

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
FRESNO IRRIGATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
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5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 FRESNO IRRIGATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, is entered into  
12 pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary thereto,  
13 including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
16 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title X,  
17 Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin River  
18 Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter referred to  
19 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to  
20 as the United States and FRESNO IRRIGATION DISTRICT, hereinafter referred to as the  
21 Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to  
22 the laws thereof, with its principal place of business in California;

23 WITNESSETH, That

EXPLANATORY RECITALS

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

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

[3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number 14-06-200-1122A, as amended, which established terms for the delivery to the Contractor of Project Water from the Friant Division from July 20, 1964 through February 28, 1995; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States have, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s), identified as Contract Number (s) 14-06-200-1122A-IR1, IR2, IR3, and IR4, which provided for the continued water service to Contractor from March 1, 1995 through February 28, 2001, and subsequently entered into a long-term renewal contract identified as Contract Number 14-06-200-1122A-LTR1, which provided for continued water service to Contractor through

44 February 28, 2026, which was amended January 18, 2007, and is herein referred to as the "Existing  
45 Contract"; and

46 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
47 United States has acquired water rights and other rights to the flows of the San Joaquin River,  
48 including without limitation the permits issued as the result of Decision 935 by the California State  
49 Water Resource Control Board and the contracts described in subdivision (n) of Article 3 of this  
50 Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers Project  
51 Water stored or flowing through Millerton Lake in accordance with State and Federal law for the  
52 benefit of Project Contractors in the Friant Division and for other specified Project purposes; and

53 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project  
54 Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory Recital of  
55 this Contract; and

56 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled "Natural Resources Defense Council, et  
57 al. v Kirk Rogers, et al." No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant Division  
58 entered into a Stipulation of Settlement dated September 13, 2006, (the "Settlement"), which  
59 settlement prescribes a Restoration Goal and a Water Management Goal and which Settlement was  
60 subsequently confirmed and implemented through the SJRRSA; and

61 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing  
62 Contract to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, no  
63 later than December 31, 2010, and further directs that such contract shall require the accelerated  
64 repayment of the Contractors' allocated share of construction costs, either as a lump sum payment by

65 January 31, 2011 or in annual installments by January 31, 2014, which funds will in turn be made  
66 available for implementation of the Settlement and SJRRSA, and which costs otherwise would have  
67 been payable through annual water rates, with full repayment by 2030; and

68 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
69 implementation of actions required under the Settlement and the SJRRSA and provide the Contractor  
70 the benefits provided in Section 10010 of the SJRRSA; and

71 [10<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act) directs  
72 the Secretary to provide that the other party to any contract entered into pursuant to subsection (d) of  
73 Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to subsection (e) of Section 9  
74 of the Act of August 4, 1939 (water service contract) shall “have the first right (to which the rights of  
75 the holders of any other type of irrigation water contract shall be subordinate) to a stated share or  
76 quantity of the project’s available water supply for beneficial use on the irrigable lands within the  
77 boundaries of, or owned by, the party and a permanent right to such share or quantity upon  
78 completion of payment of the amount assigned for ultimate return” by the contractor subject to  
79 fulfillment of all obligations under the contract; and

80 [11<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the  
81 Contractor the permanent right described in the tenth (10<sup>th</sup>) Explanatory Recital; and

82 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
83 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
84 beneficial use and/or has demonstrated projected future demand for water use such that the

85 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the quantity  
86 of Project Water to be made available to it pursuant to this Contract; and

87 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by  
88 urban and agricultural areas within California for more than fifty (50) years and is considered by the  
89 Contractor as an essential portion of its water supply; and

90 [14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
91 Contractor's, depend upon the continued availability of water, including water service from the  
92 Central Valley Project; and

93 [15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
94 to pursue measures to improve water supply, water quality, and reliability of the Project for all  
95 Project purposes; and

96 [16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
97 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of  
98 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to  
99 achieve a reasonable balance among competing demands for use of Project Water; and to comply  
100 with all applicable environmental statutes, all consistent with the legal obligations of the United  
101 States relative to the Central Valley Project; and

102 [17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a need  
103 exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to meet flood  
104 control criteria (currently referred to as "uncontrolled season"), taking into consideration, among  
105 other things, anticipated upstream reservoir operations and the most probable forecast of snowmelt

106 and runoff projections for the upper San Joaquin River, Friant Division Project Contractors utilize a  
107 portion of their undependable Class 2 Water in their service areas to, among other things, assist in the  
108 management and alleviation of groundwater overdraft in the Friant Division service area, provide  
109 opportunities for restoration of the San Joaquin River below Friant Dam, minimize flooding along the  
110 San Joaquin River, encourage optimal water management, and maximize the reasonable and  
111 beneficial use of the water; and

112 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a disincentive  
113 to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in  
114 the Explanatory Recital immediately above; and

115 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
116 its obligations under the Existing Contract.

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

119 DEFINITIONS

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

122 (a) “Additional Capital Obligation” shall mean any additional construction costs  
123 or other capitalized costs incurred after the effective date of this Contract or not reflected in the  
124 Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any amounts  
125 payable by Contractor as determined through the final adjustment described and required by Section  
126 10010(b) of the SJRRSA;

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

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

132 (d) "Class 1 Water" shall mean that supply of water stored in or flowing through  
133 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 12, and 13 of  
134 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera  
135 Canals as a dependable water supply during each Year;

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

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

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

148 (h) "Contract Total" shall mean the maximum amount of Class 1 Water plus the  
149 maximum amount of Class 2 Water specified in subdivision (a) of Article 3 of this Contract and is the  
150 stated share or quantity of the Project's available water supply to which the Contractor will have a  
151 permanent right in accordance with the 1956 Act and the terms of this Contract, upon the Contractor's  
152 complete payment of the Repayment Obligation, notwithstanding any Additional Capital Obligation  
153 that may later be established, which right shall not be disturbed so long as the Contractor fulfills all of  
154 its obligations under this Contract;

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

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

161 (k) "Eligible Lands" shall mean all lands to which Irrigation Water may be  
162 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982  
163 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

167 (m) "Existing Capital Obligation" shall mean the remaining amount of construction  
168 costs of the Contractor identified in the Central Valley Project Irrigation Water Rates and/or

169 Municipal and Industrial Water Rates, respectively, dated January 25, 2007, as adjusted to reflect  
170 payments not reflected in such schedule, pursuant to Section 10010(a)(3)(A) of the SJRRSA. The  
171 Contracting Officer has computed the Existing Capital Obligation in a manner consistent with the  
172 SJRRSA and such amount is set forth in Exhibits “C-1” and “C-2”, incorporated herein by reference;

173 (n) “Financing Costs”, for purposes of computing the reduction of certain charges  
174 as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference between the net  
175 present value of the Existing Capital Obligation discounted using the full Treasury rate and the  
176 Existing Capital Obligation discounted using one-half the Treasury Rate, as set forth in Section  
177 10010(d)(3) of the SJRRSA;

178 (o) “Full Cost Rate” shall mean that water rate described in Sections 205(a)(3) or  
179 202(3) of the RRA, whichever is applicable;

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

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

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

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

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

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

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

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

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

213 (y) Omitted;

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

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

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

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

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

230 (ee) “Repayment Obligation”, as provided in subdivision (a)(2)(A) of Article 7 of  
231 this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by one-half of  
232 the Treasury rate and computed consistent with the provisions of Section 10010(3)(A) of the  
233 SJRRSA to be paid as either a lump sum payment by January 31, 2011 or in approximately equal  
234 annual installments by January 31, 2014;

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

238 (gg) “Settlement” shall mean the Stipulation of Settlement dated September 13,  
239 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued by  
240 the Court pursuant to the terms and conditions of the Settlement in Natural Resources Defense  
241 Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

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

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

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

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

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

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

257 EFFECTIVE DATE OF CONTRACT

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

268 (b) Upon complete payment of the Repayment Obligation by the Contractor, and  
269 notwithstanding any Additional Capital Obligation that may later be established, the Tiered Pricing

270 Component as that term is utilized in this Contract, the acreage limitations, reporting, and Full Cost  
271 pricing provisions of Federal Reclamation law, and subdivisions (k), (l), (o) through (q), (s), and (v)  
272 of Article 1, subdivisions (a)(2)(A), (l)(1), (l)(2), and (l)(3) of Article 7, Article 14, subdivision (a) of  
273 Article 18, and Article 25, all of this Contract, shall no longer be applicable to the Contractor. Upon  
274 complete payment of the Repayment Obligation by the Contractor, and notwithstanding any  
275 Additional Capital Obligation that may later be established, the terms of this Contract shall be as  
276 provided in the restated contract attached hereto as Exhibit "E", which has been prepared solely as a  
277 matter of administrative convenience. Exhibit "E" makes no substantive revisions other than those  
278 required by this subdivision of this Article of this Contract. Accordingly, upon complete payment of  
279 the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation  
280 that may later be established, the parties shall refer to Exhibit "E" as their entire agreement under this  
281 Contract.

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

286 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

287 3. (a) During each Year, consistent with all applicable State water rights, permits,  
288 and licenses, Federal law, the Settlement including the SJRRSA, and subject to the provisions set  
289 forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make available for delivery  
290 to the Contractor from the Project 75,000 acre-feet of Class 2 Water for irrigation and M&I purposes.

