

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
FRESNO COUNTY WATERWORKS DISTRICT NO. 18  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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8 PROVIDING FOR PROJECT WATER SERVICE FROM  
9 FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, is entered into  
12 pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary thereto,  
13 including but not limited to: the Acts of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, June 21, 1963 (77  
15 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, Title  
16 XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title X, Subtitle A, of the Act of March  
17 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin River Restoration Settlement Act  
18 hereinafter referred to as SJRRSA, all collectively hereinafter referred to as Federal Reclamation law,  
19 between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States and  
20 FRESNO COUNTY WATERWORKS DISTRICT NO. 18, hereinafter referred to as the Contractor,  
21 a public agency of the State of California, duly organized, existing, and acting pursuant to the laws  
22 thereof, with its principal place of business in California;

23 WITNESSETH, That

24 EXPLANATORY RECITALS

25 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
26 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

[2<sup>nd</sup>] 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

[3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number 14-06-200-5904, as amended, which established terms for the delivery to the Contractor of Project Water from the Friant Division from August 17, 1956 through February 28, 1997; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States have, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s), identified as Contract Number (s) 14-06-200-5904-IR1, IR2, IR3, and IR4, which provided for the continued water service to Contractor from March 1, 1997 through February 28, 2001, and subsequently entered into a long-term renewal contract identified as Contract Number 14-06-200-5904- LTR1, which provided for continued water service to Contractor through February 28, 2026, which was amended January 18, 2007, and is herein referred to as the "Existing Contract"; and

[5<sup>th</sup>] 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 Resource 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 for other specified Project purposes; and

[6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory Recital of this Contract; and

[7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council, et al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant Division entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”), which settlement prescribes a Restoration Goal and a Water Management Goal and which Settlement was subsequently confirmed and implemented through the SJRRSA; and

[8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing Contract to a repayment contract under clause (1) in the proviso to the first sentence of subsection (c) (hereinafter referred to as subsection (c)(1)) of Section 9 of the Act of August 4, 1939, no later than December 31, 2010, and further directs that such contract shall require the repayment of the Contractors’ allocated share of construction costs in lump sum payment by January 31, 2014, which funds will in turn be made available for implementation of the Settlement and SJRRSA, and which costs otherwise would have been payable through annual water rates, with full repayment by 2030; and

[9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with implementation of actions required under the Settlement and the SJRRSA and provide the Contractor the benefits provided in Section 10010 of the SJRRSA; and

[10<sup>th</sup>] WHEREAS, Section 2 of the Act of June 21, 1963 (1963 Act) provides that if the other party to any long-term contract for municipal, domestic, or industrial water supply so requests, The Secretary shall provide in any contract entered into under subsection (c)(1) of Section 9 of the Act of August 4, 1939 (repayment contract) that such party to the contract “shall, during the term of the contract and any renewal thereof and subject to fulfillment of all obligations thereunder, have a first right for the purposes stated in the contract (to which the holders of any other type of contract for municipal, domestic, or industrial water supply shall be subordinate) to a stated share or quantity of the project’s water supply available for municipal, domestic, or industrial use”; and

[11<sup>th</sup>] Omitted; and

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

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

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

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

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

[17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a need exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to meet flood control criteria (currently referred to as "uncontrolled season"), taking into consideration, among other things, anticipated upstream reservoir operations and the most probable forecast of snowmelt and runoff projections for the upper San Joaquin River, Friant Division Project Contractors utilize a portion of their undependable Class 2 Water in their service areas to, among other things, assist in the management and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for restoration of the San Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable and beneficial use of the water; and

[18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in the Explanatory Recital immediately above; and

[19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract.

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

DEFINITIONS

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

(a) "Additional Capital Obligation" shall mean any additional construction costs or other capitalized costs incurred after the effective date of this Contract or not reflected in the Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any amounts payable by Contractor as determined through the final adjustment described and required by Section 10010(b) of the SJRRSA;

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

(c) "Charges" shall mean the payments required by Federal Reclamation law in addition to the Rates specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract and consistent with the SJRRSA;

(d) "Class 1 Water" shall mean that supply of water stored in or flowing through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 12, and 13 of

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

135 (e) "Class 2 Water" shall mean that supply of water which can be made available  
136 subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this Contract for  
137 delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of  
138 Class 1 Water. Because of its uncertainty as to availability and time of occurrence, such water will  
139 be undependable in character and will be furnished only if, as, and when it can be made available as  
140 determined by the Contracting Officer;

141 (f) "Condition of Shortage" shall mean a condition respecting the Project during  
142 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract  
143 Total;

144 (g) "Contracting Officer" shall mean the Secretary of the Interior's duly  
145 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or  
146 regulation;

147 (h) "Contract Total" shall mean the maximum amount of Class 1 Water plus the  
148 maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract and is the  
149 stated share or quantity of the Project's available water supply to which the Contractor shall have a  
150 first right, in accordance with the 1963 Act and the terms of this Contract, upon the Contractor's  
151 complete payment of the Repayment Obligation, notwithstanding any Additional Capital Obligation  
152 that may later be established;

