

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 MADERA 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 MADERA IRRIGATION DISTRICT, hereinafter
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
19 acting pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

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

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

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

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

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

42 [3.2] WHEREAS, a contract dated May 24, 1939, was made and entered into between the
43 United States and the Contractor entitled "Contract for Purchase of Property and Water Rights,"
44 which contract is hereinafter referred to as the 1939 Contract; and

45 [3.3] WHEREAS, Contractor's rights under the aforesaid 1939 Contract have been

46 judicially determined that the Contractor has a vested right in perpetuity to receive a specified
47 quantity of water together, with the right of successive renewals of all contracts for delivery thereof;
48 and

49 [3.4] WHEREAS, Contractor's rights under the 1939 Contract have been satisfied under the
50 previous contracts for delivery of water from Friant Dam and will be satisfied for the term hereof
51 under this Contract, so long as the United States performs the terms and provisions by them to be
52 performed herein; and

53 [4th] WHEREAS, the Contractor and the United States entered into Contract No. I75r-2891,
54 as amended, which established terms for the delivery to the Contractor of Project Water from the
55 Friant Division from May 15, 1951, to February 28, 1992; and

56 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
57 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
58 interim renewal contract(s) identified as Contract No(s). I75r-2891-IR1, IR2, IR3, and IR4, the
59 current of which is hereinafter referred to as the Existing Contract, which provided for the continued
60 water service to the Contractor from December 1, 2000, through February 28, 2001; and

61 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim
62 and existing long-term Project Water service contracts following completion of appropriate
63 environmental documentation, including a programmatic environmental impact statement (PEIS)
64 pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and
65 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project
66 Water; and

67 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
68 environmental review necessary to provide for long-term renewal of the Existing Contract; and

69 [8th] WHEREAS, pursuant to its rights under the 1939 Contract, the Contractor has
70 requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing
71 Contract, Federal Reclamation law, and the laws of the State of California, for water service from the
72 Friant Division of the Central Valley Project; and

73 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
74 its obligations under the Existing Contract; and

75 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
76 Officer that the Contractor has utilized the Central Valley Project Water supplies available to it for
77 reasonable and beneficial use and/or has demonstrated projected future demand for water use such
78 that the Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
79 quantity of Project Water to be made available to it pursuant to this Contract; and

80 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by
81 urban and agricultural areas within California for more than fifty (50) years, and is considered by the
82 Contractor as an essential portion of its water supply; and

83 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
84 Contractor's, depend upon the continued availability of water, including water service from the
85 Central Valley Project; and

86 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
87 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project

88 purposes; and

89 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
90 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
91 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to
92 achieve a reasonable balance among competing demands for use of Project Water; and to comply
93 with all applicable environmental statutes, all consistent with the legal obligations of the United
94 States relative to the Central Valley Project; and

95 [15th] WHEREAS, Omitted; and

96 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize
97 undependable Class 2 Water in their service areas to, among other things, assist in the management
98 and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
99 environmental enhancement, including restoration of the San Joaquin River below Friant Dam,
100 minimize flooding along the San Joaquin River, encourage optimal water management, and maximize
101 the reasonable and beneficial use of the water; and

102 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
103 to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in
104 the Explanatory Recital immediately above; and

105 [16th] WHEREAS, the Contractor is entitled to long term renewal under its rights under the
106 1939 Contract, and the United States and the Contractor are willing to enter into this Contract
107 pursuant to Federal Reclamation Law on the terms and conditions set forth below; and

108 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein

109 contained, it is hereby mutually agreed by the parties hereto as follows:

110 DEFINITIONS

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

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

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

118 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through
119 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of
120 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera
121 Canals as a dependable water supply during each Year;

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

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

130 Total;

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

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

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

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

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

145 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
146 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
147 Reclamation law;

148 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or
149 202(3) of the RRA, whichever is applicable;

150 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be

151 delivered in accordance with Section 204 of the RRA;

