

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

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

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 CITY OF LINDSAY
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

10 THIS CONTRACT, made this 9th day of March, 2005, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
17 hereinafter referred to as the United States, and CITY OF LINDSAY, hereinafter referred to as the
18 Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to
19 the laws thereof;

20 WITNESSETH, That:

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EXPLANATORY RECITALS

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

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

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

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

42 [4th] WHEREAS, the Contractor and the United States entered into Contract
43 No. 5-07-20-W0428, as amended, which established terms for the delivery to the Contractor of
44 Project Water from the Friant Division from June 13, 1985, to June 13, 2025, hereinafter referred to
45 as the Existing Contract; and

46 [5th] WHEREAS, the Contractor and the United States have, pursuant to Subsection
47 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
48 Binding Agreement identified as Binding Agreement No. 5-07-20-W0428-BA, which sets out the
49 terms pursuant to which the Contractor agreed to renew the Existing Contract before its expiration
50 date after completion of the programmatic environmental impact statement and other appropriate
51 environmental documentation and negotiation of a renewal contract, and which also sets out the
52 consequences of a subsequent decision not to renew; and

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

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

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

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

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

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

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

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

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

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

86 [15.1] WHEREAS, during uncontrolled seasons, Friant Division Project Contractors utilize
87 undependable Class 2 Water in their service areas to, among other things, assist in the management
88 and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for
89 environmental enhancement, including restoration of the San Joaquin River below Friant Dam,
90 minimize flooding along the San Joaquin River, encourage optimal water management, and maximize
91 the reasonable and beneficial use of the water; and

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

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

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

99 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

131 (h-i) Omitted;

132 (j) "Full Cost Rate" shall mean an annual rate as determined by the Contracting
133 Officer that shall amortize the expenditures for construction properly allocable to the Project
134 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded,
135 less payments, over such periods as may be required under Federal Reclamation law or applicable
136 contract provisions. Interest will accrue on both the construction expenditures and funded O&M
137 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case
138 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
139 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
140 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
141 the RRA;

142 (k-l) Omitted;

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

146 (n) Omitted;

147 (n2) "Long Term Historic Average" shall mean the average of the final forecast of
148 Water Made Available to the Contractor pursuant to this Contract and the contract referenced in the
149 fourth Explanatory Recital of this Contract;

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

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

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

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

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

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

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

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

175 (w) Omitted;

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

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

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

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

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

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

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TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 2005, through February 28, 2045, and supersedes the Existing Contract. In the event the Contractor wishes to renew this Contract beyond February 28, 2045, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two years prior to the date this Contract expires.

(b) Omitted.

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

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

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

230 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

231 3. (a) During each Year, consistent with all applicable State water rights, permits and
232 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
233 Contracting Officer shall make available for delivery to the Contractor 2,500 acre-feet of Class 1

234 Water for M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall
235 be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

236 (b) Omitted.

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

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

255 (e) The Contractor shall comply with requirements applicable to the Contractor in
256 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
257 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
258 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
259 excess of 19 years of diversions for M&I purposes of the quantities of water provided in subdivision
260 (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for the
261 biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review.
262 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief
263 in a court of competent jurisdiction with respect to any biological opinion or other environmental
264 documentation referred to in this Article.

265 (f) Subject to subdivisions (l) and (n) of Article 3, following the declaration of
266 Water Made Available under Article 4 of this Contract, the Contracting Officer will make a
267 determination whether Project Water, or other water available to the Project, can be made available to
268 the Contractor in addition to the Contract Total under Article 3 of this Contract during the Year
269 without adversely impacting other Project Contractors. At the request of the Contractor, the
270 Contracting Officer will consult with the Contractor prior to making such a determination. Subject to
271 subdivisions (l) and (n) of Article 3 of this Contract, if the Contracting Officer determines that Project
272 Water, or other water available to the Project, can be made available to the Contractor, the
273 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
274 soon as practicable. The Contracting Officer will thereafter meet with the Contractor and other
275 Project Contractors capable of taking such water to determine the most equitable and efficient
276 allocation of such water. If the Contractor requests the delivery of any quantity of such water, the

277 Contracting Officer shall make such water available to the Contractor in accordance with applicable
278 statutes, regulations, guidelines, and policies.

