

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
KAWEAH DELTA WATER CONSERVATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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2 DEPARTMENT OF THE INTERIOR  
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8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM 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 Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
16 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title X,  
17 Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin River  
18 Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter referred to  
19 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to  
20 as the United States and KAWEAH DELTA WATER CONSERVATION DISTRICT, hereinafter  
21 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and  
22 acting pursuant to the laws 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, together with Ivanhoe Irrigation District, entered into Contract Number I75r-1809-LTR1A which established terms for the assignment of 1,200 acre-feet of Class 1 Water and 7,400 acre-feet of Class 2 Water from Ivanhoe Irrigation District, delivered to Ivanhoe Irrigation District under its Contract No. I75r-1809-LTR1 (“Existing Contract”), to the Contractor for delivery of Project Water from the Friant Division from March 1, 2010 through February 28, 2026, and is herein referred to as the “Assignment Contract”; and

[4<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

48 [5th] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project  
49 Water developed through the exercise of the rights described in the fourth (<sup>th</sup>) Explanatory Recital of  
50 this Contract; and

51 [6th] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council, et  
52 al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant Division  
53 entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”), which  
54 settlement prescribes a Restoration Goal and a Water Management Goal and which Settlement was  
55 subsequently confirmed and implemented through the SJRRSA; and

56 [7th] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing  
57 Contract to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, no  
58 later than December 31, 2010, and further directs that such contract shall require the accelerated  
59 repayment of the Contractors’ allocated share of construction costs, either as a lump sum payment by  
60 January 31, 2011 or in annual installments by January 31, 2014, which funds will in turn be made  
61 available for implementation of the Settlement and SJRRSA, and which costs otherwise would have  
62 been payable through annual water rates, with full repayment by 2030; and

63 [8th] WHEREAS, such repayment of costs will assist the United States with  
64 implementation of actions required under the Settlement and the SJRRSA and provide the Contractor  
65 the benefits provided in Section 10010 of the SJRRSA; and

66 [9th] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act) directs  
67 the Secretary to provide that the other party to any contract entered into pursuant to subsection (d) of  
68 Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to subsection (e) of Section 9

of the Act of August 4, 1939 (water service contract) shall “have the first right (to which the rights of the holders of any other type of irrigation water contract shall be subordinate) “to a stated share or quantity of the project’s available water supply for beneficial use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right to such share or quantity upon completion of payment of the amount assigned for ultimate return” by the contractor subject to fulfillment of all obligations under the contract; and [CONTRACTOR SPECIFIC – NOT INCLUDED IN M&I ONLY]

[10<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the Contractor the permanent right described in the ninth (9<sup>th</sup>) Explanatory Recital; [CONTRACTOR SPECIFIC – NOT INCLUDED IN M&I ONLY]

[11<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

[12<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

[13<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

[14<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

[15<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

[16<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

[17<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

[18<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Assignment 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 and Tiered Pricing Components 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 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as a dependable water supply during each Year;

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

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

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

(h) "Contract Total" shall mean the maximum amount of Class 1 Water plus the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract and is the stated share or quantity of the Project's available water supply to which the Contractor will have a permanent right in accordance with the 1956 Act and the terms of this Contract, upon the Contractor's complete payment of the Repayment Obligation, notwithstanding any Additional Capital Obligation

that may later be established, which right shall not be disturbed so long as the Contractor fulfills all of its obligations under this Contract;

(i) “Contractor's Service Area” shall mean the area to which the Contractor is 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) “Eligible Lands” shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

(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” and “C-2”, 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) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or 202(3) of the RRA, whichever is applicable;

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

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

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

(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 contract referenced in the third (3<sup>rd</sup>) Explanatory Recital 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

191 include water used for human use and purposes such as the watering of landscaping or pasture for  
192 animals (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings  
193 operated in units of less than five (5) acres unless the Contractor establishes to the satisfaction of the  
194 Contracting Officer that the use of water delivered to any such landholding is a use described in  
195 subdivision (r) of this Article of this Contract;

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

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

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

210 (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 to be paid as either a lump sum payment by January 31, 2011 or in approximately equal annual installments by January 31, 2014;

(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) “Tiered Pricing Component” shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (l)(1) of Article 7 of this Contract;

(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) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the Tiered Pricing Component as that term is utilized in this Contract, the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law, and subdivisions (k), (l), (o) through (q), (s), and (v) of Article 1, subdivisions (a)(2)(A), (l)(1), (l)(2), and (l)(3) of Article 7, Article 14, subdivision (a) of Article 18, and Article 25, all of this Contract, shall no longer be applicable to the Contractor. Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the terms of this Contract shall be as

provided in the restated contract attached hereto as Exhibit “E”, which has been prepared solely as a matter of administrative convenience. Exhibit “E” makes no substantive revisions other than those required by this subdivision of this Article of this Contract. Accordingly, upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the parties shall refer to Exhibit “E” as their entire agreement under this Contract.

(c) This Contract supersedes in its entirety and is intended to replace in full the Assignment 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 Assignment Contract shall not be superseded and shall be in full force and effect.

Notwithstanding the foregoing, the right of Ivanhoe Irrigation District to reversion as described in Paragraph 6 of the Assignment Contract is hereby expressly preserved.

