

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

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

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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 CITY OF FRESNO
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this ____ day of _____, 20____, 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. 1263), 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 CITY OF FRESNO, hereinafter referred to as the
18 Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to
19 the laws thereof;

20 WITNESSETH, That:

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EXPLANATORY RECITALS

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

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

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

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

[4th] WHEREAS, the Contractor and the United States entered into Contract

43 No. 14-06-200-8901, which established terms for the delivery to the Contractor of Project Water
44 from the Friant Division from January 12, 1961, to February 28, 2006, hereinafter referred to as the
45 Existing Contract; and

46 [5th] WHEREAS, the Contractor and the United States have, pursuant to Subsection
47 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
48 Binding Agreement identified as Binding Agreement No. 14-06-200-8901-BA, which sets out the
49 terms pursuant to which the Contractor agreed to renew the Existing Contract before its expiration
50 date after completion of the programmatic environmental impact statement and other appropriate
51 environmental documentation and negotiation of a renewal contract, and which also sets out the
52 consequences of a subsequent decision not to renew; and

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

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

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

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

65 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
66 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
67 beneficial use and/or has demonstrated projected future demand for water use such that the
68 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
69 quantity of Project Water to be made available to it pursuant to this Contract; and

70 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
71 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
72 essential portion of its water supply; and

73 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
74 depend upon the continued availability of water, including water service from the Project; and

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

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

84 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
85 relationship in order to achieve their mutual goals; and

86 [15.1] WHEREAS, during uncontrolled seasons, Friant Division Project Contractors utilize

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

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

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

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

99 DEFINITIONS

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

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

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

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

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

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

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

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

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

- 129 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
130 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);
- 131 (h-i) Omitted;
- 132 (j) "Full Cost Rate" shall mean an annual rate as determined by the Contracting
133 Officer that shall amortize the expenditures for construction properly allocable to the Project
134 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded,
135 less payments, over such periods as may be required under Federal Reclamation law or applicable
136 contract provisions. Interest will accrue on both the construction expenditures and funded O&M
137 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case
138 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
139 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
140 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
141 the RRA;
- 142 (k-l) Omitted;
- 143 (m) "Irrigation Water" shall mean water made available from the Project that is
144 used primarily in the production of agricultural crops or livestock, including domestic use incidental
145 thereto, and watering of livestock;
- 146 (n) Omitted;
- 147 (n2) "Long Term Historic Average" shall mean the average of the final forecast of
148 Water Made Available to the Contractor pursuant to this Contract and the contract referenced in the
149 fourth Explanatory Recital of this Contract;
- 150 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other than

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

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

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

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

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

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

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

172 (v) "Rates" shall mean the payments determined annually by the Contracting

173 Officer in accordance with the then-current applicable water ratesetting policies for the Project, as
174 described in subdivision (a) of Article 7 of this Contract;

175 (w) Omitted;

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

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

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

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

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

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

191 TERM OF CONTRACT

192 2. (a) This Contract shall be effective on March 1, 20____, through February 28,

193 20_____, and supersedes the Existing Contract. In the event the Contractor wishes to renew this
194 Contract beyond February 28, 20_____, the Contractor shall submit a request for renewal in writing
195 to the Contracting Officer no later than two years prior to the date this Contract expires.

196 (b) Omitted.

197 (c) Provided, the Contractor is complying with all terms and conditions of this
198 Contract and all legal obligations of the Contractor, if any, set forth in an enforceable court order,
199 final judgment and/or settlement relating to restoration of the San Joaquin River, this Contract shall
200 be renewed for successive periods of up to 40 years each, which periods shall be consistent with the
201 then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties
202 and consistent with Federal and State law. The Contractor shall be afforded the opportunity to
203 comment to the Contracting Officer on the proposed adoption and application of any revised policy
204 applicable to the delivery of M&I Water that would limit the term of any subsequent renewal contract
205 with the Contractor for the furnishing of M&I Water to less than 40 years.