153 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
154 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,

which may be modified from time to time in accordance with Article 36 of this Contract without amendment of this Contract;

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

(k) Omitted;

(l) Omitted;

(m) “Existing Capital Obligation” shall mean the remaining amount of construction costs of the Contractor identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as adjusted to reflect payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A) of the SJRRSA. The Contracting Officer has computed the Existing Capital Obligation in a manner consistent with the SJRRSA and such amount is set forth in Exhibits “C-1”, incorporated herein by reference;

(n) “Financing Costs”, for purposes of computing the reduction of certain charges as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference between the net present value of the Existing Capital Obligation discounted using the full Treasury rate and the Existing Capital Obligation discounted using one-half the Treasury Rate, as set forth in Section 10010(d)(3) of the SJRRA;

(o) Omitted;

(p) Omitted;

(q) Omitted;

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

(s) Omitted;

(t) "Long Term Historic Average" shall mean the average of the final forecast of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) Explanatory Recitals of this Contract;

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

(v) Omitted;

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

(x) "Operating Non-Federal Entity" shall mean a Non-Federal entity, which has the obligation to operate and maintain all or a portion of the Friant Division Facilities pursuant to an agreement with the United States and which may have funding obligations with respect thereto;

(y) Omitted;

(z) “Project” shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(aa) “Project Contractors” shall mean all parties who have a long-term water service contract or repayment contract for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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

(cc) “Rates” shall mean the payments for O&M costs as determined annually by the Contracting Officer in accordance with the then-existing applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 7 of this Contract and illustrated in Exhibit “B”, attached hereto;

(dd) “Recovered Water Account” shall mean the program, as defined in the Settlement, to make water available to all of the Friant Division Project Contractors who provide water to meet interim flows or restoration flows for the purpose of reducing or avoiding the impact of the interim flows and restoration flows on such contractors;

(ee) “Repayment Obligation”, as provided in subdivision (a)(2)(A) of Article 7 of this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by one-half of the Treasury rate and computed consistent with the provisions of Section 10010(3)(A) of the SJRRSA. The Contractor has fully paid the capital obligation as assigned in the January 25, 2007 ratebooks with adjustments for payments.

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

(gg) “Settlement” shall mean the Stipulation of Settlement dated September 13, 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued by the Court pursuant to the terms and conditions of the Settlement in Natural Resources Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

(hh) Omitted;

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

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

(kk) “Water Management Goal” shall mean the goal of the Settlement to reduce or avoid adverse water supply impacts to all the Friant Division Project Contractors that may result from the interim flows and restoration flows provided for in the Settlement;

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

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

EFFECTIVE DATE OF CONTRACT

2. (a) This Contract shall become effective on the date first hereinabove written and shall continue so long as the Contractor is making the annual payments required herein and paying any other amounts owing under this Contract and applicable law, unless it is terminated by the Contracting Officer by reason of a material uncured breach by the Contractor; Provided, That the Contracting Officer shall not seek to terminate this Contract by reason of an asserted material uncured breach by the Contractor unless it has first provided at least sixty (60) days written notice of the asserted breach to the Contractor and the Contractor has failed to cure such breach (or to diligently commence curative actions satisfactory to the Contracting Officer for a breach that cannot be fully cured within sixty (60) days) within the sixty (60)-day notice period; Provided further, That this Contract may be terminated at any time by mutual consent of the parties hereto.

(b) The Contractor does not have a Repayment Obligation, and notwithstanding any Additional Capital Obligation that may later be established, the tiered pricing component and full cost pricing provisions of Federal Reclamation law shall no longer be applicable to the Contractor.

(c) This Contract supersedes in its entirety and is intended to replace in full the Existing Contract; Provided, That if this Contract is terminated or determined to be invalid or unenforceable for any reason other than a material uncured breach of this Contract by the Contractor, the Existing Contract shall not be superseded and shall be in full force and effect.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make available for delivery

to the Contractor from the Project 150 acre-feet of Class 1 Water for M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) The Contractor does not have a Repayment Obligation, and notwithstanding any Additional Capital Obligation that may later be established, the Contractor shall have a first right to a stated share or quantity of the Project's water supply available for M&I uses in accordance with the 1963 Act and the terms of this Contract which right shall not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The quantity of water made available for delivery in any given Year shall remain subject to the terms and conditions of subdivision (a) of this Article of this Contract.

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

(d) The Contractor shall make reasonable and beneficial use of all Project Water or other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with applicable Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted pursuant to Article 27 of this Contract; Provided further, That such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation

law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor, through this Contract, shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of the consultation regarding the execution of the Existing Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, as well as the requirements of any other biological opinions applicable to Project Water delivery under this Contract, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of 44 years of diversions for M&I purposes of the quantities of water provided in subdivisions (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. The Contractor shall comply with the limitations or requirements imposed by environmental documentation applicable to the Contractor and within its legal authority to implement regarding specific activities. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article of this Contract.