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 1,200 acre-feet of Class 1 Water and 7,400 acre-feet of Class 2 Water for irrigation and 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.



293 (b) Upon complete payment of the Repayment Obligation by the Contractor, and  
294 notwithstanding any Additional Capital Obligation that may later be established, the Contractor shall  
295 have a permanent right to the Contract Total in accordance with the 1956 Act and the terms of this  
296 Contract. This right shall not be disturbed so long as the Contractor fulfills all of its obligations  
297 hereunder. The quantity of water made available for delivery in any given Year shall remain subject  
298 to the terms and conditions of subdivision (a) of this Article of this Contract.

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

301 (d) The Contractor shall make reasonable and beneficial use of all Project Water  
302 or other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater  
303 banking programs, surface water storage programs, and other similar programs utilizing Project  
304 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
305 Area which are consistent with applicable State law and result in use consistent with applicable  
306 Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are)  
307 described in the Contractor's Water Conservation Plan submitted pursuant to Article 27 of this  
308 Contract; Provided further, That such Water Conservation Plan demonstrates sufficient lawful uses  
309 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered  
310 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation  
311 law. Groundwater recharge programs, groundwater banking programs, surface water storage  
312 programs, and other similar programs utilizing Project Water or other water furnished pursuant to this  
313 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 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, including conversion of Irrigation Water to M&I Water. 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 make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total in this Article of this Contract during the Year without adversely impacting the Project or other Project Contractors and consistent with the Secretary's legal obligations. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of this

Article of this Contract, if the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

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

(h) The Contractor’s right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall 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 fourth (4<sup>th</sup>) 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 fourth (4<sup>th</sup>) 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 within the Friant Division; second, to contractors in the Cross Valley Division of the Project. The Contracting Officer will consider requests from other parties for Section 215 Water for use within the

area identified as the Friant Division service area in the environmental assessment developed in connection with the execution of the Existing Contract.

(m) Nothing in this Contract, nor any action or inaction of the Contractor or Contracting Officer in connection with the implementation of this Contract, is intended to override, modify, supersede or otherwise interfere with any term or condition of the water rights and other rights referred in the fourth (4<sup>th</sup>) Explanatory Recital of this Contract.

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

(o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for recirculation, 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.

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

443 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
444 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial  
445 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written  
446 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to  
447 the date(s) on which the requested change(s) is/are to be implemented; Provided, That the total  
448 amount of water requested in that schedule or revision does not exceed the quantities announced by  
449 the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3 of this Contract, and  
450 the Contracting Officer determines that there will be sufficient capacity available in the appropriate  
451 Friant Division Facilities to deliver the water in accordance with that schedule; Provided further,  
452 That the Contractor shall not schedule the delivery of any water during any period as to which the  
453 Contractor is notified by the Contracting Officer or Operating Non-Federal Entity that Project  
454 facilities required to make deliveries to the Contractor will not be in operation because of scheduled  
455 O&M.

456 (e) The Contractor may, during the period from and including November 1 of each  
457 Year through and including the last day of February of that Year, request delivery of any amount of  
458 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following  
459 Year. The Contractor may, during the period from and including January 1 of each Year (or such



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 in the Friant-Kern Canal 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. Until complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the Contractor shall deliver Project Water in accordance with applicable acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law and any applicable land classification provisions of the associated regulations.

(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 irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout; and water delivered for municipal and industrial purposes is measured at each municipal and industrial 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 municipal and industrial 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 agricultural turnouts and the municipal and industrial 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 the Operating Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity of Irrigation and 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) In accordance with the SJRRSA, the Contractor's allocable share of Project construction costs will be repaid pursuant to the provisions of this Contract.

(A) The amount due and payable to the United States, pursuant to the SJRRSA, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the SJRRSA and is set forth, both as a lump sum payment and as four (4) approximately equal annual installments, which amounts together with the manner in which such amounts were calculated are set forth in Exhibits "C-1" and "C-2". The

Repayment Obligation is due in lump sum by January 31, 2011 or in approximate equal annual installments no later than January 31, 2014, as provided by the SJRRSA. The Contractor must provide appropriate notice to the Contracting Officer in writing not later than thirty (30) days prior to January 31, 2011 if electing to repay the amount due using the lump sum alternative. If such notice is not provided by such date, the Contractor shall be deemed to have elected the installment payment alternative, in which case, the first such payment shall be made no later than May 1, 2011, the second payment shall be made no later than the first anniversary of the first payment date, the third payment shall be made no later than the second anniversary of the first payment date, and the final payment shall be made no later than January 31, 2014. If the installment payment option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using the same methodology as was used to compute the initial annual installment payment amount, which is illustrated in Exhibit "C-2". Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation by the United States shall fully and permanently satisfy the Existing Capital Obligation.

(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 schedules referenced in Exhibits "C-1" and "C-2" 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 has paid, 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.

645 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the  
646 Contractor an estimate of the Charges for Project Water that will be applied to the period October 1,  
647 of the current Calendar Year, through September 30, of the following Calendar Year, and the basis  
648 for such estimate. The Contractor shall be allowed not less than two (2) months to review and  
649 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
650 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October  
651 1 of the current Calendar Year, through September 30 of the following Calendar Year, and such  
652 notification shall revise Exhibit "B". Charges shall be subject to reduction consistent with the  
653 SJRRSA based upon the average annual delivery amount agreed to by the Contracting Officer and the  
654 Contractor.