206 (d) The Contracting Officer shall make a determination ten years after the date of
207 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
208 a conversion to a contract under subsection 9(c)(1) of the Reclamation Project Act of 1939 can be
209 accomplished. The Contracting Officer anticipates that during the term of this Contract, all
210 authorized Project construction expected to occur will have occurred, and on that basis the
211 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
212 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
213 satisfaction of the conditions set out in this subdivision, this Contract shall, at the request of the
214 Contractor, be converted to a contract under subsection 9(c)(1) of the Reclamation Project Act of

215 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable to
216 the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
217 determination by the Contracting Officer that, account being taken of the amount credited to return
218 by the Contractor as provided for under Federal Reclamation law, the remaining amount of
219 construction costs assignable for ultimate return by the Contractor can probably be repaid to the
220 United States within the term of a contract under subsection 9(c)(1). If the remaining amount of
221 costs that are properly assignable to the Contractor cannot be determined during the term of this
222 Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a
223 determination could not be made. Further, the Contracting Officer shall make such a determination
224 as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the
225 conditions set out above, conversion to a contract under subsection 9(c)(1). In the event such
226 determination of costs has not been made at a time which allows conversion of this Contract during
227 the term of this Contract or the Contractor has not requested conversion of this Contract within such
228 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (c)
229 of this Article a provision that carries forth in substantially identical terms the provisions of this
230 subdivision.

231 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

232 3. (a) During each Year, consistent with all applicable State water rights, permits,
233 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
234 Contract, the Contracting Officer shall make available for delivery to the Contractor 60,000 acre-feet
235 of Class 1 Water for M&I purposes. Water Delivered to the Contractor in accordance with this
236 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this
237 Contract.

238 (b) Omitted.

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

241 (d) The Contractor shall make reasonable and beneficial use of all water furnished
242 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
243 banking programs, surface water storage programs, and other similar programs utilizing Project
244 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
245 Area which are consistent with applicable State law and result in use consistent with Federal
246 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in
247 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided
248 further, That such water conservation plan demonstrates sufficient lawful uses exist in the
249 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is
250 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.
251 Groundwater recharge programs, groundwater banking programs, surface water storage programs,
252 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract

253 conducted outside the Contractor's Service Area may be permitted upon written approval of the
254 Contracting Officer, which approval will be based upon environmental documentation, Project Water
255 rights, and Project operational concerns. The Contracting Officer will address such concerns in
256 regulations, policies, or guidelines.

257 (e) The Contractor shall comply with requirements applicable to the Contractor in
258 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
259 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
260 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
261 excess of 39 years of diversions for M&I purposes of the quantities of water provided in subdivision
262 (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for the
263 biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review.
264 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial
265 relief in a court of competent jurisdiction with respect to any biological opinion or other
266 environmental documentation referred to in this Article.

267 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the
268 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will
269 make a determination whether Project Water, or other water available to the Project, can be made
270 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during
271 the Year without adversely impacting other Project Contractors. At the request of the Contractor, the
272 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to
273 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that
274 Project Water, or other water available to the Project, can be made available to the Contractor, the

275 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
276 soon as practicable. The Contracting Officer will thereafter meet with the Contractor and other
277 Project Contractors capable of taking such water to determine the most equitable and efficient
278 allocation of such water. If the Contractor requests the delivery of any quantity of such water, the
279 Contracting Officer shall make such water available to the Contractor in accordance with applicable
280 statutes, regulations, guidelines, and policies.

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

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

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

297 (j) The Contracting Officer shall make reasonable efforts to protect the water
298 rights and other rights described in the third Explanatory Recital of this Contract necessary for the
299 Project and to provide the water available under this Contract. The Contracting Officer shall not
300 object to participation by the Contractor, in the capacity and to the extent permitted by law, in
301 administrative proceedings related to the water rights and other rights described in the third
302 Explanatory Recital of this Contract; Provided, That the Contracting Officer retains the right to
303 object to the substance of the Contractor's position in such a proceeding; Provided further, That in
304 such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the
305 terms of this Contract to use Project Water.