291 The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be  
292 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

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

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

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

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

317 (e) The Contractor, through this Contract, shall comply with requirements  
318 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation regarding  
319 the execution of the Existing Contract undertaken pursuant to Section 7 of the Endangered Species  
320 Act of 1973, as amended, as well as the requirements of any other biological opinions applicable to  
321 Project Water delivery under this Contract, that are within the Contractor's legal authority to  
322 implement. The Contractor shall comply with the limitations or requirements imposed by  
323 environmental documentation applicable to the Contractor and within its legal authority to implement  
324 regarding specific activities, including conversion of Irrigation Water to M&I Water. Nothing herein  
325 shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of  
326 competent jurisdiction with respect to any biological opinion or other environmental documentation  
327 referred to in this Article of this Contract.

328 (f) Subject to subdivisions (l) and (n) of this Article of this Contract, following the  
329 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will  
330 make a determination whether Project Water, or other water available to the Project, can be made  
331 available to the Contractor in addition to the Contract Total in this Article of this Contract during the  
332 Year without adversely impacting the Project or other Project Contractors and consistent with the

333 Secretary's legal obligations. At the request of the Contractor, the Contracting Officer will consult  
334 with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of this  
335 Article of this Contract, if the Contracting Officer determines that Project Water, or other water  
336 available to the Project, can be made available to the Contractor, the Contracting Officer will  
337 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
338 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of  
339 taking such water to determine the most equitable and efficient allocation of such water. If the  
340 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
341 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,  
342 and policies.

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

349 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
350 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall  
351 not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract.  
352 Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages  
353 under Article 12 or subdivision (b) of Article 13 of this Contract.

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

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

367 (k) Project Water furnished to the Contractor during any month designated in a  
368 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer  
369 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1  
370 Water is called for in such schedule for such month and shall be deemed to have been accepted as  
371 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any  
372 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and  
373 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,  
374 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water

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

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

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

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

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

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

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

423 TIME FOR DELIVERY OF WATER

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

430 Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide  
431 the Contractor with the updated Long Term Historic Average. The declaration of Project operations  
432 will be expressed in terms of both Water Made Available and the Long Term Historic Average.

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

437 Officer shall use all reasonable means to deliver Project Water according to the approved schedule  
438 for the Year commencing on such March 1.

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

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

456 (e) The Contractor may, during the period from and including November 1 of each  
457 Year through and including the last day of February of that Year, request delivery of any amount of

458 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following  
459 Year. The Contractor may, during the period from and including January 1 of each Year (or such  
460 earlier date as may be determined by the Contracting Officer) through and including the last day of  
461 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting  
462 Officer to be made available to it during the following Year. Such water shall hereinafter be referred  
463 to as pre-use water. Such request must be submitted in writing by the Contractor for a specified  
464 quantity of pre-use and shall be subject to the approval of the Contracting Officer. Payment for pre-  
465 use water so requested shall be at the appropriate Rate(s) for the following Year in accordance with  
466 Article 7 of this Contract and shall be made in advance of delivery of any pre-use water. The  
467 Contracting Officer shall deliver such pre-use water in accordance with a schedule or any revision  
468 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water  
469 is available and to the extent such deliveries will not interfere with the delivery of Project Water  
470 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.  
471 The quantities of pre-use Water Delivered pursuant to this subdivision shall be deducted from the  
472 quantities of water that the Contracting Officer would otherwise be obligated to make available to the  
473 Contractor during the following Year; Provided, That the quantity of pre-use water to be deducted  
474 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in  
475 the following Year shall be specified by the Contractor at the time the pre-use water is requested or as  
476 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of  
477 this Article of this Contract, based on the availability of the following Year water supplies as  
478 determined by the Contracting Officer.

479 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

488 (c) The Contractor shall not deliver Project Water to land outside the Contractor's  
489 Service Area unless approved in advance by the Contracting Officer. Until complete payment of the  
490 Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that  
491 may later be established, the Contractor shall deliver Project Water in accordance with applicable  
492 acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law and any  
493 applicable land classification provisions of the associated regulations.

494 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
495 measured and recorded with equipment furnished, installed, operated, and maintained by the United  
496 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting  
497 Officer (hereafter "other appropriate entity") at the point or points of delivery established pursuant to  
498 subdivision (a) of this Article of this Contract. Upon the request of either party to this Contract, the  
499 Contracting Officer shall investigate, or cause to be investigated by the responsible Operating Non-

500 Federal Entity, the accuracy of such measurements and shall take any necessary steps to adjust any  
501 errors appearing therein. For any period of time when accurate measurements have not been made,  
502 the Contracting Officer shall consult with the Contractor and the responsible Operating Non-Federal  
503 Entity prior to making a final determination of the quantity delivered for that period of time.

504 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
505 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water  
506 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in  
507 subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United States, its  
508 officers, employees, agents, and assigns on account of damage or claim of damage of any nature  
509 whatsoever for which there is legal responsibility, including property damage, personal injury, or  
510 death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of  
511 such Project Water beyond such delivery points, except for any damage or claim arising out of: (i)  
512 acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns,  
513 including any responsible Operating Non-Federal Entity, with the intent of creating the situation  
514 resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its  
515 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii)  
516 negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including  
517 any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction  
518 of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity;  
519 Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated the  
520 malfunctioning facility(ies) from which the damage claim arose.

521 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

522 6. (a) The Contractor has established a measurement program satisfactory to the  
523 Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's  
524 Service Area is measured at each agricultural turnout; and water delivered for municipal and  
525 industrial purposes is measured at each municipal and industrial service connection. The water  
526 measuring devices or water measuring methods of comparable effectiveness must be acceptable to  
527 the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
528 maintaining and repairing all such measuring devices and implementing all such water measuring  
529 methods at no cost to the United States. The Contractor shall use the information obtained from such  
530 water measuring devices or water measuring methods to ensure its proper management of the water,  
531 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered  
532 for municipal and industrial purposes by customer class as defined in the Contractor's water  
533 conservation plan provided for in Article 27 of this Contract. Nothing herein contained, however,  
534 shall preclude the Contractor from establishing and collecting any charges, assessments, or other  
535 revenues authorized by California law.

536 (b) To the extent the information has not otherwise been provided, upon execution  
537 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing  
538 the measurement devices or water measuring methods being used or to be used to implement  
539 subdivision (a) of this Article of this Contract and identifying the agricultural turnouts and the  
540 municipal and industrial service connections or alternative measurement programs approved by the  
541 Contracting Officer, at which such measurement devices or water measuring methods are being used,

542 and, if applicable, identifying the locations at which such devices and/or methods are not yet being  
543 used including a time schedule for implementation at such locations. The Contracting Officer shall  
544 advise the Contractor in writing within sixty (60) days as to the adequacy of, and necessary  
545 modifications, if any, of the measuring devices or water measuring methods identified in the  
546 Contractor's report and if the Contracting Officer does not respond in such time, they shall be  
547 deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or  
548 methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's  
549 response, negotiate in good faith the earliest practicable date by which the Contractor shall modify  
550 said measuring devices and/or measuring methods as required by the Contracting Officer to ensure  
551 compliance with subdivision (a) of this Article of this Contract.

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

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

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

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

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

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

576                       (2)     In accordance with the SJRRSA, the Contractor's allocable share of  
577 Project construction costs will be repaid pursuant to the provisions of this Contract.

578                               (A)     The amount due and payable to the United States, pursuant to  
579 the SJRRSA, shall be the Repayment Obligation. The Repayment Obligation has been computed by  
580 the Contracting Officer in a manner consistent with the SJRRSA and is set forth, both as a lump sum  
581 payment and as four (4) approximately equal annual installments, which amounts together with the  
582 manner in which such amounts were calculated are set forth in Exhibits "C-1" and "C-2". The  
583 Repayment Obligation is due in lump sum by January 31, 2011 or in approximate equal annual

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

599 (B) Project construction costs or other capitalized costs attributable  
600 to capital additions to the Project incurred after the effective date of this Contract or that are not  
601 reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly assignable to the  
602 Contractor, shall be repaid as prescribed by the SJRRSA without interest except as required by law.  
603 Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I portion of  
604 unpaid Project construction costs or other capitalized cost assigned to the Contractor until such costs

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

612 (1) If the collective annual Project construction costs or  
613 other capitalized costs that are incurred after the effective date of this Contract and properly  
614 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly  
615 assignable to the Contractor shall be repaid in not more than five (5) years after notification of the  
616 allocation. This amount is the result of a collective annual allocation of Project construction costs to  
617 the contractors exercising contract conversions; Provided, That the reference to the amount of  
618 \$5,000,000 shall not be a precedent in any other context.