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

305 make a determination whether Project Water, or other water available to the Project, can be made  
306 available to the Contractor in addition to the Contract Total in this Article of this Contract during the  
307 Year without adversely impacting the Project or other Project Contractors and consistent with the  
308 Secretary's legal obligations. At the request of the Contractor, the Contracting Officer will consult  
309 with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of this  
310 Article of this Contract, if the Contracting Officer determines that Project Water, or other water  
311 available to the Project, can be made available to the Contractor, the Contracting Officer will  
312 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
313 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of  
314 taking such water to determine the most equitable and efficient allocation of such water. If the  
315 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
316 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,  
317 and policies.

318 (g) The Contractor may request permission to reschedule for use during the  
319 subsequent Year some or all of the Water Made Available to the Contractor during the current Year  
320 referred to as "carryover." The Contractor may request permission to use during the current Year a  
321 quantity of Project Water which may be made available by the United States to the Contractor during  
322 the subsequent Year referred to as "pre-use." The Contracting Officer's written approval may permit  
323 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

324 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
325 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall  
326 not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract.

Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

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

(j) The Contracting Officer shall make reasonable efforts to protect the water rights and other rights described in the fifth (5th) Explanatory Recital of this Contract and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the water rights and other rights described in the fifth (5th) Explanatory Recital of this Contract; Provided however, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding. Provided further, that in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

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

such additional diversions shall be charged first against the Contractor's remaining Class 2 Water supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to account for such additional diversions, such additional diversions shall be charged against the Contractor's remaining Class 1 Water supply available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year are not sufficient to account for such additional diversions, such additional diversions shall be charged first against the Contractor's available Class 2 Water supply and then against the Contractor's available Class 1 Water supply, both for the following Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of this Contract.

(l) If the Contracting Officer determines there is a Project Water supply available at Friant Dam as the result of an unusually large water supply not otherwise storable for Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be made available to the Contractor and others under Section 215 of the Act of October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a temporary contract with the United States not to exceed one (1) year for the delivery of such water or as otherwise provided for in Federal Reclamation law and associated regulations. Such water may be identified by the Contractor either (i) as additional water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make water determined to be available pursuant to this subsection according to the following priorities: first, to contractors for Class 1 Water and/or Class 2 Water

371 within the Friant Division; second, to contractors in the Cross Valley Division of the Project. The  
372 Contracting Officer will consider requests from other parties for Section 215 Water for use within the  
373 area identified as the Friant Division service area in the environmental assessment developed in  
374 connection with the execution of the Existing Contract.

375 (m) Nothing in this Contract, nor any action or inaction of the Contractor or  
376 Contracting Officer in connection with the implementation of this Contract, is intended to override,  
377 modify, supersede or otherwise interfere with any term or condition of the water rights and other  
378 rights referred in the fifth (5th) Explanatory Recital of this Contract.

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

390 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph 16 of  
391 the Settlement, the Contracting Officer is required to develop and implement a plan for recirculation,  
392 recapture, reuse, exchange or transfer of water released for restoration flows or interim flows, as

those terms are defined in the Settlement, to reduce or avoid impacts to water deliveries caused by said restoration flows or interim flows. Water developed through such activities may be made available (i) to the Contractor without the need of an additional contract, and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the Contractor and the Contracting Officer that are consistent with the Water Management Goal.

TIME FOR DELIVERY OF WATER

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

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

414 (c) The Contractor shall not schedule Project Water in excess of the quantity of  
415 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's  
416 Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract or bank pursuant  
417 to subdivision (d) of Article 3 of this Contract during any Year.

418 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
419 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial  
420 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written  
421 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to  
422 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total  
423 amount of water requested in that schedule or revision does not exceed the quantities announced by  
424 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3 of this Contract, and  
425 the Contracting Officer determines that there will be sufficient capacity available in the appropriate  
426 Friant Division Facilities to deliver the water in accordance with that schedule; Provided further,  
427 That the Contractor shall not schedule the delivery of any water during any period as to which the  
428 Contractor is notified by the Contracting Officer or Operating Non-Federal Entity that Project  
429 facilities required to make deliveries to the Contractor will not be in operation because of scheduled  
430 O&M.

431 (e) The Contractor may, during the period from and including November 1 of each  
432 Year through and including the last day of February of that Year, request delivery of any amount of  
433 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following  
434 Year. The Contractor may, during the period from and including January 1 of each Year (or such  
435 earlier date as may be determined by the Contracting Officer) through and including the last day of

February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available to it during the following Year. Such water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use water in accordance with a schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water is available and to the extent such deliveries will not interfere with the delivery of Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project facilities. The quantities of pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of water that the Contracting Officer would otherwise be obligated to make available to the Contractor during the following Year; Provided, That the quantity of pre-use water to be deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following Year shall be specified by the Contractor at the time the pre-use water is requested or as revised in its first schedule for the following Year submitted in accordance with subdivision (b) of this Article of this Contract, based on the availability of the following Year water supplies as determined by the Contracting Officer.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

Contractor.

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

(c) The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the Contracting Officer. The Contractor shall deliver Project Water in accordance with Federal Reclamation law.

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

(e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United States, its

officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies) from which the damage claim arose.