306 (k) Project Water furnished to the Contractor during any month designated in a
307 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer
308 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1
309 Water is called for in such schedule for such month and shall be deemed to have been accepted as
310 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any
311 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and
312 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,
313 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water
314 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply
315 available in the current Year is not sufficient to account for such additional diversions, such
316 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply
317 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2
318 Water supplies available in the current Year are not sufficient to account for such additional

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

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

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

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

341 modify, supersede or otherwise interfere with any term or condition of the water rights and other
342 rights referred in the third Explanatory Recital of this Contract.

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

354 TIME FOR DELIVERY OF WATER

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

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

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

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

375 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
376 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
377 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
378 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior
379 to the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total
380 amount of water requested in that schedule or revision does not exceed the quantities announced by
381 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3, and the Contracting
382 Officer determines that there will be sufficient capacity available in the appropriate Friant Division
383 facilities to deliver the water in accordance with that schedule; Provided further, That the Contractor
384 shall not schedule the delivery of any water during any period as to which the Contractor is notified

385 by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make
386 deliveries to the Contractor will not be in operation because of scheduled O&M.

387 (e) The Contractor may, during the period from and including November 1 of each
388 Year through and including the last day of February of that Year, request delivery of any amount of
389 the Class 1 Water estimated by the Contracting Officer to be made available to it during the
390 following Year. The Contractor may, during the period from and including January 1 of each Year
391 (or such earlier date as may be determined by the Contracting Officer) through and including the last
392 day of February of that Year, request delivery of any amount of Class 2 Water estimated by the
393 Contracting Officer to be made available to it during the following Year. Such water shall
394 hereinafter be referred to as preuse water. Such request must be submitted in writing by the
395 Contractor for a specified quantity of preuse and shall be subject to the approval of the Contracting
396 Officer. Payment for preuse water so requested shall be at the appropriate rate(s) for the following
397 Year in accordance with Article 7 of this Contract and shall be made in advance of delivery of any
398 preuse water. The Contracting Officer shall deliver such preuse water in accordance with a schedule
399 or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to the
400 extent such water is available and to the extent such deliveries will not interfere with the delivery of
401 Project Water entitlements to other Friant Division contractors or the physical maintenance of the
402 Project facilities. The quantities of preuse water delivered pursuant to this subdivision shall be
403 deducted from the quantities of water that the Contracting Officer would otherwise be obligated to
404 make available to the Contractor during the following Year; Provided, That the quantity of preuse
405 water to be deducted from the quantities of either Class 1 Water or Class 2 Water to be made
406 available to the Contractor in the following Year shall be specified by the Contractor at the time the

407 preuse water is requested or as revised in its first schedule for the following Year submitted in
408 accordance with subdivision (b) of this Article, based on the availability of the following Year water
409 supplies as determined by the Contracting Officer.

410 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

415 (b) The Contracting Officer, either directly or through its written agreement(s)
416 with the Operating Non-Federal Entity, shall make all reasonable efforts to maintain sufficient flows
417 and levels of water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific
418 turnouts established pursuant to subdivision (a) of this Article.

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

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

429 Entity prior to making a final determination of the quantity delivered for that period of time.

430 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
431 responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the
432 Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this
433 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and
434 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal
435 responsibility, including property damage, personal injury, or death arising out of or connected with
436 the control, carriage, handling, use, disposal, or distribution of such Project Water Delivered beyond
437 such delivery points, except for any damage or claim arising out of: (i) acts or omissions of the
438 Contracting Officer or any of its officers, employees, agents, or assigns, including the Operating
439 Non-Federal Entity, with the intent of creating the situation resulting in any damage or claim;
440 (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns,
441 including the Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of its
442 officers, employees, agents, or assigns including the Operating Non-Federal Entity; or (iv) damage or
443 claims resulting from a malfunction of facilities owned and/or operated by the United States or
444 responsible Operating Non-Federal Entity.