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

626           (b)     Consistent with Section 10010(b) of the SJRRSA, following a final cost  
627 allocation by the Secretary upon completion of the construction of the Central Valley Project, the  
628 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any reallocation  
629 of Project construction costs or other capitalized costs assigned to the Contractor that may have  
630 occurred between the determination of Contractor's Existing Capital Obligation and the final cost  
631 allocation. In the event that the final cost allocation, as determined by the Secretary, indicates that  
632 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are greater  
633 than the Existing Capital Obligation and other amounts of Project construction costs or other  
634 capitalized costs paid by the Contractor, then the Contractor shall be obligated to pay the remaining  
635 allocated costs. The term of such additional repayment contract shall be no less than one (1) year and  
636 no more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment  
637 of such amount may be developed by the parties. In the event that the final cost allocation, as  
638 determined by the Secretary, indicates that the costs properly assignable to the Contractor, as  
639 determined by the Contracting Officer, are less than the Existing Capital Obligation and other  
640 amounts of Project construction costs or other capitalized costs paid by the Contractor, then the  
641 Contracting Officer shall credit such overpayment as an offset against any outstanding or future  
642 obligation of the Contractor, consistent with the SJRRSA. This Contract shall be implemented in a  
643 manner consistent with Section 10010(f) of the SJRRSA.

644           (c)     Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the  
645 Contractor an estimate of the Charges for Project Water that will be applied to the period October 1,  
646 of the current Calendar Year, through September 30, of the following Calendar Year, and the basis

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

654 (1) Upon complete payment of the Repayment Obligation by the  
655 Contractor, and notwithstanding any Additional Capital Obligation that may later be established, for  
656 the years 2020 through 2039 inclusive, Charges shall reflect the reduction on a per acre-foot basis  
657 consistent with Section 10010(d)(1) of the SJRRSA. Exhibit “D” sets forth the reduction in Charges  
658 to offset the Financing Costs as prescribed in Section 10010(d)(1) of the SJRRSA; Provided, That if  
659 the Secretary determines such Charges are otherwise needed, an equivalent reduction will be made to  
660 O&M costs consistent with such provisions of the SJRRSA. Consistent with Section 10010(d)(1) of  
661 the SJRRSA and as shown in Exhibit “D”, the Friant Surcharge reduction has been calculated based  
662 upon the anticipated average annual water deliveries, for the purpose of this reduction only, mutually  
663 agreed upon by the Secretary and the Contractor for the period from January 1, 2020 through  
664 December 31, 2039. The Friant Surcharge reduction shall remain fixed and shall only be applied to  
665 Water Delivered pursuant to this Contract to which the Friant Surcharge applies (including but not  
666 limited to water transferred, banked, or exchanged), commencing on January 1, 2020 until such  
667 volume of Water Delivered equals 210,000 acre-feet or December 31, 2039, whichever occurs first.

668                   (2) Further, to fully offset the Financing Costs, Contractor shall be entitled  
669 to a reduction in other outstanding or future obligations of the Contractor in accordance with Section  
670 10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding or future  
671 obligations of the Contractor after October 1, 2019 has been computed by the Contracting Officer,  
672 and as computed, such amount is set forth in Exhibit “D”.

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

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

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

703 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
704 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
705 Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month  
706 following the month of delivery; Provided, That the Contractor may be granted an exception from the  
707 Tiered Pricing Component pursuant to subdivision (1)(2) of this Article of this Contract. The  
708 payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as  
709 shown in the water delivery report for the subject month prepared by the Contracting Officer. Such

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

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

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

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

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

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

745 (l) (1) Beginning at such time as the total of the deliveries of Class 1 Water  
746 and Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end  
747 of the month following the month of delivery the Contractor shall make an additional payment to the  
748 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for  
749 the total of the deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the  
750 Contract Total, but less than or equal to ninety (90%) percent of the Contract Total, shall equal the

751 one-half of the difference between the Rate established under subdivision (a) of this Article of this  
752 Contract and the Irrigation Full Cost Water Rate, or M&I Full Cost Water Rate, whichever is  
753 applicable. The Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2  
754 Water which exceeds ninety (90%) percent of the Contract Total shall equal the difference between  
755 (i) the Rate established under subdivision (a) of this Article of this Contract and (ii) the Irrigation Full  
756 Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.

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

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

768 (m) Rates under the respective ratesetting policies will be established to recover  
769 only reimbursable O&M (including any deficits) costs of the Project, as those terms are used in the  
770 then-existing Project ratesetting policies, and consistent with the SJRRSA, and interest, where  
771 appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant

772 Project ratesetting policy. Changes of significance in practices which implement the Contracting  
773 Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the  
774 Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

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

780 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

784 RECOVERED WATER ACCOUNT

785 9. (a) Notwithstanding any other provisions of this Contract, water delivered to the  
786 Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the Settlement and  
787 affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of \$10.00 per acre foot.  
788 Recovered Water Account water provided to the Contractor shall be administered at a priority for  
789 delivery lower than Class 2 Water and higher than Section 215 Water.

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

793 SALES, TRANSFERS, AND EXCHANGES OF WATER

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

806 (b) In order to facilitate efficient water management by means of Project Water  
807 sales, transfers, or exchanges of the type historically carried out among Project Contractors located  
808 within the same geographical area and to allow the Contractor to participate in an accelerated water  
809 transfer program, the Contracting Officer has prepared, as appropriate, necessary environmental  
810 documentation including, but not limited to, the National Environmental Policy Act and the  
811 Endangered Species Act analyzing annual Project Water sales, transfers, or exchanges among  
812 Contractors within the same geographical area and the Contracting Officer has determined that such  
813 Project Water sales, transfers, and exchanges comply with applicable law.

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

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

829 (e) The environmental documentation and the Contracting Officer's compliance  
830 determination for transactions described in subdivision (b) of this Article of this Contract shall be  
831 reviewed every five (5) years and updated, as necessary, prior to the expiration of the then-existing  
832 five (5) year period. All subsequent environmental documentation shall include an alternative to  
833 evaluate not less than the quantity of Project Water historically sold, transferred, or exchanged within  
834 the same geographical area.

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

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

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

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

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

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

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

868 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

880 (b) All advances for miscellaneous costs incurred for work requested by the  
881 Contractor pursuant to Article 2625 of this Contract shall be adjusted to reflect the actual costs when  
882 the work has been completed. If the advances exceed the actual costs incurred, the difference will be  
883 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will  
884 be billed for the additional costs pursuant to Article 26 of this Contract.

885 TEMPORARY REDUCTIONS—RETURN FLOWS

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

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

897 avoid any discontinuance or reduction in such service. Upon resumption of service after such  
898 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,  
899 deliver the quantity of Project Water which would have been delivered hereunder in the absence of  
900 such discontinuance or reduction.

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

909 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

915 (b) If there is a Condition of Shortage because of errors in physical operations of  
916 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions  
917 taken by the Contracting Officer to meet legal obligations, including but not limited to obligations

918 pursuant to the Settlement then, except as provided in subdivision (a) of Article 1918 of this Contract,  
919 no liability shall accrue against the United States or any of its officers, agents, or employees for any  
920 damage, direct or indirect, arising therefrom.

921 (c) The United States shall not execute contracts which together with this  
922 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000 acre-feet  
923 per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That, subject to  
924 subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water contracts shall not  
925 prohibit the United States from entering into temporary contracts of one year or less in duration for  
926 delivery of Project Water to other entities if such water is not necessary to meet the schedules as may  
927 be submitted by all Friant Division Project Contractors entitled to receive Class 1 Water and/or Class  
928 2 Water under their contracts. Nothing in this subdivision shall limit the Contracting Officer's ability  
929 to take actions that result in the availability of new water supplies to be used for Project purposes and  
930 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until  
931 after consultation with the Friant Division Project Contractors.

932 (d) The Contracting Officer shall not deliver any Class 2 Water pursuant to this or  
933 any other contract heretofore or hereafter entered into any Year unless and until the Contracting  
934 Officer determines that the cumulative total quantity of Class 1 Water specified in subdivision (c) of  
935 this Article of this Contract will be available for delivery in said Year. If the Contracting Officer  
936 determines there is or will be a shortage in any Year in the quantity of Class 1 Water available for  
937 delivery, the Contracting Officer shall apportion the available Class 1 Water among all Contractors

938 entitled to receive such water that will be made available at Friant Dam in accordance with the  
939 following:

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

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

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

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

956 (f) In the event that in any Year there is made available to the Contractor, by  
957 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article of  
958 this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of Article

959 1211 of this Contract, less than the quantity of water which the Contractor otherwise would be  
960 entitled to receive hereunder, there shall be made an adjustment on account of the amounts already  
961 paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year  
962 in accordance with Article 1110 of this Contract.

963 UNAVOIDABLE GROUNDWATER PERCOLATION

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

968 ACREAGE LIMITATION

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

979 the last water district review until the date when payment to Reclamation of the Repayment  
980 Obligation is completed.

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

994 COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

999 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.

1000 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of the  
1001 Settlement and the SJRRSA.

1002 PROTECTION OF WATER AND AIR QUALITY

1003 17. (a) Project facilities used to make available and deliver water to the Contractor  
1004 shall be operated and maintained in the most practical manner to maintain the quality of the water at  
1005 the highest level possible as determined by the Contracting Officer: *Provided, That* the United States  
1006 does not warrant the quality of the water delivered to the Contractor and is under no obligation to  
1007 furnish or construct water treatment facilities to maintain or improve the quality of water delivered to  
1008 the Contractor.