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

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

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

295 (j) The Contracting Officer shall make reasonable efforts to protect the water
296 rights and other rights described in the third Explanatory Recital of this Contract necessary for the
297 Project and to provide the water available under this Contract. The Contracting Officer shall not
298 object to participation by the Contractor, in the capacity and to the extent permitted by law, in

299 administrative proceedings related to the water rights and other rights described in the third
300 Explanatory Recital of this Contract; Provided, That the Contracting Officer retains the right to object
301 to the substance of the Contractor's position in such a proceeding; Provided further, That in such
302 proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of
303 this Contract to use Project Water.

304 (k) Project Water furnished to the Contractor during any month designated in a
305 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer
306 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1
307 Water is called for in such schedule for such month and shall be deemed to have been accepted as
308 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any
309 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and
310 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,
311 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water
312 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply
313 available in the current Year is not sufficient to account for such additional diversions, such
314 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply
315 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2
316 Water supplies available in the current Year are not sufficient to account for such additional
317 diversions, such additional diversions shall be charged first against the Contractor's available Class 2
318 Water supply and then against the Contractor's available Class 1 Water supply, both for the following
319 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of
320 this Contract.

321 (l) If the Contracting Officer determines there is a Project Water supply available
322 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project
323 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be
324 made available to the Contractor and others under Section 215 of the RRA pursuant to the priorities
325 specified below if the Contractor enters into a temporary contract with the United States not to exceed
326 one year for the delivery of such water or, as otherwise provided for in Federal Reclamation law and
327 associated regulations. Such water may be identified by the Contractor either (i) as additional water
328 to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant to this
329 Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited against
330 the Contractor's Class 2 Water supply available pursuant to this Contract. The Contracting Officer
331 shall make water determined to be available pursuant to this subsection according to the following
332 priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water within the Friant
333 Division; second, to long-term contractors in the Cross Valley Division of the Project. The
334 Contracting Officer will consider and seek to accommodate requests from other parties for Section
335 215 Water for use within the area identified as the Friant Division service area in the environmental
336 assessment developed in connection with the execution of this Contract.

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

341 (n) The rights of the Contractor under this Contract are subject to the terms of the
342 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and

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

352 TIME FOR DELIVERY OF WATER

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

362 (b) On or before each March 1 and at such other times as necessary, the Contractor
363 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
364 showing the monthly quantities of Project Water to be delivered by the United States to the

365 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
366 Officer shall use all reasonable means to deliver Project Water according to the approved schedule for
367 the Year commencing on such March 1.

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

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

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

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

406 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

407 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
408 Contract shall be delivered to the Contractor at a point or points of delivery either on Project facilities

409 or another location or locations mutually agreed to in writing by the Contracting Officer and the
410 Contractor.

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

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

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

426 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
427 responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the
428 Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this
429 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns
430 on account of ~~damage~~ or ~~claim~~ of ~~damage~~ of any nature whatsoever for which there is legal

431 responsibility, including property damage, personal injury, or death arising out of or connected with
432 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
433 delivery points, except for any damage or claim arising out of: (i) acts or omissions of the
434 Contracting Officer or any of its officers, employees, agents, or assigns, including the Operating
435 Non-Federal Entity, with the intent of creating the situation resulting in any damage or claim;
436 (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns,
437 including the Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of its
438 officers, employees, agents, or assigns including the Operating Non-Federal Entity; or (iv) damage or
439 claims resulting from a malfunction of facilities owned and/or operated by the United States or
440 responsible Operating Non-Federal Entity.

441 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

442 6. (a) The Contractor has established a measurement program satisfactory to the
443 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I purposes is
444 measured at each M&I service connection. The water measuring devices or water measuring methods
445 of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be
446 responsible for installing, operating, and maintaining and repairing all such measuring devices and
447 implementing all such water measuring methods at no cost to the United States. The Contractor shall
448 use the information obtained from such water measuring devices or water measuring methods to
449 ensure its proper management of the water, to bill water users for water delivered by the Contractor;
450 and, if applicable, to record water delivered for M&I purposes by customer class as defined in the
451 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein
452 contained, however, shall preclude the Contractor from establishing and collecting any charges,

453 assessments, or other revenues authorized by California law. The Contractor shall include a summary
454 of all its annual surface water deliveries in the annual report described in subdivision (c) of Article
455 26.