445 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

446 6. (a) Within five years of the date of Contract execution, the Contractor will have an
447 established measuring program satisfactory to the Contracting Officer. The Contractor shall ensure
448 that all surface water delivered for M&I purposes is measured at each M&I service connection. The
449 water measuring devices or water measuring methods of comparable effectiveness must be
450 acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating,

451 and maintaining and repairing all such measuring devices and implementing all such water measuring
452 methods at no cost to the United States. The Contracting Officer acknowledges that the Contractor
453 has a metering plan (Exhibit "C") setting forth the milestones and schedule that the Contractor will
454 implement to comply with the requirements of this Article. Beginning January 2006, the Contractor
455 shall provide an annual written report to the Contracting Officer describing the Contractor's metering
456 plan implementation progress. The Contractor shall use the information obtained from such water
457 measuring devices or water measuring methods to ensure its proper management of the water, to bill
458 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
459 M&I purposes by customer class as defined in the Contractor's water conservation plan provided for
460 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
461 establishing and collecting any charges, assessments, or other revenues authorized by California law.
462 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
463 described in subdivision (c) of Article 26.

464 (b) To the extent the information has not otherwise been provided, upon execution
465 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
466 the measurement devices or water measuring methods being used or to be used to implement
467 subdivision (a) of this Article and identifying the M&I service connections or alternative
468 measurement programs approved by the Contracting Officer, at which such measurement devices or
469 water measuring methods are being used, and, if applicable, identifying the locations at which such
470 devices and/or methods are not yet being used including a time schedule for implementation at such
471 locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the
472 adequacy, and necessary modifications, if any, of the measuring devices or water measuring methods

473 identified in the Contractor's report and if the Contracting Officer does not respond in such time, they
474 shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring
475 devices or methods are inadequate, the parties shall within 60 days following the Contracting
476 Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall
477 modify said measuring devices and/or measuring methods as required by the Contracting Officer to
478 ensure compliance with subdivision (a) of this Article.

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

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

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

488 (f) In the event the provisions of subdivision (a) of this Article or any portion
489 thereof, are challenged in a judicial proceeding, the parties agree to meet and confer promptly and as
490 often as necessary to employ their reasonable best efforts to coordinate their response to the
491 challenge and, as appropriate, develop revisions to this Contract.

492 RATES AND METHOD OF PAYMENT FOR WATER

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

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

504 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
505 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
506 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
507 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
508 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
509 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
510 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
511 such notification shall revise Exhibit "B."

512 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
513 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project

514 Water for the following Year and the computations and cost allocations upon which those Rates are
515 based. The Contractor shall be allowed not less than two months to review and comment on such
516 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
517 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
518 upcoming Year, and such notification shall revise Exhibit "B."

519 (c) At the time the Contractor submits the initial schedule for the delivery of
520 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
521 shall make an advance payment to the United States equal to the total amount payable pursuant to the
522 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
523 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
524 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
525 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
526 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
527 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
528 for Water Delivered shall be made before the end of the following month; Provided, That any revised
529 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
530 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
531 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
532 to the Contractor in advance of such payment. In any month in which the quantity of Water
533 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
534 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
535 until an advance payment at the Rates then in effect for such additional Project Water is made. Final

536 adjustment between the advance payments for the Water Scheduled and payments for the quantities
537 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
538 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
539 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
540 last day of February.

541 (d) The Contractor shall also make a payment in addition to the Rate(s) in
542 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
543 appropriate Tiered Pricing Component then in effect, before the end of the month following the
544 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered as
545 shown in the water delivery report for the subject month prepared by the Operating Non-Federal
546 Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. Such water
547 delivery report shall be the basis for payment of Charges and Tiered Pricing Component by the
548 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the
549 Contracting Officer (as applicable) within five days after the end of the month of delivery. The water
550 delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing
551 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be
552 made through the adjustment of payments due to the United States for Charges for the next month.
553 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be
554 computed pursuant to Article 20 of this Contract.

555 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
556 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable

557 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;

558 Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this Contract shall
559 be no more than the otherwise applicable Rate for M&I Water under subdivision (a) of this Article.

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

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

566 (h) The Contracting Officer shall keep its accounts pertaining to the administration
567 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
568 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
569 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
570 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
571 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
572 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
573 reports, or information.

574 (i) The parties acknowledge and agree that the efficient administration of this
575 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
576 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,
577 and/or for making and allocating payments, other than those set forth in this Article may be in the
578 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to

579 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in
580 effect without amending this Contract.

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

591 (2) Omitted.