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

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

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

159 (n2) "Long Term Historic Average" shall mean the average of the final forecast of
160 Water Made Available to the Contractor pursuant to this Contract and the contracts referenced in the
161 fourth (4th) and fifth (5th) Explanatory Recitals of this Contract;

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

169 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined
170 by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I
171 facilities in service, including, O&M deficits funded, less payments, over such periods as may be

172 required under Federal Reclamation law with interest accruing from the dates such costs were first
173 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the
174 calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in
175 Section 202 (3) (B) and (C) of the RRA;

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

179 (r) "Operating Non-Federal Entity" shall mean the Madera-Chowchilla Water and
180 Power Authority, a Non-Federal entity which has the obligation to operate and maintain all or a
181 portion of the Friant Division facilities pursuant to an agreement with the United States, and which
182 may have funding obligations with respect thereto;

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

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

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

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

193 (w) Omitted;

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

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

199 (y2) "Uncontrolled Season" is any time during the Year the Contracting Officer
200 determines that a need exists to evacuate water from Millerton Lake in order to prevent or minimize
201 spill or to meet flood control criteria, taking into consideration, among other things, anticipated
202 upstream reservoir operations and the most probable forecast of snowmelt and runoff projections for
203 the upper San Joaquin River;

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

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

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

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

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TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two years prior to the date this Contract expires. If the Contracting Officer determines that the Contractor has performed the terms and conditions of the Existing Contract, the Contracting Officer shall renew this Contract and subsequent contracts insofar as it pertains to the furnishing of Irrigation Water to the Contractor on terms and conditions mutually agreeable for the longest period prescribed by law.

(b) Omitted.

(c) Omitted.

(d) The Contracting Officer anticipates that by December 31, 2024, all authorized project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such allocation is made, and subject to satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract under subsection (d) , Section 9 of the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that, account being taken of the amount credited to return by the Contractor as provided for under Reclamation law, the remaining amount of construction costs assignable for ultimate return by the Contractor can probably be repaid to the United States within the term of a contract under said

235 subsection (d). If the remaining amount of costs that are properly assignable to the Contractor cannot
236 be determined by December 31, 2024, the Contracting Officer shall notify the Contractor, and provide
237 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
238 make such a determination as soon thereafter as possible so as to permit, upon request of the
239 Contractor and satisfaction of the condition set out above, conversion to a contract under said
240 subsection (d). In the event such determination of costs has not been made at a time which allows
241 conversion of this Contract during the term of this Contract or the Contractor has not requested
242 conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal
243 contract as described in subdivision (b) of this Article a provision that carries forth in substantially
244 identical terms the provisions of this subdivision. In the event the Contracting Officer is able to make
245 a determination of the remaining amount of costs that are properly assignable to the Contractor before
246 December 31, 2024, the Contracting Officer shall do so at the earliest time the Contracting Officer
247 has such ability.

248 (e) The parties hereto acknowledge and agree that Part A of Contract No. I75r-
249 2891, hereinafter referred to as the Original Contract, as amended, is replaced by this Contract. The
250 respective duties, covenants, and obligations of the parties in Original Contract, as amended, which
251 are not replaced by this Contract shall continue in full force and effect, pending prompt completion of
252 good faith negotiations between the parties to agree upon an amendatory contract. Part B of the
253 Original Contract provides for the construction, operation, maintenance and repayment of a
254 distribution system which part remains in force and effect.

255 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

256 3. (a) During each Year, consistent with all applicable State water rights, permits,
257 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract,
258 the Contracting Officer shall make available for delivery to the Contractor 85,000 acre-feet of Class 1
259 Water and 186,000 acre-feet of Class 2 Water, both for irrigation and M&I purposes. The quantity of
260 Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for
261 pursuant to the provisions of Articles 4 and 7 of this Contract.

262 (b) Omitted.