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

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

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

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

480 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

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

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

507 (c) At the time the Contractor submits the initial schedule for the delivery of
508 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
509 shall make an advance payment to the United States equal to the total amount payable pursuant to the
510 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
511 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
512 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
513 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
514 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
515 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
516 for Water Delivered shall be made before the end of the following month; Provided, That any revised
517 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the

518 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
519 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
520 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
521 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
522 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an
523 advance payment at the Rates then in effect for such additional Project Water is made. Final
524 adjustment between the advance payments for the Water Scheduled and payments for the quantities
525 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
526 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
527 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
528 last day of February.

529 (d) The Contractor shall also make a payment in addition to the Rate(s) in
530 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
531 appropriate Tiered Pricing Component then in effect, before the end of the month following the
532 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered as
533 shown in the water delivery report for the subject month prepared by the Operating Non-Federal
534 Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. Such water
535 delivery report shall be the basis for payment of Charges and Tiered Pricing Component by the
536 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the
537 Contracting Officer (as applicable) within five days after the end of the month of delivery. The water
538 delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing
539 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be

540 made through the adjustment of payments due to the United States for Charges for the next month.
541 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be
542 computed pursuant to Article 20 of this Contract.

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

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

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

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

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

569 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water
570 and Class 2 Water in a Year exceed 80 percent of the Contract Total, then before the end of the month
571 following the month of delivery the Contractor shall make an additional payment to the United States
572 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the
573 deliveries of Class 1 Water and Class 2 Water in excess of 80 percent of the Contract Total, but less
574 than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the
575 Rate established under subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered
576 Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which exceeds
577 90 percent of the Contract Total shall equal the difference between (i) the Rate established under
578 subdivision (a) of this Article and (ii) the M&I Full Cost Water Rate.

579 (2) Omitted.

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

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

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

595 (m) Omitted.

596 (n) The Contractor asserts that it is not legally obligated to pay any Project deficits
597 claimed by the United States to have accrued as of the date of this Contract or deficit-related interest
598 charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or
599 remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this
600 Contract and payments made hereunder, the Contractor may challenge in the appropriate
601 administrative or judicial forums: (1) the existence, the computation, or imposition of any deficit
602 charges accruing during the term of the Existing Contract; (2) interest accruing on any such deficits;
603 (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United
604 States of payments made by the Contractor under its Existing Contract; and (5) the application of

605 such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to
606 the benefit of any administrative or judicial ruling in favor of any other Project M&I contractor on
607 any of these issues, and credits for payments heretofore made; Provided, That the basis for such ruling
608 is applicable to the Contractor.

609 8. Omitted.

610 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

621 (b) In order to facilitate efficient water management by means of water transfers of
622 the type historically carried out among Project Contractors located within the same geographical area
623 and to allow the Contractor to participate in an accelerated water transfer program during the term of
624 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
625 documentation including, but not limited to, documents prepared pursuant to NEPA and ESA,
626 analyzing annual transfers within such geographical areas, and the Contracting Officer shall

627 determine whether such transfers comply with applicable law. Following the completion of the
628 environmental documentation, such transfers addressed in such documentation shall be conducted
629 with advance notice to the Contracting Officer, but shall not require prior written approval by the
630 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
631 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
632 the then-existing five-year period. All subsequent environmental documentation shall include an
633 alternative to evaluate not less than the quantity of Project Water historically transferred within the
634 same geographical area.

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

644 APPLICATION OF PAYMENTS AND ADJUSTMENTS

645 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
646 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
647 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
648 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at

649 the option of the Contractor, may be credited against amounts to become due to the United States by
650 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
651 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
652 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
653 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such
654 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
655 in which the overpayment was made.

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

661 TEMPORARY REDUCTIONS--RETURN FLOWS

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

667 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
668 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
669 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
670 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as

671 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice
672 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case
673 no notice need be given; Provided, That the United States shall use its best efforts to avoid any
674 discontinuance or reduction in such service. Upon resumption of service after such reduction or
675 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
676 quantity of Project Water which would have been delivered hereunder in the absence of such
677 discontinuance or reduction.

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

684 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

690 (b) If there is a Condition of Shortage because of errors in physical operations of
691 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
692 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)

693 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
694 agents, or employees for any damage, direct or indirect, arising therefrom.

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

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

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

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

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

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

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

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

738 13. Omitted.

739 RULES AND REGULATIONS

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

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

746 (c) Omitted.

