These statutes require that no person in the United States shall, on the grounds
1029 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1030 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1031 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1032 agrees to immediately take any measures necessary to implement this obligation, including permitting
1033 officials of the United States to inspect premises, programs, and documents.

1034 (c) The Contractor makes this agreement in consideration of and for the purpose of
1035 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1036 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1037 installment payments after such date on account of arrangements for Federal financial assistance
1038 which were approved before such date. The Contractor recognizes and agrees that such Federal
1039 assistance will be extended in reliance on the representations and agreements made in this Article,
1040 and that the United States reserves the right to seek judicial enforcement thereof.

1041 PRIVACY ACT COMPLIANCE

1042 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1043 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1044 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1045 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
1046 Stat. 1266), and pursuant to 43 CFR 426.18.

1047 (b) With respect to the application and administration of the criminal penalty
1048 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1049 for maintaining the certification and reporting records referenced in (a) above are considered to be
1050 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1051 (c) The Contracting Officer or a designated representative shall provide the
1052 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1053 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1054 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1055 contained in the Landholder's certification and reporting records.

1056 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1057 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1058 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1059 authorized to grant requests by individuals for access to their own records.

1060 (e) The Contractor shall forward promptly to the System Manager each proposed
1061 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1062 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1063 information and records necessary to prepare an appropriate response to the requester. These
1064 requirements do not apply to individuals seeking access to their own certification and reporting forms
1065 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1066 Act as a basis for the request.

1067 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1068 25. In addition to all other payments to be made by the Contractor pursuant to this
1069 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill
1070 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1071 of direct cost incurred by the United States for work requested by the Contractor associated with this
1072 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1073 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1074 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1075 administration.

1076 WATER CONSERVATION

1077 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1078 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1079 implementing an effective water conservation and efficiency program based on the Contractor's water
1080 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1081 efficiency criteria for evaluating water conservation plans established under Federal law. The water

1082 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1083 economically feasible water conservation measures, and time schedules for meeting those objectives.
1084 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1085 continued implementation of such water conservation program. In the event the Contractor's water
1086 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1087 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1088 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1089 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1090 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1091 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1092 program in accordance with the time schedules therein.

1093 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1094 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor
1095 shall implement the Best Management Practices identified by the time frames issued by the California
1096 Urban Water Conservation Council for such M&I Water unless any such practice is determined by
1097 the Contracting Officer to be inappropriate for the Contractor.

1098 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1099 its implementation of the water conservation plan on the reporting dates specified in the then existing
1100 conservation and efficiency criteria established under Federal law.

1101 (d) At five (5) -year intervals, the Contractor shall revise its water conservation
1102 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation

1103 plans established under Federal law and submit such revised water management plan to the
1104 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1105 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1106 evaluating water conservation plans established under Federal law.

1107 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1108 be described in the Contractor's water conservation plan.

1109 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1110 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1111 Contract shall not be applicable to or affect non-Project Water or water rights now owned or hereafter
1112 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1113 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1114 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1115 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1116 Reclamation law.

1117 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1118 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1119 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1120 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1121 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1122 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1123 (b) The Contracting Officer has previously notified the Contractor in writing that

1124 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1125 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1126 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under
1127 the terms and conditions of the separate agreement between the United States and the Operating Non-
1128 Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any
1129 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1130 successor determines, sets or establishes for (i) the Operation and Maintenance of the portion of the
1131 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor, or
1132 (ii) the Friant Division's share of the operation, maintenance and replacement costs for physical
1133 works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the
1134 O'Neill Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and
1135 the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such
1136 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1137 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project
1138 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal
1139 Entity collects payments on behalf of the United States in accordance with the separate agreement
1140 identified in subdivision (a) of this Article.

1141 (c) For so long as the Operation and Maintenance of any portion of the Project
1142 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1143 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1144 this Contract representing the cost associated with the activity being performed by the Operating Non-

1145 Federal Entity or its successor.

1146 (d) In the event the Operation and Maintenance of the Project facilities operated
1147 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the
1148 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1149 the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1150 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of
1151 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in
1152 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1153 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United
1154 States in compliance with Article 7 of this Contract.