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

265 (d) The Contractor shall make reasonable and beneficial use of all Project Water or
266 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater
267 banking programs, surface water storage programs, and other similar programs utilizing Project
268 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
269 Area which are consistent with applicable State law and result in use consistent with Reclamation law
270 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's
271 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That
272 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service
273 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
274 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,
275 groundwater banking programs, surface water storage programs, and other similar programs utilizing
276 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's

277 Service Area may be permitted upon written approval of the Contracting Officer, which approval will
278 be based upon environmental documentation, Project Water rights, and Project operational concerns.
279 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

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

289 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
290 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will
291 make a determination whether Project Water, or other water available to the Project, can be made
292 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during
293 the Year without adversely impacting other Project Contractors. At the request of the Contractor, the
294 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to
295 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that Project
296 Water, or other water available to the Project, can be made available to the Contractor, the
297 Contracting Officer will announce the availability of such water and shall so notify the Contractor as

298 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project
299 Contractors capable of taking such water to determine the most equitable and efficient allocation of
300 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting
301 Officer shall make such water available to the Contractor in accordance with applicable statutes,
302 regulations, guidelines, and policies.

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

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

316 (i) Project Water furnished to the Contractor pursuant to this Contract may be
317 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
318 Contract upon written approval by the Contracting Officer in accordance with the terms and

319 conditions of such approval.

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

327 (k) Project Water furnished to the Contractor during any month designated in a
328 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer
329 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1
330 Water is called for in such schedule for such month and shall be deemed to have been accepted as
331 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any
332 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and
333 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,
334 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water
335 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply
336 available in the current Year is not sufficient to account for such additional diversions, such
337 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply
338 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2
339 Water supplies available in the current Year are not sufficient to account for such additional

340 diversions, such additional diversions shall be charged first against the Contractor's available Class 2
341 Water supply and then against the Contractor's available Class 1 Water supply, both for the following
342 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
343 this Contract.

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

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

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

376 TIME FOR DELIVERY OF WATER

377 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
378 announce the Contracting Officer's expected declaration of the Water Made Available. The
379 declaration will be updated monthly, and more frequently if necessary, based on then-current
380 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
381 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the

382 basis of the estimate, with relevant supporting information, upon the written request of the
383 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
384 shall provide the Contractor with the updated Long Term Historic Average. The declaration of
385 Project operations will be expressed in terms of both Water Made Available and the Long Term
386 Historic Average.

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

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

396 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
397 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
398 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
399 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to
400 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total
401 amount of water requested in that schedule or revision does not exceed the quantities announced by
402 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3, and the Contracting

403 Officer determines that there will be sufficient capacity available in the appropriate Friant Division
404 facilities to deliver the water in accordance with that schedule: Provided, further, That the Contractor
405 shall not schedule the delivery of any water during any period as to which the Contractor is notified
406 by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make
407 deliveries to the Contractor will not be in operation because of scheduled O&M.

408 (e) The Contractor may, during the period from and including November 1 of each
409 Year through and including the last day of February of that Year, request delivery of any amount of
410 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following
411 Year. The Contractor may, during the period from and including January 1 of each Year (or such
412 earlier date as may be determined by the Contracting Officer) through and including the last day of
413 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting
414 Officer to be made available to it during the following Year. Such water shall hereinafter be referred
415 to as preuse water. Such request must be submitted in writing by the Contractor for a specified
416 quantity of preuse and shall be subject to the approval of the Contracting Officer. Payment for preuse
417 water so requested shall be at the appropriate rate(s) for the following Year in accordance with
418 Article 7 of this Contract and shall be made in advance of delivery of any preuse water. The
419 Contracting Officer shall deliver such preuse water in accordance with a schedule or any revision
420 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water
421 is available and to the extent such deliveries will not interfere with the delivery of Project Water
422 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.
423 The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the

424 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
425 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted
426 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in
427 the following Year shall be specified by the Contractor at the time the preuse water is requested or as
428 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of
429 this Article, based on the availability of the following Year water supplies as determined by the
430 Contracting Officer.