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

595 (k) For the term of this Contract, Rates under the respective ratesetting policies
596 will be established to recover only reimbursable O&M (including any deficits) and capital costs of
597 the Project, as those terms are used in the then-current Project ratesetting policies, and interest, where
598 appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant
599 Project ratesetting policy. Changes of significance in practices which implement the Contracting
600 Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the

601 Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

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

607 (m) Omitted.

608 (n) The Contractor asserts that it is not legally obligated to pay any Project deficits
609 claimed by the United States to have accrued as of the date of this Contract or deficit-related interest
610 charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or
611 remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this
612 Contract and payments made hereunder, the Contractor may challenge in the appropriate
613 administrative or judicial forums: (1) the existence, computation, or imposition of any deficit charges
614 accruing during the term of the Existing Contract; (2) interest accruing on any such deficits; (3) the
615 inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States
616 of payments made by the Contractor under its Existing Contract; and (5) the application of such
617 payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the
618 benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these
619 issues and credits for payments heretofore made; Provided, That the basis for such ruling is
620 applicable to the Contractor.

621 8. Omitted.

622 SALES, TRANSFERS, OR EXCHANGES OF WATER

623 9. (a) The right to receive Project Water provided for in this Contract may be sold,
624 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
625 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
626 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
627 Contract may take place without the prior written approval of the Contracting Officer, except as
628 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
629 approved absent all appropriate environmental documentation including, but not limited to,
630 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
631 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
632 including environmental justice, of the proposed water transfers on both the transferor and transferee.

633 (b) In order to facilitate efficient water management by means of water transfers of
634 the type historically carried out among Project Contractors located within the same geographical area
635 and to allow the Contractor to participate in an accelerated water transfer program during the term of
636 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
637 documentation including, but not limited to, documents prepared pursuant to NEPA and ESA,
638 analyzing annual transfers within such geographical areas, and the Contracting Officer shall
639 determine whether such transfers comply with applicable law. Following the completion of the
640 environmental documentation, such transfers addressed in such documentation shall be conducted
641 with advance notice to the Contracting Officer, but shall not require prior written approval by the
642 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
643 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
644 the then-existing five-year period. All subsequent environmental documentation shall include an

645 alternative to evaluate not less than the quantity of Project Water historically transferred within the
646 same geographical area.

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

656 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

667 in which the overpayment was made.

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

673 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

688 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
689 such discontinuance or reduction.

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

696 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

707 (c) The United States shall not execute contracts which together with this
708 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals

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

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

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

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

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

759 (c) Omitted.

760 WATER AND AIR POLLUTION CONTROL

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

764 QUALITY OF WATER

765 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
766 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
767 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
768 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
769 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
770 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
771 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
772 Contractor pursuant to this Contract.

773 (b) The O&M of Project facilities shall be performed in such manner as is
774 practicable to maintain the quality of raw water made available through such facilities at the highest

775 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
776 responsible for compliance with all State and Federal water quality standards applicable to surface
777 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
778 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

779 WATER ACQUIRED BY THE CONTRACTOR
780 OTHER THAN FROM THE UNITED STATES

781 17. (a) Omitted.
782 (b) Water or water rights now owned or hereafter acquired by the Contractor,
783 other than from the United States, may be stored, conveyed and/or diverted through Project facilities,
784 subject to the completion of appropriate environmental documentation, with the approval of the
785 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
786 necessary, consistent with the following provisions:

787 (1) The Contractor may introduce non-Project water into Project facilities
788 and deliver said water within the Contractor's Service Area subject to payment to the United States
789 and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the
790 applicable Project ratesetting policy, the RRA, and the Project use power policy, if such Project use
791 power policy is applicable, each as amended, modified or superseded from time to time.

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

797 (3) Neither the United States nor the Operating Non-Federal Entity shall be
798 responsible for control, care or distribution of the non-project water before it is introduced into or
799 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
800 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
801 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting
802 from the acts of the Contractor its officers', employees', agents' or assigns', act(s) in (i) extracting or
803 diverting non-Project water from any source, or (ii) diverting such non-Project water into Project
804 facilities.