1009 (b) The Contractor shall comply with all applicable water and air pollution laws  
1010 and regulations of the United States and the State of California; and shall obtain all required permits  
1011 or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water  
1012 by the Contractor; and shall be responsible for compliance with all Federal, State, and local water  
1013 quality standards applicable to surface and subsurface drainage and/or discharges generated through  
1014 the use of Federal or Contractor facilities or project water provided by the Contractor within the  
1015 Contractor's Project Water Service Area.

1016 (c) This article shall not affect or alter any legal obligations of the Secretary to  
1017 provide drainage or other discharge services.

1018 WATER ACQUIRED BY THE CONTRACTOR  
1019 OTHER THAN FROM THE UNITED STATES

1020 18. (a) Until complete payment of the Repayment Obligation by the Contractor, and  
1021 notwithstanding any Additional Capital Obligation that may later be established, water or water rights  
1022 now owned or hereafter acquired by the Contractor other than from the United States and Irrigation  
1023 Water furnished pursuant to the terms of this Contract may be simultaneously transported through the  
1024 same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for  
1025 commingling Irrigation Water and non-project water were constructed without funds made available  
1026 pursuant to Federal Reclamation law, the acreage limitations, reporting, and Full Cost pricing  
1027 provisions of Federal Reclamation law will be applicable only to the Landholders of lands which  
1028 receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established  
1029 through the certification requirements as specified in the Acreage Limitation Rules and Regulations

1030 (43 CFR Part 426); and (iii) the water requirements of Eligible Lands within the Contractor's Service  
1031 Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the  
1032 quantity necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer  
1033 concur that the Contractor's distribution system that was constructed without funds made available  
1034 pursuant to Federal Reclamation law. The use of this distribution system is not subject to the  
1035 provisions of this subdivision of this Article.

1036 (b) Upon complete payment of the Repayment Obligation by the Contractor, and  
1037 notwithstanding any Additional Capital Obligation that may later be established, water or water rights  
1038 now owned or hereafter acquired by the Contractor other than from the United States pursuant to this  
1039 Contract and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously  
1040 transported through the same distribution facilities of the Contractor without the payment of fees to  
1041 the United States and without application of Federal Reclamation law to Water Delivered pursuant to  
1042 this Contract or to lands which receive Water Delivered to Contractor pursuant to this Contract.

1043 (c) Water or water rights now owned or hereafter acquired by the Contractor, other  
1044 than from the United States or adverse to the Project or its contractors (i.e., non-project water), may  
1045 be stored, conveyed and/or diverted through Project facilities, other than Friant Division Facilities,  
1046 subject to the completion of appropriate environmental documentation, with the approval of the  
1047 Contracting Officer and the execution of any contract determined by the Contracting Officer to be  
1048 necessary, consistent with the following provisions:

1049 (1) The Contractor may introduce non-project water into Project facilities  
1050 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,

1051 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
1052 appropriate rate as determined by the Contracting Officer. In addition, if electrical power is required  
1053 to pump non-project water, the Contractor shall be responsible for obtaining the necessary power and  
1054 paying the necessary charges therefor.

1055 (2) Delivery of such non-project water in and through Project facilities  
1056 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as  
1057 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other  
1058 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other  
1059 Project Contractors; (iv) interfere with the physical maintenance of the Project facilities; or (v) result  
1060 in the United States incurring any liability or unreimbursed costs or expenses thereby.

1061 (3) Neither the United States nor the Operating Non-Federal Entity shall be  
1062 responsible for control, care or distribution of the non-project water before it is introduced into or  
1063 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend  
1064 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,  
1065 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting  
1066 from Contractor's diversion or extraction of non-project water from any source.

1067 (4) Diversion of such non-project water into Project facilities shall be  
1068 consistent with all applicable laws, and if involving groundwater, consistent with any groundwater  
1069 management plan for the area from which it was extracted.

1070 (5) After Project purposes are met, as determined by the Contracting  
1071 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of

1072 the facilities declared to be available by the Contracting Officer for conveyance and transportation of  
1073 non-project water prior to any such remaining capacity being made available to non-project  
1074 contractors.

1075 (d) Non-project water may be stored, conveyed and/or diverted through Friant  
1076 Division Facilities, subject to the completion of appropriate environmental documentation and  
1077 approval of the Contracting Officer without execution of a separate contract, consistent with  
1078 subdivisions (c)(1) through (c)(5) of this Article and any other condition determined to be appropriate  
1079 by the Contracting Officer.

1080 OPINIONS AND DETERMINATIONS

1081 19. (a) Where the terms of this Contract provide for actions to be based upon the  
1082 opinion or determination of either party to this Contract, said terms shall not be construed as  
1083 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1084 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve  
1085 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or  
1086 unreasonable opinion or determination. Each opinion or determination by either party shall be  
1087 provided in a timely manner. Nothing in this Article of this Contract is intended to or shall affect or  
1088 alter the standard of judicial review applicable under Federal law to any opinion or determination  
1089 implementing a specific provision of Federal law embodied in statute or regulation.

1090 (b) The Contracting Officer shall have the right to make determinations necessary  
1091 to administer this Contract that are consistent with the provisions of this Contract, the laws of the  
1092 United States and the State of California, and the rules and regulations promulgated by the Secretary.

1093 Such determinations shall be made in consultation with the Contractor to the extent reasonably  
1094 practicable.

1095 COORDINATION AND COOPERATION

1096 20. (a) In order to further their mutual goals and objectives, the Contracting Officer  
1097 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
1098 affected Project Contractors, in order to improve the operation and management of the Project. The  
1099 communication, coordination, and cooperation regarding operations and management shall include,  
1100 but not limited to, any action which will or may materially affect the quantity or quality of Project  
1101 Water supply, the allocation of Project Water supply, and Project financial matters including, but not  
1102 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder  
1103 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making  
1104 authority for all actions, opinions, and determinations to be made by the respective party.

1105 (b) It is the intent of the Secretary to improve water supply reliability. To carry  
1106 out this intent:

1107 (1) The Contracting Officer will, at the request of the Contractor, assist in  
1108 the development of integrated resource management plans for the Contractor. Further, the  
1109 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to  
1110 improve water supply, water quality, and reliability.

1111 (2) The Secretary will, as appropriate, pursue program and project  
1112 implementation and authorization in coordination with Project Contractors to improve the water  
1113 supply, water quality, and reliability of the Project for all Project purposes.

1114 (3) The Secretary will coordinate with Project Contractors and the State of  
1115 California to seek improved water resource management.

1116 (4) The Secretary will coordinate actions of agencies within the  
1117 Department of the Interior that may impact the availability of water for Project purposes.

1118 (5) The Contracting Officer shall periodically, but not less than annually,  
1119 hold division level meetings to discuss Project operations, division level water management  
1120 activities, and other issues as appropriate.

1121 (c) Without limiting the contractual obligations of the Contracting Officer  
1122 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's  
1123 ability to communicate, coordinate, and cooperate with the Contractor or other interested  
1124 stakeholders or to make decisions in a timely fashion as needed to protect health, safety, physical  
1125 integrity of structures or facilities, or the Contracting Officer's ability to comply with applicable  
1126 laws.

1127 CHARGES FOR DELINQUENT PAYMENTS

1128 21. (a) The Contractor shall be subject to interest, administrative and penalty charges  
1129 on delinquent installments or payments. When a payment is not received by the due date, the  
1130 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
1131 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
1132 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
1133 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
1134 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
1135 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
1136 payment.

1137 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
1138 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
1139 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation

1140 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
1141 date and remain fixed for the duration of the delinquent period.

1142 (c) When a partial payment on a delinquent account is received, the amount  
1143 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1144 accrued interest, and finally to the overdue payment.

1145 EQUAL EMPLOYMENT OPPORTUNITY

1146 22. During the performance of this Contract, the Contractor agrees as follows:

1147 (a) The Contractor will not discriminate against any employee or applicant for  
1148 employment because of race, color, religion, sex, disability, or national origin. The Contractor will  
1149 take affirmative action to ensure that applicants are employed, and that employees are treated during  
1150 employment, without regard to their race, color, religion, sex, disability, or national origin. Such  
1151 action shall include, but not be limited to the following: employment, upgrading, demotion, or  
1152 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of  
1153 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in  
1154 conspicuous places, available to employees and applicants for employment, notices to be provided by  
1155 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1156 (b) The Contractor will, in all solicitations or advertisements for employees placed by  
1157 or on behalf of the Contractor, state that all qualified applicants will receive consideration for  
1158 employment without regard to race, color, religion, sex, disability, or national origin.

1159 (c) The Contractor will send to each labor union or representative of workers with  
1160 which it has a collective bargaining agreement or other contract or understanding, a notice, to be  
1161 provided by the Contracting Officer, advising the labor union or workers' representative of the  
1162 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and  
1163 shall post copies of the notice in conspicuous places available to employees and applicants for  
1164 employment.

1165 (d) The Contractor will comply with all provisions of Executive Order No. 11246 of  
1166 September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

1167 (e) The Contractor will furnish all information and reports required by Executive  
1168 Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of  
1169 Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the  
1170 Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance  
1171 with such rules, regulations, and orders.