#### MEASUREMENT OF WATER WITHIN THE SERVICE AREA

6. (a) The Contractor has established a measurement program satisfactory to the Contracting Officer; all surface water delivered for M&I purposes within the Contractor's Service Area is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the

Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 27 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law.

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

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

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

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

RATES, METHOD OF PAYMENT FOR WATER,  
AND ACCELERATED REPAYMENT OF FACILITIES

7. (a) The Contractor's cost obligations for all Delivered Water shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the SJRRSA, and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for the Delivered Water at Rates and Charges determined in accordance with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable costs included in the O&M Component of the Rate and amounts established to recover other charges and deficits, other than the construction costs. The Rates for

O&M costs and Charges shall be adjusted, as appropriate, in accordance with the provisions of the SJRRSA.

(2) Omitted.

(A) Omitted.

(B) Project construction costs or other capitalized costs attributable

to capital additions to the Project incurred after the effective date of this Contract or that are not reflected in the schedule referenced in Exhibit "C-1" and properly assignable to the Contractor, shall be repaid as prescribed by the SJRRSA without interest except as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I portion of unpaid Project construction costs or other capitalized cost assigned to the Contractor until such costs are paid.

Increases or decreases in Project construction costs or other capitalized costs assigned to the Contractor caused solely by annual adjustment of Project construction costs or other capitalized costs assigned to each CVP contractor by the Secretary shall not be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B), but will be considered under subdivision (b) of this Article. A separate repayment agreement shall be established by the Contractor and the Contracting Officer to accomplish repayment of all additional Project construction costs or other capitalized costs assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the following:

(1) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are less than \$5,000,000, then the portion of such costs properly assignable to the Contractor shall be repaid in not more than five (5) years after notification of the allocation. This amount is the result of a collective annual allocation of Project construction costs to

the contractors exercising contract conversions; Provided, That the reference to the amount of \$5,000,000 shall not be a precedent in any other context.

(2) If the collective annual Project construction costs or other capitalized costs that are incurred after the effective date of this Contract and properly assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law. This amount is the result of a collective annual allocation of Project construction costs to the contractors exercising contract conversions; Provided, That the reference to the amount of \$5,000,000 shall not be a precedent in any other context.

(b) Consistent with Section 10010(b) of the SJRRSA, following a final cost allocation by the Secretary upon completion of the construction of the Central Valley Project, the amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any reallocation of Project construction costs or other capitalized costs assigned to the Contractor that may have occurred between the determination of Contractor's Existing Capital Obligation and the final cost allocation. In the event that the final cost allocation, as determined by the Secretary, indicates that the costs properly assignable to the Contractor, as determined by the Contracting Officer, are greater than the Existing Capital Obligation and other amounts of Project construction costs or other capitalized costs paid by the Contractor, then the Contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be no less than one (1) year and no more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the parties. In the event that the final cost allocation, as determined by the Secretary, indicates that the costs properly assignable to the Contractor, as

determined by the Contracting Officer, are less than the Existing Capital Obligation and other amounts of Project construction costs or other capitalized costs paid by the Contractor, then the Contracting Officer shall credit such overpayment as an offset against any outstanding or future obligation of the Contractor, consistent with the SJRRSA. This Contract shall be implemented in a manner consistent with Section 10010(f) of the SJRRSA.

(c) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30 of the following Calendar Year, and such notification shall revise Exhibit "B". Charges shall be subject to reduction consistent with the SJRRSA based upon the average annual delivery amount agreed to by the Contracting Officer and the Contractor.

(1) Notwithstanding any Additional Capital Obligation that may later be established, for the years 2020 through 2039 inclusive, the Contractor has no amount due to satisfy the Repayment Obligation. Therefore, Financing Costs are not incurred nor computed and no reduction in Charges is applicable. The Friant Surcharge shall remain fixed at \$7.00 per acre foot, as prescribed by Section 3407 of the CVPIA.

(2) Omitted.

609 (d) Prior to October 1 of each Calendar Year, the Contracting Officer shall make  
610 available to the Contractor an estimate of the Rates for Project Water for the following Year and the  
611 computations and cost allocations upon which those Rates are based. The Contractor shall be  
612 allowed not less than two (2) months to review and comment on such computations and cost  
613 allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the  
614 Contractor with the final Rates to be in effect for the upcoming Year, and such notification shall  
615 revise Exhibit "B". The O&M component of the Rate may be reduced as provided in the SJRRSA.

616 (e) At the time the Contractor submits the initial schedule for the delivery of  
617 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
618 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
619 applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the Project Water  
620 scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of the  
621 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
622 Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision  
623 (a) of this Article of this Contract, for the Water Scheduled to be delivered pursuant to this Contract  
624 during the second month immediately following. Adjustments between advance payments for Water  
625 Scheduled and payments at Rates due for Water Delivered shall be made before the end of the  
626 following month; Provided, That any revised schedule submitted by the Contractor pursuant to  
627 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract  
628 during any month shall be accompanied with appropriate advance payment, at the Rates then in  
629 effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In  
630 any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract

631 equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water  
632 shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect  
633 for such additional Project Water is made. Final adjustment between the advance payments for the  
634 Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to  
635 this Contract shall be made as soon as practicable but no later than April 30th of the following Year,  
636 or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article 3 of  
637 this Contract if such water is not delivered by the last day of February.