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

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

813 OPINIONS AND DETERMINATIONS

814 18. (a) Where the terms of this Contract provide for actions to be based upon the
815 opinion or determination of either party to this Contract, said terms shall not be construed as
816 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
817 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
818 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or

819 unreasonable opinion or determination. Each opinion or determination by either party shall be
820 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
821 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
822 determination implementing a specific provision of Federal law embodied in statute or regulation.

823 (b) The Contracting Officer shall have the right to make determinations necessary
824 to administer this Contract that are consistent with the expressed and implied provisions of this
825 Contract, the laws of the United States and of the State of California, and the rules and regulations
826 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with
827 the Contractor to the extent reasonably practicable.

828 COORDINATION AND COOPERATION

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

838 (b) Within 120 days following the effective date of this Contract, the Contractor,
839 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
840 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be

841 amended as necessary separate and apart from this Contract. The goal of this process shall be to
842 provide, to the extent practicable, the means of mutual communication and interaction regarding
843 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

860 (d) Without limiting the contractual obligations of the Contracting Officer under
861 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
862 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other

863 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
864 the physical integrity of structures or facilities.

865 CHARGES FOR DELINQUENT PAYMENTS

866 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
867 on delinquent installments or payments. When a payment is not received by the due date, the
868 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
869 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
870 charge to cover additional costs of billing and processing the delinquent payment. When a payment
871 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
872 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
873 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
874 payment.

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

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

883 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

927 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

928 22. (a) The obligation of the Contractor to pay the United States as provided in this
929 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation

930 may be distributed among the Contractor's water users and notwithstanding the default of
931 individual water users in their obligations to the Contractor.

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

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

940 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

959 24. Omitted.

960 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

961 25. In addition to all other payments to be made by the Contractor pursuant to this
962 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
963 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
964 direct cost incurred by the United States for work requested by the Contractor associated with this
965 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
966 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
967 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
968 administration.

969 WATER CONSERVATION

970 26. (a) Prior to the delivery of water provided from or conveyed through Federally
971 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
972 implementing an effective water conservation and efficiency program based on the Contractor's water
973 conservation plan that has been determined by the Contracting Officer to meet the conservation and
974 efficiency criteria for evaluating water conservation plans established under Federal law. The water
975 conservation and efficiency program shall contain definite water conservation objectives, appropriate
976 economically feasible water conservation measures, and time schedules for meeting those objectives.
977 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
978 continued implementation of such water conservation program. In the event the Contractor's water
979 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
980 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
981 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the

982 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
983 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
984 thereafter the Contractor immediately begins implementing its water conservation and efficiency
985 program in accordance with the time schedules therein.

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

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

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

1000 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1001 be described in the Contractor's water conservation plan.

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EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

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OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

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

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(b) The Contracting Officer has previously notified the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including

1022 any assessment for reserve funds, which the Operating Non-Federal Entity or such successor
1023 determines, sets or establishes for (i) the O&M of the portion of the Project facilities operated and
1024 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share
1025 of the operation, maintenance and replacement costs for physical works and appurtenances associated
1026 with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the
1027 federal share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint
1028 use conveyance and conveyance pumping facilities. Such direct payments to the Operating
1029 Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly
1030 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1031 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf of
1032 the United States in accordance with the separate agreement identified in subdivision (a) of this
1033 Article.

1034 (c) For so long as the O&M of any portion of the Project facilities serving the
1035 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1036 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1037 Contract representing the cost associated with the activity being performed by the Operating
1038 Non-Federal Entity or its successor.

1039 (d) In the event the O&M of the Project facilities operated and maintained by the
1040 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the
1041 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised
1042 Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project
1043 Water under this Contract representing the O&M costs of the portion of such Project facilities which

1044 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from
1045 the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1046 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this
1047 Contract.

1048 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1049 29. The expenditure or advance of any money or the performance of any obligation of the
1050 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1051 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1052 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1053 or allotted.

1054 BOOKS, RECORDS, AND REPORTS

1055 30. (a) The Contractor shall establish and maintain accounts and other books and
1056 records pertaining to administration of the terms and conditions of this Contract, including: the
1057 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1058 water use data; and other matters that the Contracting Officer may require. Reports thereon shall be
1059 furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer
1060 may require. Subject to applicable Federal laws and regulations, each party to this Contract shall
1061 have the right during office hours to examine and make copies of the other party's books and records
1062 relating to matters covered by this Contract.