1172 (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses  
1173 of this contract or with any of such rules, regulations, or orders, this contract may be canceled,  
1174 terminated or suspended in whole or in part and the Contractor may be declared ineligible for further  
1175 Government contracts in accordance with procedures authorized in Executive Order 11246 of  
1176 September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in  
1177 Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of  
1178 Labor, or as otherwise provided by law.

1179 (g) The Contractor will include the provisions of paragraphs (1) through (7) in every  
1180 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of  
1181 Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such  
1182 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
1183 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
1184 means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that  
1185 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor  
1186 or vendor as a result of such direction, the Contractor may request the United States to enter into such  
1187 litigation to protect the interests of the United States.

1188 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1189 23. (a) The obligation of the Contractor to pay the United States as provided in this  
1190 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation  
1191 may be distributed among the Contractor's water users and notwithstanding the default of individual  
1192 water users in their obligations to the Contractor.

1193 (b) The payment of charges becoming due hereunder is a condition precedent to  
1194 receiving benefits under this Contract. The United States shall not make water available to the  
1195 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
1196 the advance payment of water rates due the United States. The Contractor shall not furnish water  
1197 made available pursuant to this Contract for lands or parties which are in arrears in the advance  
1198 payment of water rates levied or established by the Contractor.

1199 (c) With respect to subdivision (b) of this Article of this Contract, the Contractor  
1200 shall have no obligation to require advance payment for water rates which it levies.

1201 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1202 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42  
1203 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
1204 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as

1205 well as with their respective implementing regulations and guidelines imposed by the U.S.  
1206 Department of the Interior and/or Bureau of Reclamation.

1207 (b) These statutes require that no person in the United States shall, on the grounds  
1208 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the  
1209 benefits of, or be otherwise subjected to discrimination under any program or activity receiving  
1210 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor  
1211 agrees to immediately take any measures necessary to implement this obligation, including permitting  
1212 officials of the United States to inspect premises, programs, and documents.

1213 (c) The Contractor makes this agreement in consideration of and for the purpose  
1214 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
1215 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
1216 installment payments after such date on account of arrangements for Federal financial assistance  
1217 which were approved before such date. The Contractor recognizes and agrees that such Federal  
1218 assistance will be extended in reliance on the representations and agreements made in this Article,  
1219 and that the United States reserves the right to seek judicial enforcement thereof.

1220 PRIVACY ACT COMPLIANCE

1221 25. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the  
1222 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
1223 maintaining Landholder acreage certification and reporting records, required to be submitted to the  
1224 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96  
1225 Stat. 1266), and pursuant to 43 CFR 426.18.

1226 (b) With respect to the application and administration of the criminal penalty  
1227 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible  
1228 for maintaining the certification and reporting records referenced in (a) above are considered to be  
1229 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1230 (c) The Contracting Officer or a designated representative shall provide the  
1231 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
1232 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
1233 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
1234 contained in the Landholder's certification and reporting records.

1235 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1236 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
1237 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
1238 authorized to grant requests by individuals for access to their own records.

1239 (e) The Contractor shall forward promptly to the System Manager each proposed  
1240 denial of access under 43 CFR 2.64; and each request for amendment of records filed under  
1241 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1242 information and records necessary to prepare an appropriate response to the requester. These  
1243 requirements do not apply to individuals seeking access to their own certification and reporting forms  
1244 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy  
1245 Act as a basis for the request.

1246 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1247 26. In addition to all other payments to be made by the Contractor pursuant to this  
1248 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill  
1249 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1250 of direct cost incurred by the United States for work requested by the Contractor associated with this  
1251 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1252 procedures. All such amounts referred to in this Article of this Contract shall not exceed the amount  
1253 agreed to in writing in advance by the Contractor. This Article of this Contract shall not apply to  
1254 costs for routine contract administration.

1255 WATER CONSERVATION

1256 27. (a) Prior to the delivery of water provided from or conveyed through Federally  
1257 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1258 implementing an effective water conservation and efficiency program based on the Contractor's water  
1259 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
1260 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
1261 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
1262 economically feasible water conservation measures, and time schedules for meeting those objectives.

1263 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
1264 continued implementation of such water conservation program. In the event the Contractor's water  
1265 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
1266 this Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
1267 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
1268 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
1269 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
1270 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
1271 program in accordance with the time schedules therein.

1272 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1273 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor  
1274 shall implement the Best Management Practices identified by the time frames issued by the  
1275 California Urban Water Conservation Council for such M&I Water unless any such practice is  
1276 determined by the Contracting Officer to be inappropriate for the Contractor.

1277 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1278 its implementation of the water conservation plan on the reporting dates specified in the then-existing  
1279 conservation and efficiency criteria established under Federal law.

1280 (d) At five (5) -year intervals, the Contractor shall revise its water conservation  
1281 plan to reflect the then-existing conservation and efficiency criteria for evaluating water conservation  
1282 plans established under Federal law and submit such revised water management plan to the  
1283 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the

1284 water conservation plan meets Reclamation's then-existing conservation and efficiency criteria for  
1285 evaluating water conservation plans established under Federal law.

1286 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1287 be described in the Contractor's water conservation plan.

1288 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1289 28. Except as specifically provided in Article 1817 of this Contract, the provisions of this  
1290 Contract shall not be applicable to or affect non-project Water or water rights now owned or hereafter  
1291 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
1292 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
1293 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
1294 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1295 Reclamation law.

1296 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1297 29. (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1298 responsibility for funding a portion of the costs of such O& M, have been transferred to the Operating  
1299 Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal  
1300 Entity. That separate agreement shall not interfere with or affect the rights or obligations of the  
1301 Contractor or the United States hereunder.

1302 (b) The Contracting Officer has previously notified the Contractor in writing that  
1303 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the  
1304 Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-

1305 Federal Entity, or to any successor approved by the Contracting Officer under the terms and  
1306 conditions of the separate agreement between the United States and the Operating Non-Federal Entity  
1307 described in subdivision (a) of this Article of this Contract, all rates, charges or assessments of any  
1308 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such  
1309 successor determines, sets or establishes for (i) the O&M of the portion of the Project facilities  
1310 operated and maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant  
1311 Division's share of the operation, maintenance and replacement costs for physical works and  
1312 appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill  
1313 Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and the  
1314 federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such direct  
1315 payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor of its  
1316 obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges,  
1317 and Tiered Pricing Components except to the extent the Operating Non-Federal Entity collects  
1318 payments on behalf of the United States in accordance with the separate agreement identified in  
1319 subdivision (a) of this Article of this Contract.

1320 (c) For so long as the O&M of any portion of the Project facilities serving the  
1321 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1322 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1323 Contract representing the cost associated with the activity being performed by the Operating Non-  
1324 Federal Entity or its successor.

1325 (d) In the event the O&M of the Project facilities operated and maintained by the  
1326 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the  
1327 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised  
1328 Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project  
1329 Water under this Contract representing the O &M costs of the portion of such Project facilities which  
1330 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from  
1331 the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)  
1332 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this  
1333 Contract.

1334 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1335 30. The expenditure or advance of any money or the performance of any obligation of the  
1336 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1337 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1338 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1339 or allotted.

1340 BOOKS, RECORDS, AND REPORTS

1341 31. (a) The Contractor shall establish and maintain accounts and other books and  
1342 records pertaining to administration of the terms and conditions of this Contract, including: the  
1343 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1344 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1345 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1346 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1347 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1348 during office hours to examine and make copies of the other party's books and records relating to  
1349 matters covered by this Contract.

1350 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1351 Contract, no books, records, or other information shall be requested from the Contractor by the

1352 Contracting Officer unless such books, records, or information are reasonably related to the  
1353 administration or performance of this Contract. Any such request shall allow the Contractor a  
1354 reasonable period of time within which to provide the requested books, records, or information.

1355 (c) At such time as the Contractor provides information to the Contracting Officer  
1356 pursuant to subdivision (a) of this Article of this Contract, a copy of such information shall be  
1357 provided to the Operating Non-Federal Entity.

1358 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1359 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1360 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1361 therein shall be valid until approved in writing by the Contracting Officer.

1362 (b) The assignment of any right or interest in this Contract by either party shall not  
1363 interfere with the rights or obligations of the other party to this Contract absent the written  
1364 concurrence of said other party.

1365 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1366 of any proposed assignment.

1367 SEVERABILITY

1368 33. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1369 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1370 association or other form of organization whose primary function is to represent parties to Project  
1371 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1372 enforceability of a provision included in this Contract and said person, entity, association, or  
1373 organization obtains a final court decision holding that such provision is legally invalid or

1374 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1375 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final  
1376 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1377 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time  
1378 periods specified above may be extended by mutual agreement of the parties. Pending the  
1379 completion of the actions designated above, to the extent it can do so without violating any applicable  
1380 provisions of law, the United States shall continue to make the quantities of Project Water specified  
1381 in this Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1382 found to be legally invalid or unenforceable in the final court decision.

1383 RESOLUTION OF DISPUTES

1384 34. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1385 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1386 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1387 any matter to Department of Justice, the party shall provide to the other party thirty (30) days written  
1388 notice of the intent to take such action; Provided, That such notice shall not be required where a delay  
1389 in commencing an action would prejudice the interests of the party that intends to file suit. During  
1390 the thirty (30) day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1391 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1392 waive or abridge any right or remedy that the Contractor or the United States may have.