655 (1) Upon complete payment of the Repayment Obligation by the  
656 Contractor, and notwithstanding any Additional Capital Obligation that may later be established, for  
657 the years 2020 through 2039 inclusive, Charges shall reflect the reduction on a per acre-foot basis  
658 consistent with Section 10010(d)(1) of the SJRRSA. Exhibit "D" sets forth the reduction in Charges  
659 to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA; Provided, That if  
660 the Secretary determines such Charges are otherwise needed, an equivalent reduction will be made to  
661 O&M costs consistent with such provisions of the SJRRSA. Consistent with Section 10010(d)(1) of  
662 the SJRRSA and as shown in Exhibit "D", the Friant Surcharge reduction has been calculated based  
663 upon the anticipated average annual water deliveries, for the purpose of this reduction only, mutually  
664 agreed upon by the Secretary and the Contractor for the period from January 1, 2020 through  
665 December 31, 2039. The Friant Surcharge reduction shall remain fixed and shall only be applied to

Water Delivered pursuant to this Contract to which the Friant Surcharge applies (including but not limited to water transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water Delivered equals 41,120 acre-feet or December 31, 2039, whichever occurs first.

(2) Further, to fully offset the Financing Costs, Contractor shall be entitled to a reduction in other outstanding or future obligations of the Contractor in accordance with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding or future obligations of the Contractor after October 1, 2019 has been computed by the Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

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

(e) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the Project Water scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of the

Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(f) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the

Tiered Pricing Component pursuant to subdivision (l)(2) of this Article of this Contract. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Contracting Officer. Such water delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill basis for payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges shall be computed pursuant to Article 21 of this Contract.

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

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

(i) All revenues received by the United States from the Contractor relating to the delivery of Project Water or the delivery of non-project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or

729 regulations, the then-existing Project Ratesetting policies for M&I Water or Irrigation Water, and  
730 consistent with the SJRRSA.

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

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

746 (l) (1) Beginning at such time as the total of the deliveries of Class 1 Water  
747 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end  
748 of the month following the month of delivery the Contractor shall make an additional payment to the  
749 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for

the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference between the Rate established under subdivision (a) of this Article of this Contract and the Irrigation Full Cost Water Rate, or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which exceeds ninety (90%) percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article of this Contract and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

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

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

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

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.



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

794 SALES, TRANSFERS, AND EXCHANGES OF WATER

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

807 (b) In order to facilitate efficient water management by means of Project Water  
808 sales, transfers, or exchanges of the type historically carried out among Project Contractors located  
809 within the same geographical area and to allow the Contractor to participate in an accelerated water  
810 transfer program, the Contracting Officer has prepared, as appropriate, necessary environmental  
811 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 municipal and industrial 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 reviewed every five (5) years and updated, as necessary, prior to the expiration of the then-existing

833 five (5) year period. All subsequent environmental documentation shall include an alternative to  
834 evaluate not less than the quantity of Project Water historically sold, transferred, or exchanged within  
835 the same geographical area.

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

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

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

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

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

862                   (g)     Upon complete payment of the Repayment Obligation by the Contractor, and  
863     notwithstanding any Additional Capital Obligation that may later be established, in the case of a sale  
864     or transfer of Irrigation Water to another contractor which is otherwise subject to the acreage  
865     limitations, reporting, and Full Cost pricing provisions of the RRA, such sold or transferred Irrigation  
866     Water shall not be subject to such RRA provisions, however, in the case of a sale or transfer of  
867     Irrigation Water to the Contractor from another contractor which is subject to RRA provisions, such  
868     RRA provisions shall apply to delivery of such water.

869                   APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

become due to the United States by the Contractor. With respect to overpayment, such refund or 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 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 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."



957 (f) In the event that in any Year there is made available to the Contractor, by  
958 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article of  
959 this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of Article  
960 12 of this Contract, less than the quantity of water which the Contractor otherwise would be entitled  
961 to receive hereunder, there shall be made an adjustment on account of the amounts already paid to the  
962 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in  
963 accordance with Article 11 of this Contract.

964 UNAVOIDABLE GROUNDWATER PERCOLATION

965 14. To the extent applicable, the Contractor shall not be deemed to have delivered  
966 Irrigation Water to Excess Lands and Ineligible Lands within the meaning of this Contract if such  
967 lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of  
968 the delivery of Irrigation Water by the Contractor to Eligible Lands.

969 ACREAGE LIMITATION

970 15. (a) Notwithstanding the application of the acreage limitation provisions to  
971 activities referred to in subdivision (b) of this Article, subdivision (a) of Article 16, and Article 18 of  
972 this Contract, upon complete payment of the Repayment Obligation by the Contractor, and  
973 notwithstanding any Additional Capital Obligation that may later be established, the provisions of  
974 section 213(a) and (b) of the RRA shall apply to lands in the Contractor's Service Area, with the  
975 effect that acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer  
976 apply to lands in the Contractor's Service Area with respect to Water Delivered pursuant to this  
977 Contract. Upon receiving the complete payment of the Repayment Obligation from the Contractor,

Reclamation will conduct a final water district review for the purpose of determining compliance with the acreage limitations, reporting, and Full Cost pricing provisions of the RRA from the date of the last water district review until the date when payment to Reclamation of the Repayment Obligation is completed.