431 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

444 (d) All Water Delivered to the Contractor pursuant to this Contract shall be

445 measured and recorded with equipment furnished, installed, operated, and maintained by the United
446 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting
447 Officer (hereafter “other appropriate entity”) at the point or points of delivery established pursuant to
448 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
449 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,
450 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
451 therein. For any period of time when accurate measurements have not been made, the Contracting
452 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to
453 making a final determination of the quantity delivered for that period of time.

454 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
455 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
456 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
457 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
458 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
459 for which there is legal responsibility, including property damage, personal injury, or death arising out
460 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project
461 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or
462 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
463 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any
464 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,
465 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the

466 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible
467 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities
468 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,
469 That the Contractor is not the Operating Non-Federal Entity that owned or operated the
470 malfunctioning facility(ies) from which the damage claim arose.

471 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

472 6. (a) The Contractor established a measurement program satisfactory to the
473 Contracting Officer, all surface water delivered for irrigation purposes within the Contractor's Service
474 Area is measured at each agricultural turnout and such water delivered for municipal and industrial
475 purposes is measured at each municipal and industrial service connection. The water measuring
476 devices or water measuring methods of comparable effectiveness must be acceptable to the
477 Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining
478 and repairing all such measuring devices and implementing all such water measuring methods at no
479 cost to the United States. The Contractor shall use the information obtained from such water
480 measuring devices or water measuring methods to ensure its proper management of the water, to bill
481 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
482 municipal and industrial purposes by customer class as defined in the Contractor's water conservation
483 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude
484 the Contractor from establishing and collecting any charges, assessments, or other revenues
485 authorized by California law. The Contractor shall include a summary of all its annual surface water
486 deliveries in the annual report described in subdivision (c) of Article 26.

487 (b) To the extent the information has not otherwise been provided, upon execution
488 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
489 measurement devices or water measuring methods being used or to be used to implement subdivision
490 (a) of this Article and identifying the agricultural turnouts and the municipal and industrial service
491 connections or alternative measurement programs approved by the Contracting Officer, at which such
492 measurement devices or water measuring methods are being used, and, if applicable, identifying the
493 locations at which such devices and/or methods are not yet being used including a time schedule for
494 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
495 within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring
496 devices or water measuring methods identified in the Contractor's report and if the Contracting
497 Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer
498 notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within
499 sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest
500 practicable date by which the Contractor shall modify said measuring devices and/or measuring
501 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this
502 Article.

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

506 (d) The Contractor shall inform the Contracting Officer and the State of California
507 in writing by April 30 of each Year of the monthly volume of surface water delivered within the

508 Contractor's Service Area during the previous Year.

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

512 RATES AND METHOD OF PAYMENT FOR WATER

513 7. (a) The Contractor shall pay the United States as provided in this Article for all
514 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
515 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
516 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified,
517 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law
518 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
519 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in
520 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
521 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B",
522 as may be revised annually.

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

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

529 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
530 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
531 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
532 notification shall revise Exhibit "B."

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

540 (c) At the time the Contractor submits the initial schedule for the delivery of
541 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
542 shall make an advance payment to the United States equal to the total amount payable pursuant to the
543 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
544 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
545 end of the first month and before the end of each calendar month thereafter, the Contractor shall make
546 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
547 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
548 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
549 for Water Delivered shall be made before the end of the following month; Provided, That any revised

550 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
551 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
552 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
553 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
554 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
555 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an
556 advance payment at the Rates then in effect for such additional Project Water is made. Final
557 adjustment between the advance payments for the Water Scheduled and payments for the quantities
558 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
559 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project
560 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by
561 the last day of February.

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

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

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

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

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

590 (h) The Contracting Officer shall keep its accounts pertaining to the administration
591 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal

592 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
593 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
594 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
595 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
596 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
597 reports, or information.