638 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
639 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
640 Charges then in effect, before the end of the month following the month of delivery. The payments  
641 shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the  
642 water delivery report for the subject month prepared by the Contracting Officer. Such water delivery  
643 report shall be the basis for payment of Charges by the Contractor, and shall be provided to the  
644 Contractor by the Contracting Officer (as applicable) within five (5) days after the end of the month  
645 of delivery. The water delivery report shall be deemed a bill basis for payment of Charges for Water  
646 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the  
647 adjustment of payments due to the United States for Charges for the next month. Any amount to be  
648 paid for past due payment of Charges shall be computed pursuant to Article 21 of this Contract.

649 (g) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or  
650 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
651 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;  
652 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall

653 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision  
654 (a) of this Article of this Contract.

655 (h) Payments to be made by the Contractor to the United States under this  
656 Contract may be paid from any revenues available to the Contractor.

657 (i) All revenues received by the United States from the Contractor relating to the  
658 delivery of Project Water or the delivery of non-project water through Project facilities shall be  
659 allocated and applied in accordance with Federal Reclamation law and the associated rules or  
660 regulations, the then-existing Project Ratesetting policies for M&I water and consistent with the  
661 SJRRSA.

662 (j) The Contracting Officer shall keep its accounts, pertaining to the  
663 administration of the financial terms and conditions of its long-term contracts, in accordance with  
664 applicable Federal standards so as to reflect the application of Project costs and revenues. The  
665 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a  
666 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project  
667 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer  
668 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes  
669 relating to accountings, reports, or information.

670 (k) The parties acknowledge and agree that the efficient administration of this  
671 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
672 policies, and procedures used for establishing Rates, Charges, and/or for making and allocating  
673 payments, other than those set forth in this Article of this Contract, may be in the mutual best interest  
674 of the parties, it is expressly agreed that the parties may enter into agreements to modify the

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

(l) (1) Omitted.

(2) Omitted.

(3) Omitted.

(m) Rates under the respective ratesetting policies will be established to recover only reimbursable O&M (including any deficits) costs of the Project, as those terms are used in the then-existing Project ratesetting policies, and consistent with the SJRRSA, and interest, where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

(n) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any) incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in accordance with the then-existing Central Valley Project Ratesetting Policy.

NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

8. Omitted.

RECOVERED WATER ACCOUNT

9. (a) Notwithstanding any other provisions of this Contract, water delivered to the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the Settlement and

affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be administered at a priority for delivery lower than Class 2 Water and higher than Section 215 Water.

(b) The manner in which the Recovered Water Account will be administered will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA, and Paragraph 16 of the Settlement.

SALES, TRANSFERS, AND EXCHANGES OF WATER

10. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivisions (b) and (c) of this Article of this Contract. No such Project Water sales, transfers, or exchanges shall be approved, where approval is required, absent compliance with appropriate environmental documentation including but not limited to the National Environmental Policy Act and the Endangered Species Act. Such environmental documentation must include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed Project Water sales, transfers and exchanges on both the transferor/exchanger and transferee/exchange recipient.

(b) In order to facilitate efficient water management by means of Project Water sales, transfers, or exchanges of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water

transfer program, the Contracting Officer has prepared, as appropriate, necessary environmental documentation including, but not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual Project Water sales, transfers, or exchanges among Contractors within the same geographical area and the Contracting Officer has determined that such Project Water sales, transfers, and exchanges comply with applicable law.

(c) Project Water sales, transfers, and exchanges analyzed in the environmental documentation referenced in subdivision (b) of this Article of this Contract, shall be conducted with advance notice to the Contracting Officer and the Contracting Officer's written acknowledgement of the transaction, but shall not require prior written approval by the Contracting Officer.

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

(e) The environmental documentation and the Contracting Officer's compliance determination for transactions described in subdivision (b) of this Article of this Contract shall be

741 reviewed every five (5) years and updated, as necessary, prior to the expiration of the then-existing  
742 five (5) year period. All subsequent environmental documentation shall include an alternative to  
743 evaluate not less than the quantity of Project Water historically sold, transferred, or exchanged within  
744 the same geographical area.

745 (f) Consistent with Section 10010(e)(l) of the SJRRSA, any agreement providing  
746 for sale, transfer, or exchange of Project Water that is not used for interim flows or restoration flows  
747 pursuant to Paragraphs 13 and 15 of the Settlement, shall be deemed to satisfy the requirements of  
748 CVPIA section 3405(a)(1)(A) and (I); Provided, That such sales, transfers, or exchanges comply with  
749 sub-division (f)(1) and (f)(2) below.

750 (1) Project Water sales, transfers, and exchanges conducted under the  
751 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting Officer's  
752 concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the Contractor  
753 shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1) year, provide  
754 ninety (90) days written advance notification to the Contracting Officer and similarly thirty (30) days  
755 written advance notification of any Project Water sale, transfer, or exchange with a term of less than  
756 one (1) year. The Contracting Officer shall promptly make such notice publicly available.