(b) Project Water to which the Contractor is entitled through a separate contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to lands within the Contractor's Service Area. Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, Project Water Delivered under this Contract may be mixed with Project Water Delivered pursuant to a contract with the United States, other than this Contract, to which acreage limitation and the full-cost pricing provisions of Federal Reclamation law apply without causing the application of the acreage limitation and the full-cost pricing provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract; Provided, The terms and conditions in such other contract shall continue to apply, and if such terms and conditions so require, the lands to receive Project Water under such other contract shall be properly designated by the Contractor and such Project Water is to be delivered in accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost pricing provisions.

#### COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

(b) 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) Until complete payment of the Repayment Obligation by the Contractor, and 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 and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without funds made available pursuant to Federal Reclamation law, the acreage limitations, reporting, and Full Cost pricing

provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that the Contractor's distribution system was constructed without funds made available pursuant to Federal Reclamation law. The use of this distribution system is not subject to the provisions of this subdivision of this Article.

(b) Upon complete payment of the Repayment Obligation by the Contractor, and 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, including Ineligible Lands, 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 the 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 the 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. (a) 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.

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

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

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

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of

Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's certification and reporting records.

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

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

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

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

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

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

(e) If the Contractor is engaged in direct groundwater recharge, such activity shall 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) The O&M of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O& M, have been transferred to the Operating Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal

Entity. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

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



1346 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1347 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1348 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1349 during office hours to examine and make copies of the other party's books and records relating to  
1350 matters covered by this Contract.

1351 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1352 Contract, no books, records, or other information shall be requested from the Contractor by the  
1353 Contracting Officer unless such books, records, or information are reasonably related to the  
1354 administration or performance of this Contract. Any such request shall allow the Contractor a  
1355 reasonable period of time within which to provide the requested books, records, or information.

1356 (c) At such time as the Contractor provides information to the Contracting Officer  
1357 pursuant to subdivision (a) of this Article of this Contract, a copy of such information shall be  
1358 provided to the Operating Non-Federal Entity.

1359 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1360 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1361 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1362 therein shall be valid until approved in writing by the Contracting Officer.

1363 (b) The assignment of any right or interest in this Contract by either party shall not  
1364 interfere with the rights or obligations of the other party to this Contract absent the written  
1365 concurrence of said other party.

1366 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1367 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. The Contractor and Contracting Officer acknowledge that the requirements to establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of Friant Division Facilities is and will continue to be administered under Contract No. 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

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 of Kaweah Delta Water Conservation District, 2975 North Farmersville Boulevard, Farmersville, California 93223. 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 15, 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 Articles 37 through 38 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.

1460                IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1461                year first above written.

THE UNITED STATES OF AMERICA

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

KAWEAH DELTA WATER CONSERVATION DISTRICT

By: \_\_\_\_\_  
TITLE OF AUTHORIZED SIGNATORY

Attest:

By: \_\_\_\_\_  
TITLE

**EXHIBIT A**

**Map or Description of Service Area**

**EXHIBIT B**  
**KAWEAH DELTA WATER CONSERVATION DISTRICT**  
**(PARTIAL ASSIGNMENT FROM IVANHOE IRRIGATION DISTRICT)**  
**2010 Rates and Charges**  
**(Per Acre-Foot)**

	<b>Irrigation</b>	<b>Irrigation</b>	<b>M&amp;I <sup>1</sup></b>
	<b>Water</b>	<b>Water</b>	<b>Water</b>
	<b>Class 1</b>	<b>Class 2</b>	
<b>COST-OF-SERVICE (COS) RATES</b>			
O&M Rates			
Water Marketing	\$6.01	\$6.01	
Storage	\$6.57		
Conveyance <sup>2</sup>			
<b>TOTAL COS (Tier 1 Rate)</b>	<b>\$12.58</b>	<b>\$6.01</b>	
<b>IRRIGATION FULL-COST RATE (RRA)</b>			
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$34.72	\$15.11	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$40.74	\$19.20	
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>			
<b>IRRIGATION</b>			
<i>Tier 2 Rate</i> : >80% <=90% of Contract Total [Section 202(3) Irrigation Full-Cost Rate - COS Rate]/2 (Amount to be added to Tier 1 Rate)	\$11.07	\$4.55	
<i>Tier 3 Rate</i> : >90% of Contract Total [Section 202(3) Irrigation Full-Cost Rate - COS Rate] (Amount to be added to Tier 1 Rate)	\$22.14	\$9.10	
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>			
P.L. 102-575 Surcharges <sup>3</sup>			
Restoration Fund Payments [Section 3407(d)(2)(A)]	\$9.11	\$9.11	
Friant Surcharge [Section 3406(c)(1)]	\$7.00	\$7.00	



**EXHIBIT B**  
**KAWEAH DELTA WATER CONSERVATION DISTRICT**  
**(PARTIAL ASSIGNMENT FROM IVANHOE IRRIGATION DISTRICT)**  
**2010 Rates and Charges**  
**(Per Acre-Foot)**

P.L. 106-377 Assessment (Trinity Public Utilities District) <sup>4</sup> [Appendix B, Section 203]	\$0.11	\$0.11	
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**EXPLANATORY NOTES**