1393 OFFICIALS NOT TO BENEFIT

1394 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1395 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1396 manner as other water users or landowners.

1397 CHANGES IN CONTRACTOR'S SERVICE AREA

1398 36. (a) While this Contract is in effect, no change may be made in the Contractor's  
1399 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or  
1400 otherwise, except upon the Contracting Officer's written consent.

1401 (b) Within thirty (30) days of receipt of a request for such a change, the  
1402 Contracting Officer will notify the Contractor of any additional information required by the  
1403 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1404 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1405 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1406 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1407 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible;  
1408 and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,  
1409 the Contracting Officer shall comply with the National Environmental Policy Act and the Endangered  
1410 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in  
1411 this process, and such costs will be paid in accordance with Article 2625 of this Contract.

1412 FEDERAL LAWS

1413 37. By entering into this Contract, the Contractor does not waive its rights to contest the  
1414 validity or application in connection with the performance of the terms and conditions of this  
1415 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the

1416 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1417 regulation to the implementing provision of the Contract is granted by a court of competent  
1418 jurisdiction.

1419 EMERGENCY RESERVE FUND

1420 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1421 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1422 Friant Division Facilities is and will continue to be administered under Contract No. 8-07-20-X0356  
1423 titled Agreement To Transfer The Operation, Maintenance And Replacement And Certain Financial  
1424 And Administrative Activities Related To The Friant-Kern Canal And Associated Works, dated  
1425 March 1, 1998 as amended, supplemented, assigned, or renewed.

1426 MEDIUM FOR TRANSMITTING PAYMENT

1427 39. (a) All payments from the Contractor to the United States under this contract  
1428 shall be by the medium requested by the United States on or before the date payment is due. The  
1429 required method of payment may include checks, wire transfers, or other types of payment specified  
1430 by the United States.

1431 (b) Upon execution of the contract, the Contractor shall furnish the Contracting  
1432 Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the  
1433 Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the  
1434 Contractor's relationship with the United States.

1435 NOTICES

1436 40. Any notice, demand, or request authorized or required by this Contract shall be  
1437 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1438 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California  
1439 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of  
1440 Directors of Fresno Irrigation District, 2907 South Maple Avenue, Fresno California 93725. The  
1441 designation of the addressee or the address may be changed by notice given in the same manner as  
1442 provided in this Article of this Contract for other notices.

1443 CONFIRMATION OF CONTRACT

1444 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1445 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1446 confirming the execution of this Contract. The Contractor shall furnish the United States a certified  
1447 copy of the final decree, the validation proceedings, and all pertinent supporting records of the court  
1448 approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and  
1449 binding on the Contractor.

1450 CONTRACT DRAFTING CONSIDERATIONS

1451 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,  
1452 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,  
1453 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and  
1454 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the parties  
1455 hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party  
1456 shall be considered to have drafted the stated Articles.  
1457

1458            IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1459            year first above written.

THE UNITED STATES OF AMERICA

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

FRESNO IRRIGATION DISTRICT

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

Attest:

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

**EXHIBIT A**

**Map or Description of Service Area**

**EXHIBIT B  
 FRESNO IRRIGATION DISTRICT  
 2010 Rates and Charges  
 (Per Acre-Foot)**

	<b>Irrigation</b>	<b>M&amp;I<sup>1</sup></b>
	<b>Water</b>	<b>Water</b>
	<b>Class 2</b>	
<b>COST-OF-SERVICE (COS) COMPONENTS</b>		
O&M Components		
Water Marketing	\$6.01	
Storage	\$0.00	
Conveyance <sup>2</sup>		
<b>TOTAL COS (Tier 1 Rate)</b>	<b>\$6.01</b>	
<b>IRRIGATION FULL-COST RATE (RRA)</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$15.53	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$19.80	
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>		
<b>IRRIGATION</b>		
<i>Tier 2 Rate</i> : >80% <=90% of Contract Total [Section 202(3) Irrigation Full-Cost Rate - COS Rate]/2 (Amount to be added to Tier 1 Rate)	\$4.76	
<i>Tier 3 Rate</i> : >90% of Contract Total [Section 202(3) Irrigation Full-Cost Rate - COS Rate] (Amount to be added to Tier 1 Rate)	\$9.52	
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>		
P.L. 102-575 Surcharges <sup>3</sup>		
Restoration Fund Payments [Section 3407(d)(2)(A)]	\$9.11	
Friant Surcharge [Section 3406(c)(1)]	\$7.00	
P.L. 106-377 Assessment (Trinity Public Utilities District) <sup>4</sup> [Appendix B, Section 203]	\$0.11	

**EXHIBIT B**  
**FRESNO IRRIGATION DISTRICT**  
**2010 Rates and Charges**  
**(Per Acre-Foot)**

**EXPLANATORY NOTES**

- 1 The Contractor has not projected any delivery of M&I water for the 2010 contract year. A temporary M&I rate will be applied upon any M&I water delivery.
- 2 Conveyance and Conveyance Pumping Operation and maintenance costs were removed for ratesetting purposes and are to be direct billed.
- 3 The surcharges were determined pursuant to Tital XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are determined on a fiscal year bases (10/1-9/30).
- 4 The Trinity Public Utilities District Assessment is applicable to each acre-foot of water delivered from 3/1/2010-2/28/2011 and is adjusted annually.

**Additional detail of rate components is available on the Internet at**

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

**Exhibit C-1**

Repayment Obligation - Lump Sum Option

Friant Contractor:

Fresno ID

San Joaquin River Restoration Act

Existing Capital Obligation (Article 1(m))	\$	3,950,067.46
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Irrigation portion of Existing Capital Obligation	\$	3,950,067.46
---	----	--------------

20yr CMT as of :	10/01/10	4.050%
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Discount Rate (1/2 20yr CMT)	2.025%
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Discounted Irrigation Capital	\$	3,221,685.47
-------------------------------	----	--------------

Non-Discounted M&I Portion of Existing Capital Obligation	\$	-
---	----	---

Repayment Obligation - Lump Sum Option (per Article 7(a)(2)(A))	\$	3,221,685.47
---	----	--------------

Year	Irrigation Portion of Allocated Capital Cost	
	Beginning Balance	Straight Line Repayment
	2011	\$ 3,950,067
2012	\$ 3,752,564	\$ 197,503
2013	\$ 3,555,061	\$ 197,503
2014	\$ 3,357,557	\$ 197,503
2015	\$ 3,160,054	\$ 197,503
2016	\$ 2,962,551	\$ 197,503
2017	\$ 2,765,047	\$ 197,503
2018	\$ 2,567,544	\$ 197,503
2019	\$ 2,370,040	\$ 197,503
2020	\$ 2,172,537	\$ 197,503
2021	\$ 1,975,034	\$ 197,503
2022	\$ 1,777,530	\$ 197,503
2023	\$ 1,580,027	\$ 197,503
2024	\$ 1,382,524	\$ 197,503
2025	\$ 1,185,020	\$ 197,503
2026	\$ 987,517	\$ 197,503
2027	\$ 790,013	\$ 197,503
2028	\$ 592,510	\$ 197,503
2029	\$ 395,007	\$ 197,503
2030	\$ 197,503	\$ 197,503
		\$ 3,950,067

**Exhibit C-2**

Repayment Obligation - Installment Payment Option

**Prinant Contractor:** Fresno ID

**Existing Capital Obligation (Article 1(m))**      \$      3,950,067.46

**Irrigation Portion of Existing Capital Obligation**      \$      3,950,067.46

**20yr CMT - 10/1/2010**      **4.050%**  
**Discount Rate (1/2 20yr CMT)**      **2.025%**

**Non-Discounted M&I Existing Capital Obligation**      \$      -

**Installment Schedule**

		Irrigation Portion of		Non-discounted	
		Repayment		M&I Portion of	
	Payment Due Date	Obligation		Existing Capital	
				Repayment	
				Obligation	
<b>1st Installment</b>	5/1/2011	\$	829,484.76	\$	-
<b>2nd Installment</b>	5/1/2012	\$	829,108.97	\$	-
<b>3rd Installment</b>	5/1/2013	\$	829,703.24	\$	-
<b>4th Installment</b>	1/31/2014	\$	830,957.02	\$	-
<b>Total Repayment Obligation - Installment Option (per Article 7(a)(2)(A)):</b>		\$	3,319,253.99	\$	-
				\$	3,319,253.99