757 (2) The Contractor's thirty (30) days or ninety (90) days advance written  
758 notification pursuant to subdivision (f)(1) of this Article of this Contract shall explain how the  
759 proposed Project Water sales, transfers, or exchanges are intended to reduce, avoid, or mitigate  
760 impacts to Project Water deliveries caused by interim or restoration flows or is otherwise intended to  
761 facilitate the Water Management Goal as described in the SJRRSA. The Contracting Officer shall  
762 promptly make such notice publicly available.

763                   (3)     In addition, the Contracting Officer shall, at least annually, make  
764     available publicly a compilation of the number of Project Water sales, transfers, and exchange  
765     agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this  
766     Contract.

767                   (4)     Project Water sold, transferred, or exchanged under an agreement that  
768     meets the terms of subdivisions (f)(1) and (f)(2) of this Article of this Contract shall not be counted as  
769     a replacement or an offset for purposes of determining reductions to Project Water deliveries to any  
770     Friant Division Project Contractor except as provided in Paragraph 16(b) of the Settlement.

771                   (g)     Notwithstanding any Additional Capital Obligation that may later be  
772     established, in the case of a sale or transfer of Irrigation Water to another contractor which is  
773     otherwise subject to the acreage limitations, reporting, and full cost pricing provisions of the RRA,  
774     such sold or transferred Irrigation Water shall not be subject to such RRA provisions, however, in the  
775     case of a sale or transfer of Irrigation Water to the Contractor from another contractor which is  
776     subject to RRA provisions, such RRA provisions shall apply to delivery of such water.

777                   APPLICATION OF PAYMENTS AND ADJUSTMENTS

778                   11.     (a)     The amount of any overpayment by the Contractor of the Contractor's O&M,  
779     Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
780     the Contractor arising out of this Contract then due and payable. Overpayments of more than One  
781     Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any  
782     amount of such overpayment, at the option of the Contractor, may be credited against amounts to  
783     become due to the United States by the Contractor. With respect to overpayment, such refund or  
784     adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have

the right to the use of any of the Project Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 26 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 26 of this Contract.

TEMPORARY REDUCTIONS—RETURN FLOWS

12. (a) The Contracting Officer shall make all reasonable efforts to optimize delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project; (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project.

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

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

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

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations, including but not limited to obligations pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of this Contract,

no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

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

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

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

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

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

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

(f) In the event that in any Year there is made available to the Contractor, by reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts already paid to the

Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in accordance with Article 11 of this Contract.

UNAVOIDABLE GROUNDWATER PERCOLATION

14. Omitted.

ACREAGE LIMITATION

15. Omitted.

RULES, REGULATIONS, AND DETERMINATIONS

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

(b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with its provisions, the laws of the United States and the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

(c) The terms of this Contract are subject to the Settlement and the SJRRSA. Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of the Settlement and the SJRRSA.

PROTECTION OF WATER AND AIR QUALITY

17. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through

the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

(c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

18. (a) Omitted.

(b) Notwithstanding any Additional Capital Obligation that may later be established, water or water rights now owned or hereafter acquired by the Contractor other than from the United States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor without the payment of fees to the United States and without application of Federal Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water Delivered to Contractor pursuant to this Contract.

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

(1) The Contractor may introduce non-project water into Project facilities and deliver said water to lands within the Contractor's Service Area subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by

the Contracting Officer. In addition, if electrical power is required to pump non-project water, the Contractor shall be responsible for obtaining the necessary power and paying the necessary charges therefor.

(2) Delivery of such non-project water in and through Project facilities shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project Contractors; (iv) interfere with the physical maintenance of the Project facilities; or (v) result in the United States incurring any liability or unreimbursed costs or expenses thereby.

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

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

(5) After Project purposes are met, as determined by the Contracting Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities declared to be available by the Contracting Officer for conveyance and transportation of

non-project water prior to any such remaining capacity being made available to non-project contractors.

(d) Non-project water may be stored, conveyed and/or diverted through Friant Division Facilities, subject to the prior completion of appropriate environmental documentation and approval of the Contracting Officer without execution of a separate contract, consistent with subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be appropriate by the Contracting Officer.

#### OPINIONS AND DETERMINATIONS

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

#### COORDINATION AND COOPERATION

20. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include,

but not limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

(b) It is the intent of the Secretary to improve water supply reliability. To carry out this intent:

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

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

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

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

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

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

#### CHARGES FOR DELINQUENT PAYMENTS

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

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

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

#### EQUAL EMPLOYMENT OPPORTUNITY

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

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or

transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

PRIVACY ACT COMPLIANCE

25. Omitted.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

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

1108 this Article of this Contract have not yet been determined by the Contracting Officer to meet such  
1109 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
1110 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
1111 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
1112 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
1113 program in accordance with the time schedules therein.

1114 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1115 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor  
1116 shall implement the Best Management Practices identified by the time frames issued by the  
1117 California Urban Water Conservation Council for such M&I Water unless any such practice is  
1118 determined by the Contracting Officer to be inappropriate for the Contractor.