- 1 The Contractor has not projected any delivery of M&I water for the 2010 contract year. A temporary M&I Rate will be applied upon any M&I water delivery.
- 2 Conveyance and Conveyance Pumping operation and maintenance costs were removed for Irrigation ratesetting purposes and are to be direct billed.
- 3 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).
- 4 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 detail of rate components is available on the Internet at**  
<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

**Exhibit C-1**

## Repayment Obligation - Lump Sum Option

Friant Contractor:

Kaweah Delta

San Joaquin River Restoration Act

Existing Capital Obligation (Article 1(m))	\$	600,704.07
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Irrigation portion of Existing Capital Obligation	\$	600,704.07
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20yr CMT as of : 10/01/10 3.410%

Discount Rate (1/2 20yr CMT) 1.705%

Discounted Irrigation Capital	\$	505,391.68
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Non-Discounted M&I Portion of  
Existing Capital Obligation

\$ -

Repayment Obligation - Lump Sum Option (per Article 7(a)(2)(A))	\$	505,391.68
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Year	Irrigation Portion of Allocated Capital Cost	
	Beginning Balance	Straight Line Repayment
2011	\$ 600,704	\$ 30,035
2012	\$ 570,669	\$ 30,035
2013	\$ 540,634	\$ 30,035
2014	\$ 510,598	\$ 30,035
2015	\$ 480,563	\$ 30,035
2016	\$ 450,528	\$ 30,035
2017	\$ 420,493	\$ 30,035
2018	\$ 390,458	\$ 30,035
2019	\$ 360,422	\$ 30,035
2020	\$ 330,387	\$ 30,035
2021	\$ 300,352	\$ 30,035
2022	\$ 270,317	\$ 30,035
2023	\$ 240,282	\$ 30,035
2024	\$ 210,246	\$ 30,035
2025	\$ 180,211	\$ 30,035
2026	\$ 150,176	\$ 30,035
2027	\$ 120,141	\$ 30,035
2028	\$ 90,106	\$ 30,035
2029	\$ 60,070	\$ 30,035
2030	\$ 30,035	\$ 30,035
		\$ 600,704

**Exhibit C-2**

Repayment Obligation - Installment Payment Option

**Prinant Contractor:** Kaweah Delta

<b>Existing Capital Obligation (Article 1(m))</b>	<b>\$ 600,704.07</b>
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<b>Irrigation Portion of Existing Capital Obligation</b>	<b>\$ 600,704.07</b>
--	----------------------

<b>20yr CMT - 10/1/2010</b>	<b>3.410%</b>
<b>Discount Rate (1/2 20yr CMT)</b>	<b>1.705%</b>

<b>Non-Discounted M&amp;I Existing Capital Obligation</b>	<b>\$ -</b>
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**Installment Schedule**

	Payment Due Date	Irrigation Portion of Repayment Obligation	Non-discounted M&I Portion of Existing Capital Obligation	Repayment Obligation
1st Installment	5/1/2011	\$ 129,462.29	\$ -	\$ 129,462.29
2nd Installment	5/1/2012	\$ 129,442.18	\$ -	\$ 129,442.18
3rd Installment	5/1/2013	\$ 129,574.52	\$ -	\$ 129,574.52
4th Installment	1/31/2014	\$ 129,810.35	\$ -	\$ 129,810.35

<b>Total Repayment Obligation - Installment Option (per Article 7(a)(2)(A)):</b>	\$ 518,289.33	\$ -	\$ 518,289.33
--	---------------	------	---------------

Year	Irrigation Portion of Allocated Capital Cost		Discounted Capital Amount			
	Beginning Balance	Straight Line Repayment	\$129,462.29	\$129,442.18	\$129,574.52	\$129,810.35
2011	\$ 600,704	\$ 30,035	\$ 30,035			
2012	\$ 570,669	\$ 30,035	\$ 6,307	\$ 23,728		
2013	\$ 540,634	\$ 30,035	\$ 6,307	\$ 7,013	\$ 16,715	
2014	\$ 510,598	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2015	\$ 480,563	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2016	\$ 450,528	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2017	\$ 420,493	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2018	\$ 390,458	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2019	\$ 360,422	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2020	\$ 330,387	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2021	\$ 300,352	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2022	\$ 270,317	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2023	\$ 240,282	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2024	\$ 210,246	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2025	\$ 180,211	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2026	\$ 150,176	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2027	\$ 120,141	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2028	\$ 90,106	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2029	\$ 60,070	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
2030	\$ 30,035	\$ 30,035	\$ 6,307	\$ 7,013	\$ 7,854	\$ 8,860
	\$ 600,704	\$ 600,704	\$ 149,876	\$ 149,966	\$ 150,236	\$ 150,627

# Exhibit D

## Friant Surcharge Reduction Calculation

### Friant Contractor: San Joaquin River Restoration Act

Kaweah Delta

Average Annual Delivery - Forecasted for 2020-2039*	5,595
Total Projected deliveries (over 20 yr period)**	
Article 7(c)	111,900
20 yr CMT as of 10/1/2010	3.410%
1/2 20 yr CMT as of 10/1/2010	1.705%
Irrigation Portion of Existing Capital Obligation	\$600,704
NPV at Half CMT (Repayment Obligation)	\$505,392
NPV at Full CMT	\$430,370
Financing Cost Offset: @ (Article 7(c)(1))	\$75,022
NPV of FS Reduction	\$75,022
Difference between Financing Cost Offset and NPV of FS Reduction	\$0
2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2))***	\$0