747 WATER AND AIR POLLUTION CONTROL

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

751 QUALITY OF WATER

752 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
753 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
754 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
755 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
756 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
757 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor

758 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
759 Contractor pursuant to this Contract.

760 (b) The O&M of Project facilities shall be performed in such manner as is
761 practicable to maintain the quality of raw water made available through such facilities at the highest
762 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
763 responsible for compliance with all State and Federal water quality standards applicable to surface
764 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
765 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

766 WATER ACQUIRED BY THE CONTRACTOR
767 OTHER THAN FROM THE UNITED STATES

768 17. (a) Omitted.

769 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
770 than from the United States, may be stored, conveyed and/or diverted through Project facilities,
771 subject to the completion of appropriate environmental documentation, with the approval of the
772 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
773 necessary, consistent with the following provisions:

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

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

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

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

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

800

OPINIONS AND DETERMINATIONS

801 18. (a) Where the terms of this Contract provide for actions to be based upon the
802 opinion or determination of either party to this Contract, said terms shall not be construed as
803 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
804 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
805 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
806 unreasonable opinion or determination. Each opinion or determination by either party shall be
807 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
808 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
809 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

815

COORDINATION AND COOPERATION

816 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
817 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
818 affected Project Contractors, in order to improve the O&M of the Project. The communication,
819 coordination, and cooperation regarding operations and management shall include, but not be limited
820 to, any action which will or may materially affect the quantity or quality of Project Water supply, the
821 allocation of Project Water supply, and Project financial matters including, but not limited to, budget

822 issues. The communication, coordination, and cooperation provided for hereunder shall extend to all
823 provisions of this Contract. Each party shall retain exclusive decision making authority for all
824 actions, opinion, and determinations to be made by the respective party.

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

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

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

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

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

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

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

847 (d) Without limiting the contractual obligations of the Contracting Officer under
848 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
849 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
850 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
851 the physical integrity of structures or facilities.

852 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

869 EQUAL OPPORTUNITY

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

871 (a) The Contractor will not discriminate against any employee or applicant for
872 employment because of race, color, religion, sex, or national origin. The Contractor will take

873 affirmative action to ensure that applicants are employed, and that employees are treated during
874 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
875 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
876 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
877 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
878 conspicuous places, available to employees and applicants for employment, notices to be provided by
879 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

904 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
905 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
906 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
907 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
908 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
909 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,

910 That in the event the Contractor becomes involved in, or is threatened with, litigation with a
911 subcontractor or vendor as a result of such direction, the Contractor may request the United States to
912 enter into such litigation to protect the interests of the United States.

913 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

926 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

927 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
928 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
929 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
930 laws, as well as with their respective implementing regulations and guidelines imposed by the
931 U.S. Department of the Interior and/or Bureau of Reclamation.

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

938 (c) The Contractor makes this agreement in consideration of and for the purpose of
939 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
940 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
941 installment payments after such date on account of arrangements for Federal financial assistance
942 which were approved before such date. The Contractor recognizes and agrees that such Federal

943 assistance will be extended in reliance on the representations and agreements made in this Article,
944 and that the United States reserves the right to seek judicial enforcement thereof.

945 24. Omitted.

946 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

955 WATER CONSERVATION

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

965 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
966 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
967 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
968 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
969 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
970 thereafter the Contractor immediately begins implementing its water conservation and efficiency
971 program in accordance with the time schedules therein.

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

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

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

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

988 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

996 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

997 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
998 responsibility for funding a portion of the costs of such O&M, have been transferred to the Operating
999 Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal
1000 Entity. That separate agreement shall not interfere with or affect the rights or obligations of the
1001 Contractor or the United States hereunder.

1002 (b) The Contracting Officer has previously notified the Contractor in writing that
1003 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1004 Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating
1005 Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and
1006 conditions of the separate agreement between the United States and the Operating Non-Federal Entity
1007 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including

1008 any assessment for reserve funds, which the Operating Non-Federal Entity or such successor
1009 determines, sets or establishes for (i) the O&M of the portion of the Project facilities operated and
1010 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share
1011 of the operation, maintenance and replacement costs for physical works and appurtenances associated
1012 with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the
1013 federal share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint
1014 use conveyance and conveyance pumping facilities. Such direct payments to the Operating
1015 Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly
1016 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1017 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf of
1018 the United States in accordance with the separate agreement identified in subdivision (a) of this
1019 Article.