1119 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1120 its implementation of the water conservation plan on the reporting dates specified in the then-existing  
1121 conservation and efficiency criteria established under Federal law.

1122 (d) At five (5) -year intervals, the Contractor shall revise its water conservation  
1123 plan to reflect the then-existing conservation and efficiency criteria for evaluating water conservation  
1124 plans established under Federal law and submit such revised water management plan to the  
1125 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the  
1126 water conservation plan meets Reclamation's then-existing conservation and efficiency criteria for  
1127 evaluating water conservation plans established under Federal law.

1128 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1129 be described in the Contractor's water conservation plan.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

28. Except as specifically provided in Article 18 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.

OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

29. (a) If 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, is transferred to any responsible 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.

(b) If the Contracting Officer notifies the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to any responsible Operating Non-Federal Entity, 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 of this Contract, all rates, charges or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M of the portion of the Project facilities operated and

maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share of the operation, maintenance and replacement costs for physical works and appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates and Charges, except to the extent the Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article of this Contract.

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

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the O & M costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)

specified in the revised Exhibit “B” directly to the United States in compliance with Article 7 of this Contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

BOOKS, RECORDS, AND REPORTS

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

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

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

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

SEVERABILITY

33. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified

in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

#### RESOLUTION OF DISPUTES

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

#### OFFICIALS NOT TO BENEFIT

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

#### CHANGES IN CONTRACTOR'S SERVICE AREA

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

(b) Within thirty (30) days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the

proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 26 of this Contract.

#### FEDERAL LAWS

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

#### EMERGENCY RESERVE FUND

38. Omitted.

#### MEDIUM FOR TRANSMITTING PAYMENT

39. (a) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) Upon execution of the contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

NOTICES

40. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors, Fresno County Waterworks No. 18, Post Office Box 92, Friant, California 93626. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article of this Contract for other notices.

CONFIRMATION OF CONTRACT

41. The Contractor, after the execution of this Contract, shall promptly provide to the Contracting Officer a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

CONTRACT DRAFTING CONSIDERATIONS

42. Articles 1 through 7, Articles 9 through 13, subdivision (c) of Article 16, Articles 18 through 20, subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31, subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and Article 37 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated Articles.

1294                IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1295                year first above written.

THE UNITED STATES OF AMERICA

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

FRESNO COUNTY WATERWORKS NO. 18

By: \_\_\_\_\_  
President, Board of Directors

Attest:

By: \_\_\_\_\_  
Secretary

**EXHIBIT A**

**Map or Description of Service Area**

Map or description of service area is pending final form.

**EXHIBIT B**  
**FRESNO COUNTY WATERWORKS DISTRICT NO. 18**  
**2010 Rates and Charges**  
**(Per Acre-Foot)**

	M&I Water
<b>COST-OF-SERVICE (COS) RATES</b>	
Capital Component <sup>1</sup>	
O&M Component	
Water Marketing	
Storage	
<b>TOTAL COS RATES</b> ( <i>Tier 1 Rate</i> ) <sup>2</sup>	
<b>M&amp;I FULL COST RATE</b> <sup>3</sup>	
<b>TIERED PRICING COMPONENTS</b> ( <i>In Addition to Total COS Rate Above</i> )	
<b>M&amp;I</b>	
<i>Tier 2 Rate : &gt;80% &lt;=90% of Contract Total [M&amp;I Full Cost Rate - M&amp;I COS Rate]/2</i>	
<i>Tier 3 Rate : &gt;90% of Contract Total [M&amp;I Full Cost Rate - M&amp;I COS Rate] (Amount to Be Added to Tier 1 Rate)</i>	
<b>CHARGES AND ASSESSMENTS</b> ( <i>Payments in addition to Rates</i> )	
P.L. 102-575 Surcharges <sup>4</sup>	
Restoration Fund Payments [Section 3407(d)(2)(A)]	
Friant Surcharge [Section 3406(c)(1)]	
P.L. 106-377 Assessment (Trinity Public Utilities District) <sup>5</sup> [Appendix B, Section 203]	

**EXPLANATORY NOTES**

- 1 Contractor has satisfied their obligation of allocated capital costs as of 9/30/08.
- 2 Cost of service rate is the greatest of the CVP minimum rate of \$15.00 per acre-foot, the rate equal to the O&M rate plus deficit rate or the COS rate.
- 3 Full Cost rate is the greatest of the CVP minimum rate of \$15.00 per acre foot, the rate equal to the O&M rate plus deficit rate, or the full cost rate.
- 4 The surcharges were determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are determined on a fiscal year basis (10/1-9/30).
- 5 The Trinity Public Utilities District Assessment is applicable to each acre-foot of water delivered from 3/1/2010-2/28/2011 and is adjusted annually.