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

605 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water
606 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of
607 the month following the month of delivery the Contractor shall make an additional payment to the
608 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for
609 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80) percent of the
610 Contract Total, but less than or equal to ninety (90) percent of the Contract Total, shall equal the one-
611 half of the difference between the Rate established under subdivision (a) of Article 7 of this Contract
612 and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The

613 Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which
614 exceeds ninety (90) percent of the Contract Total shall equal the difference between (i) the Rate
615 established under subdivision (a) of Article 7 of this Contract and (ii) the Irrigation Full Cost Water
616 Rate or M&I Full Cost Water Rate, whichever is applicable. For purposes of this subdivision, Class 2
617 Water taken by the Contractor during an Uncontrolled Season shall not be included in the total of the
618 deliveries of Class 1 Water and Class 2 Water.

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

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

629 (k) For the term of this Contract, Rates under the respective ratesetting policies
630 will be established to recover only reimbursable Operation and Maintenance (including any deficits)
631 and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies,
632 and interest, where appropriate, except in instances where a minimum Rate is applicable in
633 accordance with the relevant Project ratesetting policy. Changes of significance in practices which

634 implement the Contracting Officer's ratesetting policies will not be implemented until the
635 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
636 impact of the proposed change.

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

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

647 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

651 SALES, TRANSFERS, OR EXCHANGES OF WATER

652 9. (a) The right to receive Project Water provided for in this Contract may be sold,
653 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
654 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable

655 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
656 Contract may take place without the prior written approval of the Contracting Officer, except as
657 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
658 approved absent compliance with appropriate environmental documentation including but not limited
659 to the National Environmental Policy Act and the Endangered Species Act. Such environmental
660 documentation should include, as appropriate, an analysis of groundwater impacts and economic and
661 social effects, including environmental justice, of the proposed water transfers on both the transferor
662 and transferee.

663 (b) In order to facilitate efficient water management by means of water transfers of
664 the type historically carried out among Project Contractors located within the same geographical area
665 and to allow the Contractor to participate in an accelerated water transfer program during the term of
666 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental
667 documentation including, but not limited to, the National Environmental Policy Act and the
668 Endangered Species Act analyzing annual transfers within such geographical areas and the
669 Contracting Officer shall determine whether such transfers comply with applicable law. Following
670 the completion of the environmental documentation, such transfers addressed in such documentation
671 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written
672 approval by the Contracting Officer. Such environmental documentation and the Contracting
673 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,
674 prior to the expiration of the then existing five (5) -year period. All subsequent environmental
675 documentation shall include an alternative to evaluate not less than the quantity of Project Water

676 historically transferred within the same geographical area.

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

687 APPLICATION OF PAYMENTS AND ADJUSTMENTS

688 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
689 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
690 the Contractor arising out of this Contract then due and payable. Overpayments of more than One
691 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
692 amount of such overpayment at the option of the Contractor, may be credited against amounts to
693 become due to the United States by the Contractor. With respect to overpayment, such refund or
694 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
695 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of
696 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as

697 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
698 finalized the accounts for the Year in which the overpayment was made.

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

704 TEMPORARY REDUCTIONS--RETURN FLOWS

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

710 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
711 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
712 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
713 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
714 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice
715 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case
716 no notice need be given; Provided, That the United States shall use its best efforts to avoid any
717 discontinuance or reduction in such service. Upon resumption of service after such reduction or

718 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
719 quantity of Project Water which would have been delivered hereunder in the absence of such
720 discontinuance or reduction.

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

729 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

735 (b) If there is a Condition of Shortage because of errors in physical operations of
736 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
737 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
738 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,

739 agents, or employees for any damage, direct or indirect, arising therefrom.