1020 (c) For so long as the O&M of any portion of the Project facilities serving the
1021 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1022 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1023 Contract representing the cost associated with the activity being performed by the Operating
1024 Non-Federal Entity or its successor.

1025 (d) In the event the O&M of the Project facilities operated and maintained by the
1026 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the
1027 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised
1028 Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project
1029 Water under this Contract representing the O&M costs of the portion of such Project facilities which

1030 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from
1031 the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1032 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this
1033 Contract.

1034 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1035 29. The expenditure or advance of any money or the performance of any obligation of the
1036 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1037 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1038 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1039 or allotted.

1040 BOOKS, RECORDS, AND REPORTS

1041 30. (a) The Contractor shall establish and maintain accounts and other books and
1042 records pertaining to administration of the terms and conditions of this Contract, including: the
1043 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1044 water use data; and other matters that the Contracting Officer may require. Reports thereon shall be
1045 furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer
1046 may require. Subject to applicable Federal laws and regulations, each party to this Contract shall
1047 have the right during office hours to examine and make copies of the other party's books and records
1048 relating to matters covered by this Contract.

1049 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1050 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1051 such books, records, or information are reasonably related to the administration or performance of
1052 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1053 to provide the requested books, records, or information.

1054 (c) At such time as the Contractor provides information to the Contracting Officer
1055 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1056 Operating Non-Federal Entity.

1057 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1058 31. (a) The provisions of this Contract shall apply to and bind the successors and
1059 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1060 therein shall be valid until approved in writing by the Contracting Officer.

1061 (b) The assignment of any right or interest in this Contract by either party shall not
1062 interfere with the rights or obligations of the other party to this Contract absent the written
1063 concurrence of said other party.

1064 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1065 of any proposed assignment.

1066 SEVERABILITY

1067 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1068 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1069 association or other form of organization whose primary function is to represent parties to Project
1070 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1071 enforceability of a provision included in this Contract and said person, entity, association, or
1072 organization obtains a final court decision holding that such provision is legally invalid or
1073 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1074 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1075 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1076 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1077 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1078 actions designated above, to the extent it can do so without violating any applicable provisions of
1079 law, the United States shall continue to make the quantities of Project Water specified in this Contract

1080 available to the Contractor pursuant to the provisions of this Contract which were not found to be
1081 legally invalid or unenforceable in the final court decision.

1082 RESOLUTION OF DISPUTES

1083 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1084 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1085 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1086 any matter to Department of Justice, the party shall provide to the other party 30 days' written notice
1087 of the intent to take such action; Provided, That such notice shall not be required where a delay in
1088 commencing an action would prejudice the interests of the party that intends to file suit. During the
1089 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt
1090 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge
1091 any right or remedy that the Contractor or the United States may have.

1092 OFFICIALS NOT TO BENEFIT

1093 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1094 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1095 manner as other water users or landowners.

1096 CHANGES IN CONTRACTOR'S SERVICE AREA

1097 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1098 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1099 except upon the Contracting Officer's written consent.

1100 (b) Within 30 days of receipt of a request for such a change, the Contracting
1101 Officer will notify the Contractor of any additional information required by the Contracting Officer
1102 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1103 timely completion of the process. Such process will analyze whether the proposed change is likely to:

1104 (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1105 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1106 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1107 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1108 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1109 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1110 FEDERAL LAWS

1111 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1112 validity or application in connection with the performance of the terms and conditions of this
1113 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1114 terms and conditions of this Contract unless and until relief from application of such Federal law or
1115 regulation to the implementing provision of the Contract is granted by a court of competent
1116 jurisdiction.

1117 NOTICES

1118 37. Any notice, demand, or request authorized or required by this Contract shall be
1119 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1120 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1121 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the City
1122 Council of the City of Lindsay, 251 East Honolulu, Lindsay, California 93247. The designation of
1123 the addressee or the address may be changed by notice given in the same manner as provided in this
1124 Article for other notices.

1125 CONFIRMATION OF CONTRACT

1126 38. The Contractor, after the execution of this Contract, shall furnish to the Contracting
1127 Officer evidence that pursuant to the laws of the State of California the Contractor is a legally
1128 constituted entity, and the Contract is lawful, valid, and binding on the Contractor. This Contract
1129 shall not be binding on the United States until such evidence has been provided to the Contracting
1130 Officer's satisfaction.

1131 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1132 and year first above written.