**Additional details of the rate components are available on the Internet at**

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

**Exhibit C-1**

## Repayment Obligation - Lump Sum Option

Friant Contractor:

Fresno County WW #18**San Joaquin River Restoration Act****Existing Capital Obligation (Article 1(m))**

Irrigation portion of Existing Capital Obligation \$ -

20yr CMT as of : 10/01/10

Discount Rate (1/2 20yr CMT)

**Discounted Irrigation Capital** \$ -Non-Discounted M&I Portion of  
Existing Capital Obligation**Repayment Obligation - Lump Sum Option (per Article  
7(a)(2)(A) \$ -**

Irrigation Portion of

**Allocated Capital Cost**

Year	<b>Beginning</b>		<b>Straight Line</b>	
	<b>Balance</b>		<b>Repayment</b>	
2011	\$	-	\$	-
2012	\$	-	\$	-
2013	\$	-	\$	-
2014	\$	-	\$	-
2015	\$	-	\$	-
2016	\$	-	\$	-
2017	\$	-	\$	-
2018	\$	-	\$	-
2019	\$	-	\$	-
2020	\$	-	\$	-
2021	\$	-	\$	-
2022	\$	-	\$	-
2023	\$	-	\$	-
2024	\$	-	\$	-
2025	\$	-	\$	-
2026	\$	-	\$	-
2027	\$	-	\$	-
2028	\$	-	\$	-
2029	\$	-	\$	-
2030	\$	-	\$	-
			\$	-

**Exhibit D**  
Friant Surcharge Reduction Calculation

**Friant Contractor:**  
**San Joaquin River Restoration Act**

Fresno County Waterworks No. 18

**Average Annual Delivery - Forecasted for 2020-2039\***

<b>Total Projected deliveries (over 20 yr period)**</b>	<b>-</b>
Article 7(c)	

**20 yr CMT as of 10/1/2010**

1/2 20 yr CMT as of 10/1/2010

<b>Irrigation Portion of Existing Capital Obligation</b>	<b>\$0</b>
<b>NPV at Half CMT (Repayment Obligation)</b>	<b>\$0</b>
<b>NPV at Full CMT</b>	<b>\$0</b>

<b>Financing Cost Offset: <sup>®</sup> (Article 7(c)(1))</b>	<b>\$0</b>
NPV of FS Reduction	

<b>Difference between Financing Cost Offset and NPV of FS Reduction</b>	<b>\$0</b>
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<b>2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2))***</b>	<b>\$0</b>
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CVPIA Friant							
Irrigation portion of Allocated Capital Cost			CVPIA Friant	Reduction in Friant Surcharge			
			Surcharges	Friant	Friant	Projected	2020 Other
				Surcharge	Surcharge	Total Annual	Obligation Credit
				Reduction per	due per A/F	Credit	Calculation (Art.
Year	Beginning Balance	Straight Line Repayment	Surcharge per Acre-	Article 7(c)(1)	7( after Reduction		7(c)(2))
			Foot Before Reduction				
2011	\$ -	\$ -					\$ -
2012	\$ -	\$ -					\$ -
2013	\$ -	\$ -					\$ -
2014	\$ -	\$ -					\$ -
2015	\$ -	\$ -					\$ -
2016	\$ -	\$ -					\$ -
2017	\$ -	\$ -					\$ -
2018	\$ -	\$ -					\$ -
2019	\$ -	\$ -					\$ -
2020	\$ -	\$ -					\$ -
2021	\$ -	\$ -					
2022	\$ -	\$ -					
2023	\$ -	\$ -					
2024	\$ -	\$ -					
2025	\$ -	\$ -					
2026	\$ -	\$ -					
2027	\$ -	\$ -					
2028	\$ -	\$ -					
2029	\$ -	\$ -					
2030	\$ -	\$ -					
2031							
2032							
2033							
2034							
2035							
2036							
2037							
2038							
2039							
	\$ -	\$ -					

## Exhibit D

### Friant Surcharge Reduction Calculation

#### Footnotes

\* Average annual delivery forecast indicated above is a mutually agreed upon estimate of deliveries during the period 2020-2039 for purposes of calculating the Friant Surcharge reduction and related credits only.

\*\* This figure represents the total cumulative deliveries the reduced surcharge is applicable to, but not beyond 2039. If cumulative actual deliveries exceed this amount prior to 2039, the full Friant Surcharge is applicable to deliveries in excess of this amount.

\*\*\* The difference represents the amount of financing costs that are not offset through the reduced Friant Surcharge computed on this schedule. Pursuant to Section 7(c)(2), this amount shall offset the Contractor's other outstanding or future obligations. After 2020, the contractor's other obligations shall be reduced in the following order to fully offset this amount: 1) Payments or prepayments due for O&M expenses and, to the extent applicable, 2) Additional Capital Obligation.

@ Amount of reduction in Friant Surcharge is computed using FPV of Financing Costs adjusted to Yr 2020. Annual Friant Surcharge reduction to fully offset Financing costs is computed and presented on per a/f basis. Friant surcharge may be reduced up to \$3 per a/f.

#### Friant Surcharge (FS) Reduction Calculations

FV of Total Financing Cost for Offset	\$	-
Annual Credit Target	\$	-
FS Reduction w/o limit		
FS Reduction limit	\$	(3.00)