Irrigation portion of Allocated Capital Cost				CVPIA Friant Surcharges	Reduction in Friant Surcharge			
Year	Beginning Balance	Straight Line Repayment	Surcharge per Acre-Foot Before Reduction		Friant Surcharge Reduction per Article c(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit	2020 Other Obligation Credit Calculation (Art. 7(c)(2))
2011	\$ 600,704	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2012	\$ 570,669	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2013	\$ 540,634	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2014	\$ 510,598	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2015	\$ 480,563	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2016	\$ 450,528	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2017	\$ 420,493	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2018	\$ 390,458	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2019	\$ 360,422	\$ 30,035	\$7.00			\$7.00	0 \$	0.00
2020	\$ 330,387	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(\$7,080)	\$ 0.00
2021	\$ 300,352	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2022	\$ 270,317	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2023	\$ 240,282	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2024	\$ 210,246	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2025	\$ 180,211	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2026	\$ 150,176	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2027	\$ 120,141	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2028	\$ 90,106	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2029	\$ 60,070	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2030	\$ 30,035	\$ 30,035	\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2031			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2032			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2033			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2034			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2035			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2036			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2037			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2038			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
2039			\$7.00		(\$1.27)	\$ 5.73	(7,080)	
	\$ 600,704						(\$141,602)	

## 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	\$	104,909
Annual Credit Target	\$	(7,080)
FS Reduction w/o limit	\$	(1.27)
FS Reduction limit	\$	(3.00)

EXHIBIT E

Restated Contract<sup>1</sup>

Irrigation and M&I

Contract No. I75r-1809A

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
KAWEAH DELTA WATER CONSERVATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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<sup>1</sup> Pursuant to subdivision (b) of Article 2 of the Contract to which this exhibit is attached, this Exhibit "E" makes no substantive revisions to the Contract to which it is attached and is prepared solely as a matter of administrative convenience. In this Exhibit "E", references to "Contract" or "this Contract" refers to this Restated Contract.

- 14 Omitted
- 15 Acreage Limitation
- 16 Compliance With Federal Reclamation Laws
- 17 Protection of Water and Air Quality
- 18 Water Acquired By the Contractor Other Than From the United States
- 19 Opinions and Determinations
- 20 Coordination and Cooperation
- 21 Charges for Delinquent Payments
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- 32 Assignment Limited--Successors and Assigns Obligated
- 33 Severability
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- 36 Changes in Contractor's Service Area
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- 38 Emergency Reserve Fund
- 39 Medium for Transmitting Payment
- 40 Notices
- 41 Confirmation of Contract
- 42 Contract Drafting Considerations

Signature Page

- Exhibit A Contractor's Map or Description of Service Area
- Exhibit B Rates and Charges
- Exhibit C-1 Repayment Schedule – Lump Sum Option
- Exhibit C-2 Repayment Schedule – Installment Option
- Exhibit D Computation of the Friant Surcharge
- Exhibit E Omitted

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

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 KAWEAH DELTA WATER CONSERVATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM 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 Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
16 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title X,  
17 Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin River  
18 Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter referred to  
19 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to  
20 as the United States and KAWEAH DELTA WATER CONSERVATION DISTRICT, hereinafter  
21 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and  
22 acting pursuant to the laws thereof, with its principal place of business in California;

23 WITNESSETH, That



EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley 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, together with Ivanhoe Irrigation District, entered into Contract Number I75r-1809-LTR1A which established terms for the assignment of 1,200 acre-feet of Class 1 Water and 7,400 acre-feet of Class 2 Water from Ivanhoe Irrigation District, delivered to Ivanhoe Irrigation District under its Contract No. I75r-1809-LTR1 (“Existing Contract”), to the Contractor for delivery of Project Water from the Friant Division from March 1, 2010 through February 28, 2026, and is herein referred to as the “Assignment Contract”; and

[4<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

[5th] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water developed through the exercise of the rights described in the fourth (4<sup>th</sup>) Explanatory Recital of this Contract; and

[6th] 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

[7th] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing Contract to a repayment contract under subsection (d) 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 accelerated repayment of the Contractors’ allocated share of construction costs, either as a lump sum payment by January 31, 2011 or in annual installments 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

[8th] 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

[9<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act) directs the Secretary to provide that the other party to any contract entered into pursuant to subsection (d) of Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to subsection (e) of Section 9 of the Act of August 4, 1939 (water service contract) shall “have the first right (to which the rights of the holders of any other type of irrigation water contract shall be subordinate) to a stated share or quantity of the project’s available water supply for beneficial use on the irrigable lands within the boundaries of, or owned by, the party and a permanent right to such share or quantity upon completion of payment of the amount assigned for ultimate return” by the contractor subject to fulfillment of all obligations under the contract; and

[10<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the Contractor the permanent right described in the ninth (9<sup>th</sup>) Explanatory Recital; and

[11<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

[12<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

[13<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

[14<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

[15<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

[16<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

[17<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

[18<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Assignment 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 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as a dependable water supply during each Year;

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

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

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

(h) "Contract Total" shall mean the maximum amount of Class 1 Water plus the maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract and is the