1133

THE UNITED STATES OF AMERICA

1134
1135
1136

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James E. Thomas
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

By: *[Signature]*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

1137 (SEAL)

1138

CITY OF LINDSAY

1139
1140

By: *Ed Murray*
Mayor

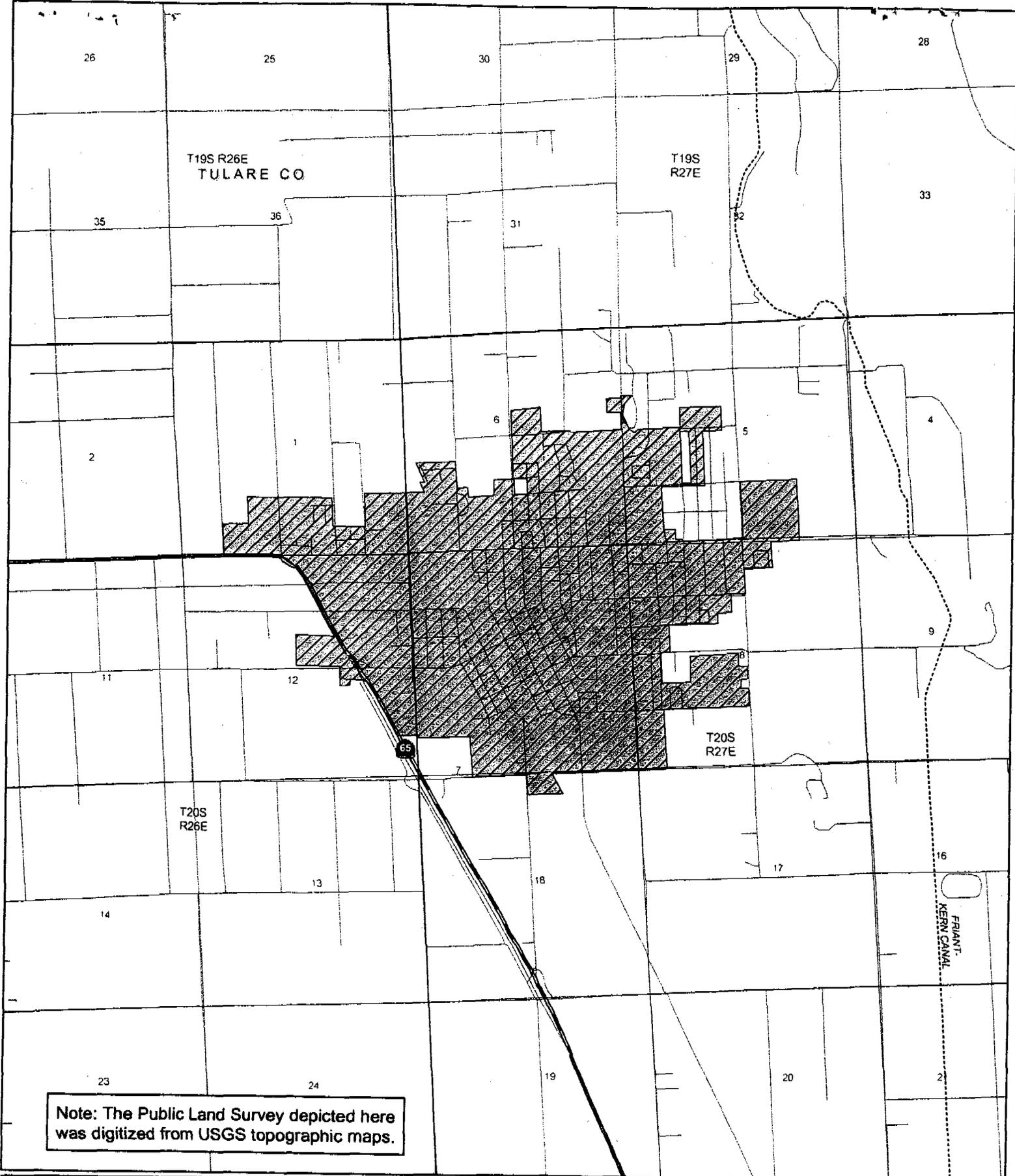
1141 Attest:

1142 By: *Kenny D. Walker*
1143 City Clerk

1144 Approved as to form:

1145 *Juli M. Law*
1146 City Attorney

1147 (I:\LTRC\Final Draft LTRC's - Fresno, Tracy\08-07-2004 City of Lindsay R. O. Final Draft.doc)



Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

-  Contractor's Service Area
-  District Boundary

City of Lindsay
 Contract No. 4-07-20-W0420-LTR1
 EXHIBIT A



EXHIBIT B
CITY OF LINDSAY
Water Rates and Charges

CONTRACT NO. 5-07-20-W0428-LTR1	<u>2005 Rates Per Acre-Foot</u>
O&M AND COST-OF-SERVICE RATES:	M&I
	Water
Capital Rates:	\$10.51
O&M Rates:	
Water Marketing	\$3.89
Storage	\$6.67
Conveyance	*
Deficit Rates:	
Non-Interest Bearing	
Interest Bearing	\$0.28
CFO/PFR Adj Rate **	\$2.69
TOTAL COST-OF-SERVICE RATES (COS):	\$24.04
M&I FULL-COST RATE:	\$30.07
Tiered Pricing Component >80% <=90% of Contract	
Total [Full Cost Rate - COS Rate /2]:	\$3.01
Tiered Pricing Component >90% of Contract	
Total [Full Cost Rate - COS Rate]:	\$6.03
SURCHARGES UNDER P.L. 102-575	
TO RESTORATION FUND***	
Friant Surcharge [3406(c)(1)]	\$7.00
Restoration Payments [3407(d)(2)(A)]	\$15.87

* Conveyance Operation and Maintenance costs were removed for ratesetting purposes and are to be billed directly by Friant Water Authority.

** Chief Financial Officer (CFO) Adjustment and Provision for Replacement (PFR) Credit are being distributed over a 5-year period beginning in FY 2003 for the contractors that request that the costs be deferred.

*** The surcharges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1-9/30).

RESOLUTION NO. 04-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY AUTHORIZING THE MAYOR TO SIGN A LONG TERM RENEWAL WATER CONTRACT WITH THE UNITED STATES (BUREAU OF RECLAMATION) FOR THE PROVISION OF PROJECT WATER SERVICE FROM THE FRIANT DIVISION.

At a regularly scheduled meeting of the City Council of the City of Lindsay, held on the 27th day of July, 2004, at the hour of 7:00 p.m. of said day, in the Council Chambers at City Hall, 251 East Honolulu, Lindsay, California, the following resolution was adopted:

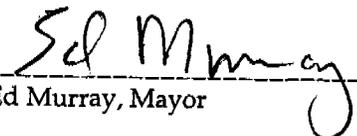
WHEREAS, City staff has reviewed the document and negotiated with the Bureau of Reclamation for the most favorable terms and conditions; and

NOW, THEREFORE, BE IT RESOLVED that the Lindsay City Council hereby approves the Long Term Renewal Contract with the United States (Bureau of Reclamation) for the provision of Project Water Service from the Friant Division to the City of Lindsay; and

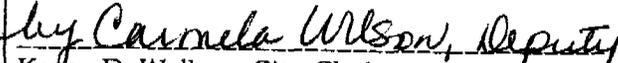
BE IT FURTHER RESOLVED, that the terms and conditions of the contract are in the best interests of the City of Lindsay and now therefore directs the Mayor to execute the document herein referenced as Contract No. 5-07-20-WO428-LTR1; on behalf of the City of Lindsay.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Lindsay this 27th day of July, 2004.

CITY COUNCIL OF THE CITY OF LINDSAY


Ed Murray, Mayor

ATTEST:


Kerry D. Walker, City Clerk

CITY OF LINDSAY)
COUNTY OF TULARE) CITY CLERK CERTIFICATION
STATE OF CALIFORNIA)

I, Kenny D. Walker, City Clerk of the City of Lindsay, do hereby certify that the foregoing is a full, true and correct copy of the original Resolution No. 04-51 adopted by the City Council of the City of Lindsay at a regular meeting duly held on the 27th day of July, 2004, on motion of KIMBALL, second of STAVA, by the following vote, as the same appears of record and on file in my office:

AYES: KIMBALL, STAVA, VELASQUEZ, SALINAS, MURRAY.
NOES: None.
ABSENT: None.
ABSTAIN: None.

WITNESS my hand and Corporate City Seal of Lindsay this 27th day of July, 2004.

OFFICE OF THE CITY CLERK OF LINDSAY

By Carmela Wilson, Deputy
Kenny D. Walker, City Clerk