740 (c) The United States shall not execute contracts which together with this
741 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals
742 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of
743 1,401,475 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract,
744 the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering
745 into temporary contracts of one year or less in duration for delivery of Project Water to other entities
746 if such water is not necessary to meet the schedules as may be submitted by all Friant Division long-
747 term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under their
748 water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to
749 take actions that result in the availability of new water supplies to be used for Project purposes and
750 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until
751 after consultation with the Friant Division Project Contractors.

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

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

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

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

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

776 (f) In the event that in any Year there is made available to the Contractor, by
777 reason of any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or
778 any discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this
779 Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive
780 hereunder, there shall be made an adjustment on account of the amounts already paid to the

781 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in
782 accordance with Article 10 of this Contract.

783 UNAVOIDABLE GROUNDWATER PERCOLATION

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

788 RULES AND REGULATIONS

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

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

796 WATER AND AIR POLLUTION CONTROL

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

800 QUALITY OF WATER

801 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
802 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
803 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act

804 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
805 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
806 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
807 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
808 Contractor pursuant to this Contract.

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

815 WATER ACQUIRED BY THE CONTRACTOR
816 OTHER THAN FROM THE UNITED STATES

817 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
818 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
819 be simultaneously transported through the same distribution facilities of the Contractor subject to the
820 following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were
821 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
822 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
823 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
824 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
825 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be

826 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
827 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
828 Water and non-project water are/were constructed with funds made available pursuant to Federal
829 Reclamation law, the non-project water will be subject to the acreage limitation provisions of Federal
830 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
831 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
832 cost to the Federal Government, including interest of storing or delivering non-Project Water, which
833 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
834 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
835 The incremental fee per acre is the mathematical result of such quotient times the interest rate
836 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
837 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
838 receives non-project water through Federally financed or constructed facilities. The incremental fee
839 calculation methodology will continue during the term of this Contract absent the promulgation of a
840 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
841 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
842 regulation or policy is adopted it shall supersede this provision.

843 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
844 than from the United States or adverse to the Project or its contractors (i.e. non-project water), may be
845 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate
846 environmental documentation, with the approval of the Contracting Officer and the execution of any

847 contract determined by the Contracting Officer to be necessary, consistent with the following
848 provisions:

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

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

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

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

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

876 OPINIONS AND DETERMINATIONS

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

886 (b) The Contracting Officer shall have the right to make determinations necessary
887 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
888 United States and of the State of California, and the rules and regulations promulgated by the

889 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
890 the extent reasonably practicable.

891 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

929 CHARGES FOR DELINQUENT PAYMENTS

930 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
931 on delinquent installments or payments. When a payment is not received by the due date, the

932 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
933 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
934 charge to cover additional costs of billing and processing the delinquent payment. When a payment is
935 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)
936 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
937 shall pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

946 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

990 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

995 (b) The payment of charges becoming due hereunder is a condition precedent to
996 receiving benefits under this Contract. The United States shall not make water available to the
997 Contractor through Project facilities during any period in which the Contractor may be in arrears in
998 the advance payment of water rates due the United States. The Contractor shall not furnish water
999 made available pursuant to this Contract for lands or parties which are in arrears in the advance
1000 payment of water rates levied or established by the Contractor.

1001 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1002 obligation to require advance payment for water rates which it levies.

1003 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1004 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
1005 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1006 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
1007 well as with their respective implementing regulations and guidelines imposed by the U.S.
1008 Department of the Interior and/or Bureau of Reclamation.

1009 (b) These statutes require that no person in the United States shall, on the grounds
1010 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
1011 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
1012 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
1013 agrees to immediately take any measures necessary to implement this obligation, including permitting
1014 officials of the United States to inspect premises, programs, and documents.

1015 (c) The Contractor makes this agreement in consideration of and for the purpose of
1016 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1017 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1018 installment payments after such date on account of arrangements for Federal financial assistance
1019 which were approved before such date. The Contractor recognizes and agrees that such Federal
1020 assistance will be extended in reliance on the representations and agreements made in this Article,
1021 and that the United States reserves the right to seek judicial enforcement thereof.