145 stated share or quantity of the Project's available water supply to which the Contractor has a  
146 permanent right in accordance with the 1956 Act and the terms of this Contract, due to the  
147 Contractor's complete payment of the Repayment Obligation, notwithstanding any Additional Capital  
148 Obligation that may later be established, which right shall not be disturbed so long as the Contractor  
149 fulfills all of its obligations under this Contract;

150 (i) "Contractor's Service Area" shall mean the area to which the Contractor is  
151 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,  
152 which may be modified from time to time in accordance with Article 36 of this Contract without  
153 amendment of this Contract;

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

156 (k) Omitted;

157 (l) Omitted;

158 (m) "Existing Capital Obligation" shall mean the remaining amount of construction  
159 costs of the Contractor identified in the Central Valley Project Irrigation Water Rates and/or  
160 Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as adjusted to reflect  
161 payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A) of the SJRRSA. The  
162 Contracting Officer has computed the Existing Capital Obligation in a manner consistent with the  
163 SJRRSA and such amount is set forth in Exhibits "C-1" and "C-2", incorporated herein by reference;

164 (n) "Financing Costs", for purposes of computing the reduction of certain charges  
165 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 the Friant Water Authority, or its successor, 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 to be paid as either a lump sum payment by January 31, 2011 or in approximately equal annual installments by January 31, 2014;

(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 has paid the Repayment Obligation, and notwithstanding any Additional Capital Obligation that may later be established, the tiered pricing component and the acreage limitations, reporting, 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 Assignment 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 Assignment Contract shall not be superseded and shall be in full force and effect.

Notwithstanding the foregoing, the right of Ivanhoe Irrigation District to reversion as described in Paragraph 6 of the Assignment Contract is hereby expressly preserved.

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 1,200 acre-feet of Class 1 Water and 7,400 acre-feet of Class 2 Water for irrigation and 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 has paid the Repayment Obligation, and notwithstanding any Additional Capital Obligation that may later be established, the Contractor has a permanent right to the Contract Total in accordance with the 1956 Act and the terms of this Contract. This 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 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, including conversion of Irrigation Water to M&I Water. 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 make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total in this Article of this Contract during the Year without adversely impacting the Project or other Project Contractors and consistent with the Secretary's legal obligations. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of this

Article of this Contract, if the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

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

(h) The Contractor’s right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall 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 within the Friant Division; second, to contractors in the Cross Valley Division of the Project. The Contracting Officer will consider requests from other parties for Section 215 Water for use within the

371 area identified as the Friant Division service area in the environmental assessment developed in  
372 connection with the execution of the Existing Contract.

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

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

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

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

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

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

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 in the Friant-Kern Canal 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 applicable 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 irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout; and water delivered for M&I purposes 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 agricultural turnouts and 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 the Operating Non-Federal Entity on or before the twentieth (20<sup>th</sup>) calendar day of each month of the quantity of Irrigation and 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 schedules referenced in Exhibits "C-1" and "C-2" 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.

594 (c) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the  
595 Contractor an estimate of the Charges for Project Water that will be applied to the period October 1,  
596 of the current Calendar Year, through September 30, of the following Calendar Year, and the basis  
597 for such estimate. The Contractor shall be allowed not less than two (2) months to review and  
598 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting  
599 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October  
600 1 of the current Calendar Year, through September 30 of the following Calendar Year, and such  
601 notification shall revise Exhibit "B". Charges shall be subject to reduction consistent with the  
602 SJRRSA based upon the average annual delivery amount agreed to by the Contracting Officer and the  
603 Contractor.

604 (1) Upon complete payment of the Repayment Obligation by the  
605 Contractor, and notwithstanding any Additional Capital Obligation that may later be established, for  
606 the years 2020 through 2039 inclusive, Charges shall reflect the reduction on a per acre-foot basis  
607 consistent with Section 10010(d)(1) of the SJRRSA. Exhibit "D" sets forth the reduction in Charges  
608 to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA; Provided, That if  
609 the Secretary determines such Charges are otherwise needed, an equivalent reduction will be made to  
610 O&M costs consistent with such provisions of the SJRRSA. Consistent with Section 10010(d)(1) of  
611 the SJRRSA and as shown in Exhibit "D", the Friant Surcharge reduction has been calculated based  
612 upon the anticipated average annual water deliveries, for the purpose of this reduction only, mutually  
613 agreed upon by the Secretary and the Contractor for the period from January 1, 2020 through  
614 December 31, 2039. The Friant Surcharge reduction shall remain fixed and shall only be applied to

Water Delivered pursuant to this Contract to which the Friant Surcharge applies (including but not limited to water transferred, banked, or exchanged), commencing on January 1, 2020 until such volume of Water Delivered equals 41,120 acre-feet or December 31, 2039, whichever occurs first.

(2) Further, to fully offset the Financing Costs, Contractor shall be entitled to a reduction in other outstanding or future obligations of the Contractor in accordance with Section 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding or future obligations of the Contractor after October 1, 2019 has been computed by the Contracting Officer, and as computed, such amount is set forth in Exhibit "D".

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

(e) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the Project Water scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the end of the first month and before the end of each calendar month thereafter, the

Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article of this Contract, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(f) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Contracting Officer. Such water delivery

report shall be the basis for payment of Charges by the Contractor, and shall be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill basis for payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges shall be computed pursuant to Article 21 of this Contract.