Year	Irrigation Portion of Allocated Capital Cost		Discounted Capital Amount			
	Beginning Balance	Straight Line Repayment	\$829,484.76	\$829,108.97	\$829,703.24	\$830,957.02
2011	\$ 3,950,067	\$ 197,503	\$ 197,503			
2012	\$ 3,752,564	\$ 197,503	\$ 41,476	\$ 156,028		
2013	\$ 3,555,061	\$ 197,503	\$ 41,476	\$ 46,117	\$ 109,911	
2014	\$ 3,357,557	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2015	\$ 3,160,054	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2016	\$ 2,962,551	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2017	\$ 2,765,047	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2018	\$ 2,567,544	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2019	\$ 2,370,040	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2020	\$ 2,172,537	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2021	\$ 1,975,034	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2022	\$ 1,777,530	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2023	\$ 1,580,027	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2024	\$ 1,382,524	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2025	\$ 1,185,020	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2026	\$ 987,517	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2027	\$ 790,013	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2028	\$ 592,510	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2029	\$ 395,007	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
2030	\$ 197,503	\$ 197,503	\$ 41,476	\$ 46,117	\$ 51,647	\$ 58,263
	\$ 3,950,067		\$ 985,542	\$ 986,134	\$ 987,912	\$ 990,479

**Exhibit D**

Friant Surcharge Reduction Calculation

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

Fresno ID \_\_\_\_\_

Average Annual Delivery - Forecasted for 2020-2039*	10,500
<b>Total Projected deliveries (over 20 yr period)**</b>	<b>210,000</b>
Article 7(c)	210,000
20 yr CMT as of 10/1/2010	4.050%
1/2 20 yr CMT as of 10/1/2010	2.025%
<b>Irrigation Portion of Existing Capital Obligation</b>	<b>\$3,950,067</b>
NPV at Half CMT (Repayment Obligation)	\$3,221,685
NPV at Full CMT	\$2,672,290
<b>Financing Cost Offset: @ (Article 7(c)(1))</b>	<b>\$549,395</b>
NPV of FS Reduction	\$298,154
<b>Difference between Financing Cost Offset and NPV of FS Reduction</b>	<b>\$251,241</b>
<b>2020 Other Obligation Credit (FV of difference) (Art. 7(c)(2))***</b>	<b>\$359,144</b>

Year	Irrigation portion of Allocated Capital Cost			CVPIA Friant	Reduction in Friant Surcharge			
	Beginning Balance	Straight Line Repayment	Surcharge per Acre- Foot Before Reduction	Surcharges	Friant Surcharge Reduction per Article 7(c)(1)	Friant Surcharge due per A/F after Reduction	Projected Total Annual Credit	2020 Other Obligation Credit Calculation (Art. 7(c)(2))
2011	\$ 3,950,067	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 251,240.82
2012	\$ 3,752,564	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 261,416.08
2013	\$ 3,555,061	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 272,003.43
2014	\$ 3,357,557	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 283,019.57
2015	\$ 3,160,054	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 294,481.86
2016	\$ 2,962,551	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 306,408.37
2017	\$ 2,765,047	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 318,817.91
2018	\$ 2,567,544	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 331,730.04
2019	\$ 2,370,040	\$ 197,503	\$ 7.00			\$ 7.00	0	\$ 345,165.10
2020	\$ 2,172,537	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(\$31,500)	\$ 359,144.29
2021	\$ 1,975,034	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2022	\$ 1,777,530	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2023	\$ 1,580,027	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2024	\$ 1,382,524	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2025	\$ 1,185,020	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2026	\$ 987,517	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2027	\$ 790,013	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2028	\$ 592,510	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2029	\$ 395,007	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2030	\$ 197,503	\$ 197,503	\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2031			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2032			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2033			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2034			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2035			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2036			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2037			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2038			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
2039			\$ 7.00		(\$3.00)	\$ 4.00	(31,500)	
	\$ 3,950,067						(\$630,000)	

## Exhibit D

### Friant Surcharge Reduction Calculation



#### **Footnotes**

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

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

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

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

#### Friant Surcharge (FS) Reduction Calculations

FV of Total Financing Cost for Offset	\$	817,157
Annual Credit Target	\$	(58,044)
FS Reduction w/o limit	\$	(5.53)
FS Reduction limit	\$	(3.00)

**EXHIBIT E**

**Restated Contract<sup>1</sup>**

Irrigation and M&I

Contract No. 14-06-200-1122D

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
FRESNO IRRIGATION DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE FROM  
FRIANT DIVISION AND  
FOR FACILITIES REPAYMENT

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3	Water to be Made Available and Delivered to the Contractor	
4	Time for Delivery of Water	
5	Point of Diversion and Responsibility for Distribution of Water	
6	Measurement of Water within the Service Area	
7	Rates, Method of Payment for Water, and Accelerated Repayment of Facilities	
8	Non-Interest Bearing Operation and Maintenance Deficits	
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13	Constraints on the Availability of Water	
14	Omitted	
15	Acreage Limitation	
16	Compliance With Federal Reclamation Law	

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

17	Protection of Water and Air Quality
18	Water Acquired By the Contractor Other Than From the United States
19	Opinions and Determinations
20	Coordination and Cooperation
21	Charges for Delinquent Payments
22	Equal Employment Opportunity
23	General Obligation--Benefits Conditioned Upon Payment
24	Compliance with Civil Rights Laws and Regulations
25	Omitted
26	Contractor to Pay Certain Miscellaneous Costs
27	Water Conservation
28	Existing or Acquired Water or Water Rights
29	Operation and Maintenance by Operating Non-Federal Entity
30	Contingent on Appropriation or Allotment of Funds
31	Books, Records, and Reports
32	Assignment Limited--Successors and Assigns Obligated
33	Severability
34	Resolution of Disputes
35	Officials Not to Benefit
36	Changes in Contractor's Service Area
37	Federal Laws
38	Emergency Reserve Fund
39	Medium for Transmitting Payment
40	Notices
41	Confirmation of Contract
42	Contract Drafting Considerations

Signature Page

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

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

5 CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 FRESNO IRRIGATION DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM FRIANT DIVISION AND  
10 FACILITIES REPAYMENT

11 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, is entered into  
12 pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary thereto,  
13 including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and  
14 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
15 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.  
16 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title X,  
17 Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin River  
18 Restoration Settlement Act hereinafter referred to as SJRRSA, all collectively hereinafter referred to  
19 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to  
20 as the United States and FRESNO IRRIGATION DISTRICT, hereinafter referred to as the  
21 Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to  
22 the laws thereof, with its principal place of business in California;

23 WITNESSETH, That

24 EXPLANATORY RECITALS

25 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
26 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,

27 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,  
28 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of  
29 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River  
30 and their tributaries; and

31 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton  
32 Lake) and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant  
33 Division Facilities, which will be used in part for the furnishing of water to the Contractor pursuant to  
34 the terms of this Contract; and

35 [3<sup>rd</sup>] WHEREAS, the United States and the Contractor entered into Contract Number 14-  
36 06-200-1122A, as amended, which established terms for the delivery to the Contractor of Project  
37 Water from the Friant Division from July 20, 1964 through February 28, 1995; and

38 [4<sup>th</sup>] WHEREAS, the Contractor and the United States have, pursuant to subsection  
39 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
40 interim renewal contract(s), identified as Contract Number (s) 14-06-200-1122A-IR1, IR2, IR3, and  
41 IR4, which provided for the continued water service to Contractor from March 1, 1995 through  
42 February 28, 2001, and subsequently entered into a long-term renewal contract identified as Contract  
43 Number 14-06-200-1122A-LTR1, which provided for continued water service to Contractor through  
44 February 28, 2026, which was amended January 18, 2007, and is herein referred to as the "Existing  
45 Contract"; and

46 [5<sup>th</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the  
47 United States has acquired water rights and other rights to the flows of the San Joaquin River,

48 including without limitation the permits issued as the result of Decision 935 by the California State  
49 Water Resource Control Board and the contracts described in subdivision (n) of Article 3 of this  
50 Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers Project  
51 Water stored or flowing through Millerton Lake in accordance with State and Federal law for the  
52 benefit of Project Contractors in the Friant Division and for other specified Project purposes; and

53 [6<sup>th</sup>] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project  
54 Water developed through the exercise of the rights described in the fifth (5<sup>th</sup>) Explanatory Recital of  
55 this Contract; and

56 [7<sup>th</sup>] WHEREAS, as a result of litigation entitled “Natural Resources Defense Council, et  
57 al. v Kirk Rogers, et al.” No. CIV-S-88-1658LLK/GGH, certain contractors from the Friant Division  
58 entered into a Stipulation of Settlement dated September 13, 2006, (the “Settlement”), which  
59 settlement prescribes a Restoration Goal and a Water Management Goal and which Settlement was  
60 subsequently confirmed and implemented through the SJRRSA; and

61 [8<sup>th</sup>] WHEREAS, the SJRRSA authorizes and directs the Secretary to convert the Existing  
62 Contract to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, no  
63 later than December 31, 2010, and further directs that such contract shall require the accelerated  
64 repayment of the Contractors’ allocated share of construction costs, either as a lump sum payment by  
65 January 31, 2011 or in annual installments by January 31, 2014, which funds will in turn be made  
66 available for implementation of the Settlement and SJRRSA, and which costs otherwise would have  
67 been payable through annual water rates, with full repayment by 2030; and

68 [9<sup>th</sup>] WHEREAS, such repayment of costs will assist the United States with  
69 implementation of actions required under the Settlement and the SJRRSA and provide the Contractor  
70 the benefits provided in Section 10010 of the SJRRSA; and