1022 PRIVACY ACT COMPLIANCE

1023 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
1024 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
1025 maintaining Landholder acreage certification and reporting records, required to be submitted to the
1026 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
1027 Stat. 1266), and pursuant to 43 CFR 426.18.

1028 (b) With respect to the application and administration of the criminal penalty
1029 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1030 for maintaining the certification and reporting records referenced in (a) above are considered to be
1031 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1032 (c) The Contracting Officer or a designated representative shall provide the

1033 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1034 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1035 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1036 contained in the Landholder's certification and reporting records.

1037 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1038 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1039 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1040 authorized to grant requests by individuals for access to their own records.

1041 (e) The Contractor shall forward promptly to the System Manager each proposed
1042 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1043 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1044 information and records necessary to prepare an appropriate response to the requester. These
1045 requirements do not apply to individuals seeking access to their own certification and reporting forms
1046 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1047 Act as a basis for the request.

1048 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1049 25. In addition to all other payments to be made by the Contractor pursuant to this
1050 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill
1051 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1052 of direct cost incurred by the United States for work requested by the Contractor associated with this
1053 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1054 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1055 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1056 administration.

1057 WATER CONSERVATION

1058 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1059 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be

1060 implementing an effective water conservation and efficiency program based on the Contractor's water
1061 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1062 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1063 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1064 economically feasible water conservation measures, and time schedules for meeting those objectives.
1065 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1066 continued implementation of such water conservation program. In the event the Contractor's water
1067 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1068 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1069 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1070 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1071 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1072 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1073 program in accordance with the time schedules therein.

1074 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1075 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor
1076 shall implement the Best Management Practices identified by the time frames issued by the California
1077 Urban Water Conservation Council for such M&I Water unless any such practice is determined by
1078 the Contracting Officer to be inappropriate for the Contractor.

1079 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1080 its implementation of the water conservation plan on the reporting dates specified in the then existing

1081 conservation and efficiency criteria established under Federal law.

1082 (d) At five (5) -year intervals, the Contractor shall revise its water conservation
1083 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation
1084 plans established under Federal law and submit such revised water management plan to the
1085 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1086 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1087 evaluating water conservation plans established under Federal law.

1088 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1089 be described in the Contractor's water conservation plan.

1090 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1091 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1092 Contract shall not be applicable to or affect non-Project Water or water rights now owned or hereafter
1093 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1094 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1095 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1096 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1097 Reclamation law.

1098 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1099 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1100 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1101 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement

1102 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1103 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1104 (b) The Contracting Officer has previously notified the Contractor in writing that
1105 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1106 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1107 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under
1108 the terms and conditions of the separate agreement between the United States and the Operating Non-
1109 Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any
1110 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1111 successor determines, sets or establishes for (i) the Operation and Maintenance of the portion of the
1112 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor, or
1113 (ii) the Friant Division's share of the operation, maintenance and replacement costs for physical
1114 works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the
1115 O'Neill Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and
1116 the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such
1117 direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1118 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project
1119 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal
1120 Entity collects payments on behalf of the United States in accordance with the separate agreement
1121 identified in subdivision (a) of this Article.

1122 (c) For so long as the Operation and Maintenance of any portion of the Project

1123 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1124 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1125 this Contract representing the cost associated with the activity being performed by the Operating Non-
1126 Federal Entity or its successor.

1127 (d) In the event the Operation and Maintenance of the Project facilities operated
1128 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the
1129 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1130 the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1131 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of
1132 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in
1133 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1134 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United
1135 States in compliance with Article 7 of this Contract.

1136 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1137 29. The expenditure or advance of any money or the performance of any obligation of the
1138 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1139 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1140 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1141 or allotted.

1142 BOOKS, RECORDS, AND REPORTS

1143 30. (a) The Contractor shall establish and maintain accounts and other books and
1144 records pertaining to administration of the terms and conditions of this Contract, including: the
1145 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1146 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1147 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1148 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.