1155 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1156 29. The expenditure or advance of any money or the performance of any obligation of the
1157 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1158 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1159 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1160 or allotted.

1161 BOOKS, RECORDS, AND REPORTS

1162 30. (a) The Contractor shall establish and maintain accounts and other books and
1163 records pertaining to administration of the terms and conditions of this Contract, including: the
1164 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1165 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1166 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1167 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1168 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1169 during office hours to examine and make copies of the other party's books and records relating to
1170 matters covered by this Contract.

1171 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,

1172 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1173 such books, records, or information are reasonably related to the administration or performance of
1174 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1175 to provide the requested books, records, or information.

1176 (c) At such time as the Contractor provides information to the Contracting Officer
1177 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1178 Operating Non-Federal Entity.

1179 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1180 31. (a) The provisions of this Contract shall apply to and bind the successors and
1181 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1182 therein shall be valid until approved in writing by the Contracting Officer.

1183 (b) The assignment of any right or interest in this Contract by either party shall not
1184 interfere with the rights or obligations of the other party to this Contract absent the written
1185 concurrence of said other party.

1186 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1187 of any proposed assignment.

1188 SEVERABILITY

1189 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1190 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1191 association or other form of organization whose primary function is to represent parties to Project
1192 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1193 enforceability of a provision included in this Contract and said person, entity, association, or

1194 organization obtains a final court decision holding that such provision is legally invalid or
1195 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1196 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final
1197 court decision identify by mutual agreement the provisions in this Contract which must be revised
1198 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time
1199 periods specified above may be extended by mutual agreement of the parties. Pending the completion
1200 of the actions designated above, to the extent it can do so without violating any applicable provisions
1201 of law, the United States shall continue to make the quantities of Project Water specified in this
1202 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1203 to be legally invalid or unenforceable in the final court decision.

1204 RESOLUTION OF DISPUTES

1205 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1206 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1207 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1208 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written
1209 notice of the intent to take such action; Provided, That such notice shall not be required where a delay
1210 in commencing an action would prejudice the interests of the party that intends to file suit. During
1211 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in
1212 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive
1213 or abridge any right or remedy that the Contractor or the United States may have.

1214 OFFICIALS NOT TO BENEFIT

1215 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1216 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1217 manner as other water users or landowners.

1218 CHANGES IN CONTRACTOR'S SERVICE AREA

1219 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1220 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or
1221 otherwise, except upon the Contracting Officer's written consent.

1222 (b) Within thirty (30) days of receipt of a request for such a change, the
1223 Contracting Officer will notify the Contractor of any additional information required by the
1224 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1225 agreeable schedule for timely completion of the process. Such process will analyze whether the
1226 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1227 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1228 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1229 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1230 Contracting Officer shall comply with the National Environmental Policy Act and the Endangered
1231 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in
1232 this process, and such costs will be paid in accordance with Article 25 of this Contract.

1233 FEDERAL LAWS

1234 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1235 validity or application in connection with the performance of the terms and conditions of this
1236 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1237 terms and conditions of this Contract unless and until relief from application of such Federal law or

1238 regulation to the implementing provision of the Contract is granted by a court of competent
1239 jurisdiction.

1240 NOTICES

1241 37. Any notice, demand, or request authorized or required by this Contract shall be
1242 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1243 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1244 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1245 Directors of the Lindsay-Strathmore Irrigation District, PO Box 846, Lindsay, California 93247. The
1246 designation of the addressee or the address may be changed by notice given in the same manner as
1247 provided in this Article for other notices.

1248 CONFIRMATION OF CONTRACT

1249 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1250 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1251 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1252 validation proceedings, and all pertinent supporting records of the court approving and confirming
1253 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1254 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1255 year first above written.

THE UNITED STATES OF AMERICA

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

LINDSAY-STRATHMORE IRRIGATION DISTRICT

By: _____
President of the Board of Directors

Attest:

By: _____
Secretary of the Board of Directors

Contract No.I75r-1514-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No.I75r-1514-LTR1

EXHIBIT B
[Initial Rates and Charges]

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