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

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

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

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



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

(k) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates, Charges, and/or for making and allocating payments, other than those set forth in this Article of this Contract, may be in the mutual best interest 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. The Contractor and the Contracting Officer concur that, as of the effective date of this Contract, the Contractor has no non-interest bearing operation and maintenance deficits and therefore shall have no further liability.

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

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

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

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

(3) In addition, the Contracting Officer shall, at least annually, make available publicly a compilation of the number of Project Water sales, transfers, and exchange

agreements implemented in accordance with sub-divisions (f)(1) and (f)(2) of this Article of this Contract.

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

(g) Notwithstanding any Additional Capital Obligation that may later be established, in the case of a sale or transfer of Irrigation Water to another contractor which is otherwise subject to the acreage limitations, reporting, Full Cost pricing provisions of the Reclamation Reform Act of 1982, as amended, hereinafter referred to as the RRA, such sold or transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of a sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to RRA provisions, such RRA provisions shall apply to delivery of such water.

#### APPLICATION OF PAYMENTS AND ADJUSTMENTS

11. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or 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 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 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. (a) The Contractor has paid the Repayment Obligation, and notwithstanding any Additional Capital Obligation that may later be established, the provisions of section 213(a) and (b) of the RRA shall apply to lands in the Contractor's Service Area, with the effect that acreage limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer apply to lands in the Contractor's Service Area with respect to Water Delivered pursuant to this Contract. Reclamation will conduct a final water district review for the purpose of determining compliance with the acreage limitations, reporting, and Full Cost pricing provisions of the RRA from the date of the last water district review until the date when payment to Reclamation of the Repayment Obligation was completed.

(b) Project Water to which the Contractor is entitled through a separate contract, other than this Contract, that is subject to Federal Reclamation law, may be delivered to lands within the Contractor's Service Area. Notwithstanding any Additional Capital Obligation that may later be established, Project Water Delivered under this Contract may be mixed with Project Water Delivered pursuant to a contract with the United States, other than this Contract, to which acreage limitations,

reporting, and the Full Cost pricing provisions of Federal Reclamation law apply without causing the application of the acreage limitations, reporting, and the Full Cost pricing provisions of Federal Reclamation law to the Water Delivered pursuant to this Contract; Provided, The terms and conditions in such other contract shall continue to apply, and if such terms and conditions so require, the lands to receive Project Water under such other contract shall be properly designated by the Contractor and such Project Water is to be delivered in accordance with the RRA including any applicable acreage limitations, reporting, and Full Cost pricing provisions.

#### COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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 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

954 States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by  
955 the Contracting Officer. In addition, if electrical power is required to pump non-project water, the  
956 Contractor shall be responsible for obtaining the necessary power and paying the necessary charges  
957 therefor.

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

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

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

973                   (5)     After Project purposes are met, as determined by the Contracting  
974 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. (a) 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.

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

Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

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

(b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the

California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

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

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

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

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

1244 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1245 of any proposed assignment.

1246 SEVERABILITY

1247 33. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1248 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1249 association or other form of organization whose primary function is to represent parties to Project  
1250 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1251 enforceability of a provision included in this Contract and said person, entity, association, or  
1252 organization obtains a final court decision holding that such provision is legally invalid or  
1253 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1254 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final  
1255 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1256 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time  
1257 periods specified above may be extended by mutual agreement of the parties. Pending the  
1258 completion of the actions designated above, to the extent it can do so without violating any applicable  
1259 provisions of law, the United States shall continue to make the quantities of Project Water specified  
1260 in this Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1261 found to be legally invalid or unenforceable in the final court decision.

1262 RESOLUTION OF DISPUTES

1263 34. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1264 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. The Contractor and Contracting Officer acknowledge that the requirements to establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of Friant Division Facilities is and will continue to be administered under Contract No. 8-07-20-X0356 titled Agreement To Transfer The Operation, Maintenance And Replacement And Certain Financial And Administrative Activities Related To The Friant-Kern Canal And Associated Works, dated March 1, 1998 as amended, supplemented, assigned, or renewed.

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.

1310 (b) Upon execution of the contract, the Contractor shall furnish the Contracting  
1311 Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the  
1312 Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the  
1313 Contractor's relationship with the United States.

1314 NOTICES

1315 40. Any notice, demand, or request authorized or required by this Contract shall be  
1316 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1317 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California  
1318 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of  
1319 Directors of Kaweah Delta Water Conservation District, 2975 North Farmersville Boulevard,  
1320 Farmersville, California 93223. The designation of the addressee or the address may be changed by  
1321 notice given in the same manner as provided in this Article of this Contract for other notices.

1322 CONFIRMATION OF CONTRACT

1323 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1324 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1325 confirming the execution of this Contract. The Contractor shall furnish the United States a certified  
1326 copy of the final decree, the validation proceedings, and all pertinent supporting records of the court  
1327 approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and  
1328 binding on the Contractor.

1329 CONTRACT DRAFTING CONSIDERATIONS

1330 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,  
1331 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,  
1332 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and  
1333 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the parties  
1334 hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party  
1335 shall be considered to have drafted the stated Articles.  
1336

1337           IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1338   year first above written.