1149 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1150 during office hours to examine and make copies of the other party's books and records relating to
1151 matters covered by this Contract.

1152 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1153 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1154 such books, records, or information are reasonably related to the administration or performance of
1155 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1156 to provide the requested books, records, or information.

1157 (c) At such time as the Contractor provides information to the Contracting Officer
1158 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1159 Operating Non-Federal Entity.

1160 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1161 31. (a) The provisions of this Contract shall apply to and bind the successors and
1162 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1163 therein shall be valid until approved in writing by the Contracting Officer.

1164 (b) The assignment of any right or interest in this Contract by either party shall not
1165 interfere with the rights or obligations of the other party to this Contract absent the written
1166 concurrence of said other party.

1167 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1168 of any proposed assignment.

1169 SEVERABILITY

1170 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1171 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an

1172 association or other form of organization whose primary function is to represent parties to Project
1173 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1174 enforceability of a provision included in this Contract and said person, entity, association, or
1175 organization obtains a final court decision holding that such provision is legally invalid or
1176 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1177 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final
1178 court decision identify by mutual agreement the provisions in this Contract which must be revised
1179 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time
1180 periods specified above may be extended by mutual agreement of the parties. Pending the completion
1181 of the actions designated above, to the extent it can do so without violating any applicable provisions
1182 of law, the United States shall continue to make the quantities of Project Water specified in this
1183 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1184 to be legally invalid or unenforceable in the final court decision.

1185 RESOLUTION OF DISPUTES

1186 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1187 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1188 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1189 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written
1190 notice of the intent to take such action; Provided, That such notice shall not be required where a delay
1191 in commencing an action would prejudice the interests of the party that intends to file suit. During
1192 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in

1193 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive
1194 or abridge any right or remedy that the Contractor or the United States may have.

1195 OFFICIALS NOT TO BENEFIT

1196 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1197 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1198 manner as other water users or landowners.

1199 CHANGES IN CONTRACTOR'S SERVICE AREA

1200 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1201 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or
1202 otherwise, except upon the Contracting Officer's written consent.

1203 (b) Within thirty (30) days of receipt of a request for such a change, the
1204 Contracting Officer will notify the Contractor of any additional information required by the
1205 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1206 agreeable schedule for timely completion of the process. Such process will analyze whether the
1207 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1208 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1209 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1210 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1211 Contracting Officer shall comply with the National Environmental Policy Act and the Endangered
1212 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in
1213 this process, and such costs will be paid in accordance with Article 25 of this Contract.

1214 FEDERAL LAWS

1215 36. By entering into this Contract, the Contractor does not waive its rights to contest the

1216 validity or application in connection with the performance of the terms and conditions of this
1217 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1218 terms and conditions of this Contract unless and until relief from application of such Federal law or
1219 regulation to the implementing provision of the Contract is granted by a court of competent
1220 jurisdiction.

1221 NOTICES

1222 37. Any notice, demand, or request authorized or required by this Contract shall be
1223 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1224 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1225 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1226 Directors of the Madera Irrigation District, 12152 Road 28 1/4, Madera, California 93637. The
1227 designation of the addressee or the address may be changed by notice given in the same manner as
1228 provided in this Article for other notices.

1229 CONFIRMATION OF CONTRACT

1230 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1231 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1232 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1233 validation proceedings, and all pertinent supporting records of the court approving and confirming
1234 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1235 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1236 year first above written.

THE UNITED STATES OF AMERICA

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

MADERA IRRIGATION DISTRICT

By: _____
President of the Board of Directors

Attest:

By: _____
Secretary of the Board of Directors

Contract No. I75r-2891-LTR1

EXHIBIT A

[Map or Description of Service Area]

Contract No. I75r-2891-LTR1

EXHIBIT B
[Initial Rates and Charges]

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