1063 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1064 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1065 such books, records, or information are reasonably related to the administration or performance of
1066 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1067 to provide the requested books, records, or information.

1068 (c) At such time as the Contractor provides information to the Contracting Officer
1069 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1070 Operating Non-Federal Entity.

1071 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1072 31. (a) The provisions of this Contract shall apply to and bind the successors and
1073 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1074 therein shall be valid until approved in writing by the Contracting Officer.

1075 (b) The assignment of any right or interest in this Contract by either party shall not
1076 interfere with the rights or obligations of the other party to this Contract absent the written
1077 concurrence of said other party.

1078 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1079 of any proposed assignment.

1080 SEVERABILITY

1081 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1082 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1083 association or other form of organization whose primary function is to represent parties to Project
1084 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1085 enforceability of a provision included in this Contract and said person, entity, association, or
1086 organization obtains a final court decision holding that such provision is legally invalid or
1087 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1088 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1089 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1090 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1091 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1092 actions designated above, to the extent it can do so without violating any applicable provisions of

1093 law, the United States shall continue to make the quantities of Project Water specified in this
1094 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1095 to be legally invalid or unenforceable in the final court decision.

1096 RESOLUTION OF DISPUTES

1097 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1098 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1099 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1100 any matter to Department of Justice, the party shall provide to the other party 30 days' written notice
1101 of the intent to take such action; Provided, That such notice shall not be required where a delay in
1102 commencing an action would prejudice the interests of the party that intends to file suit. During the
1103 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt
1104 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge
1105 any right or remedy that the Contractor or the United States may have.

1106 OFFICIALS NOT TO BENEFIT

1107 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1108 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1109 manner as other water users or landowners.

1110 CHANGES IN CONTRACTOR'S SERVICE AREA

1111 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1112 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1113 except upon the Contracting Officer's written consent.

1114 (b) Within 30 days of receipt of a request for such a change, the Contracting
1115 Officer will notify the Contractor of any additional information required by the Contracting Officer
1116 for processing said request, and both parties will meet to establish a mutually agreeable schedule for

1117 timely completion of the process. Such process will analyze whether the proposed change is likely
1118 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability
1119 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1120 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1121 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1122 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1123 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1124 FEDERAL LAWS

1125 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1126 validity or application in connection with the performance of the terms and conditions of this
1127 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1128 terms and conditions of this Contract unless and until relief from application of such Federal law or
1129 regulation to the implementing provision of the Contract is granted by a court of competent
1130 jurisdiction.

1131 NOTICES

1132 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1133 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area
1134 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on
1135 behalf of the United States, when mailed, postage prepaid, or delivered to the City Council of the
1136 City of Fresno, 2600 Fresno Street, Room 3065, Fresno, California 93721-3624. The designation of
1137 the addressee or the address may be changed by notice given in the same manner as provided in this
1138 Article for other notices.

1139 CONFIRMATION OF CONTRACT

1140 38. The Contractor, after the execution of this Contract, shall furnish to the Contracting
1141 Officer evidence that pursuant to the laws of the State of California the Contractor is a legally
1142 constituted entity and the contract is lawful, valid, and binding on the Contractor. This Contract shall

1143 not be binding on the United States until such evidence has been provided to the Contracting
1144 Officer's satisfaction.

1145 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1146 and year first above written.

1147 THE UNITED STATES OF AMERICA

1148 By: _____
1149 Regional Director, Mid-Pacific Region
1150 Bureau of Reclamation

1151 (SEAL)

1152 CITY OF FRESNO

1153 By: _____
1154 City Manager

1155 Attest:

1156 By: _____
1157 City Clerk

1158 Approved as to form:

1159 _____
1160 City Attorney

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EXHIBIT A

*Reserved for Contractor's
Service Area/Sphere of Influence Map*

Contract No. 14-06-200-8901-LTR1

EXHIBIT B

Reserved for Water Rates Spreadsheet