71 [10<sup>th</sup>] WHEREAS, subsection (4) of Section 1 of the Act of July 2, 1956 (1956 Act) directs  
72 the Secretary to provide that the other party to any contract entered into pursuant to subsection (d) of  
73 Section 9 of the Act of August 4, 1939 (repayment contract) or pursuant to subsection (e) of Section 9  
74 of the Act of August 4, 1939 (water service contract) shall “have the first right (to which the rights of  
75 the holders of any other type of irrigation water contract shall be subordinate) to a stated share or  
76 quantity of the project’s available water supply for beneficial use on the irrigable lands within the  
77 boundaries of, or owned by, the party and a permanent right to such share or quantity upon  
78 completion of payment of the amount assigned for ultimate return” by the contractor subject to  
79 fulfillment of all obligations under the contract; and

80 [11<sup>th</sup>] WHEREAS, among other things, this Contract includes provisions granting the  
81 Contractor the permanent right described in the tenth (10<sup>th</sup>) Explanatory Recital; and

82 [12<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
83 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
84 beneficial use and/or has demonstrated projected future demand for water use such that the  
85 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the quantity  
86 of Project Water to be made available to it pursuant to this Contract; and

87 [13<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by  
88 urban and agricultural areas within California for more than fifty (50) years and is considered by the  
89 Contractor as an essential portion of its water supply; and

90 [14<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
91 Contractor's, depend upon the continued availability of water, including water service from the  
92 Central Valley Project; and

93 [15<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
94 to pursue measures to improve water supply, water quality, and reliability of the Project for all  
95 Project purposes; and

96 [16<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
97 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of  
98 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to  
99 achieve a reasonable balance among competing demands for use of Project Water; and to comply  
100 with all applicable environmental statutes, all consistent with the legal obligations of the United  
101 States relative to the Central Valley Project; and

102 [17<sup>th</sup>] WHEREAS, any time during the Year the Contracting Officer determines that a need  
103 exists to evacuate water from Millerton Lake in order to prevent or minimize spill or to meet flood  
104 control criteria (currently referred to as "uncontrolled season"), taking into consideration, among  
105 other things, anticipated upstream reservoir operations and the most probable forecast of snowmelt  
106 and runoff projections for the upper San Joaquin River, Friant Division Project Contractors utilize a  
107 portion of their undependable Class 2 Water in their service areas to, among other things, assist in the

108 management and alleviation of groundwater overdraft in the Friant Division service area, provide  
109 opportunities for restoration of the San Joaquin River below Friant Dam, minimize flooding along the  
110 San Joaquin River, encourage optimal water management, and maximize the reasonable and  
111 beneficial use of the water; and

112 [18<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a disincentive  
113 to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in  
114 the Explanatory Recital immediately above; and

115 [19<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
116 its obligations under the Existing Contract.

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

119 DEFINITIONS

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

122 (a) “Additional Capital Obligation” shall mean any additional construction costs  
123 or other capitalized costs incurred after the effective date of this Contract or not reflected in the  
124 Existing Capital Obligation as provided in Section 10010(a)(3)(B) of the SJRRSA and any amounts  
125 payable by Contractor as determined through the final adjustment described and required by Section  
126 10010(b) of the SJRRSA;

127 (b) “Calendar Year” shall mean the period January 1 through December 31, both  
128 dates inclusive;

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

132 (d) "Class 1 Water" shall mean that supply of water stored in or flowing through  
133 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 12, and 13 of  
134 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera  
135 Canals as a dependable water supply during each Year;

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

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

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

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

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

155 (i) “Contractor's Service Area” shall mean the area to which the Contractor is  
156 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,  
157 which may be modified from time to time in accordance with Article 36 of this Contract without  
158 amendment of this Contract;

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

161 (k) Omitted;

162 (l) Omitted;

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

169 (n) “Financing Costs”, for purposes of computing the reduction of certain charges  
170 as specified in subdivision (c) of Article 7 of this Contract, shall mean the difference between the net

171 present value of the Existing Capital Obligation discounted using the full Treasury rate and the  
172 Existing Capital Obligation discounted using one-half the Treasury Rate, as set forth in Section  
173 10010(d)(3) of the SJRRA;

174 (o) Omitted;

175 (p) Omitted;

176 (q) Omitted;

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

180 (s) Omitted;

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

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

191 (v) Omitted;

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

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

199 (y) Omitted.

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

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

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

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

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

216 (ee) “Repayment Obligation”, as provided in subdivision (a)(2)(A) of Article 7 of  
217 this Contract, shall be the Existing Capital Obligation, as defined herein, discounted by one-half of  
218 the Treasury rate and computed consistent with the provisions of Section 10010(3)(A) of the  
219 SJRSA to be paid as either a lump sum payment by January 31, 2011 or in approximately equal  
220 annual installments by January 31, 2014;

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

224 (gg) “Settlement” shall mean the Stipulation of Settlement dated September 13,  
225 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued by  
226 the Court pursuant to the terms and conditions of the Settlement in Natural Resources Defense  
227 Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

228 (hh) Omitted;

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

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

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

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

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

242 EFFECTIVE DATE OF CONTRACT

243 2. (a) This Contract shall become effective on the date first hereinabove written and  
244 shall continue so long as the Contractor is making the annual payments required herein and paying  
245 any other amounts owing under this Contract and applicable law, unless it is terminated by the  
246 Contracting Officer by reason of a material uncured breach by the Contractor; Provided, That the  
247 Contracting Officer shall not seek to terminate this Contract by reason of an asserted material  
248 uncured breach by the Contractor unless it has first provided at least sixty (60) days written notice of  
249 the asserted breach to the Contractor and the Contractor has failed to cure such breach (or to  
250 diligently commence curative actions satisfactory to the Contracting Officer for a breach that cannot

251 be fully cured within sixty (60) days) within the sixty (60)-day notice period; Provided further, That  
252 this Contract may be terminated at any time by mutual consent of the parties hereto.

253 (b) The Contractor has paid the Repayment Obligation, and notwithstanding any  
254 Additional Capital Obligation that may later be established, the tiered pricing component and the  
255 acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law, shall no  
256 longer be applicable to the Contractor.

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

261 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

262 3. (a) During each Year, consistent with all applicable State water rights, permits,  
263 and licenses, Federal law, the Settlement including the SJRRSA, and subject to the provisions set  
264 forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make available for delivery  
265 to the Contractor from the Project 75,000 acre-feet of Class 2 Water for irrigation and M&I purposes.  
266 The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be  
267 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

268 (b) The Contractor has paid the Repayment Obligation, and notwithstanding any  
269 Additional Capital Obligation that may later be established, the Contractor has a permanent right to  
270 the Contract Total in accordance with the 1956 Act and the terms of this Contract. This right shall  
271 not be disturbed so long as the Contractor fulfills all of its obligations hereunder. The quantity of

272 water made available for delivery in any given Year shall remain subject to the terms and conditions  
273 of subdivision (a) of this Article of this Contract.

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

276 (d) The Contractor shall make reasonable and beneficial use of all Project Water  
277 or other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater  
278 banking programs, surface water storage programs, and other similar programs utilizing Project  
279 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
280 Area which are consistent with applicable State law and result in use consistent with applicable  
281 Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are)  
282 described in the Contractor's Water Conservation Plan submitted pursuant to Article 27 of this  
283 Contract; Provided further, That such Water Conservation Plan demonstrates sufficient lawful uses  
284 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered  
285 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation  
286 law. Groundwater recharge programs, groundwater banking programs, surface water storage  
287 programs, and other similar programs utilizing Project Water or other water furnished pursuant to this  
288 Contract conducted outside the Contractor's Service Area may be permitted upon written approval of  
289 the Contracting Officer, which approval will be based upon environmental documentation, Project  
290 Water rights, and Project operational concerns. The Contracting Officer will address such concerns  
291 in regulations, policies, or guidelines.

292 (e) The Contractor, through this Contract, shall comply with requirements  
293 applicable to the Contractor in biological opinion(s) prepared as a result of the consultation regarding  
294 the execution of the Existing Contract undertaken pursuant to Section 7 of the Endangered Species  
295 Act of 1973, as amended, as well as the requirements of any other biological opinions applicable to  
296 Project Water delivery under this Contract, that are within the Contractor's legal authority to  
297 implement. The Contractor shall comply with the limitations or requirements imposed by  
298 environmental documentation applicable to the Contractor and within its legal authority to implement  
299 regarding specific activities, including conversion of Irrigation Water to M&I Water. Nothing herein  
300 shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of  
301 competent jurisdiction with respect to any biological opinion or other environmental documentation  
302 referred to in this Article of this Contract.

303 (f) Subject to subdivisions (l) and (n) of this Article of this Contract, following the  
304 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will  
305 make a determination whether Project Water, or other water available to the Project, can be made  
306 available to the Contractor in addition to the Contract Total in this Article of this Contract during the  
307 Year without adversely impacting the Project or other Project Contractors and consistent with the  
308 Secretary's legal obligations. At the request of the Contractor, the Contracting Officer will consult  
309 with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of this  
310 Article of this Contract, if the Contracting Officer determines that Project Water, or other water  
311 available to the Project, can be made available to the Contractor, the Contracting Officer will  
312 announce the availability of such water and shall so notify the Contractor as soon as practical. The

313 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of  
314 taking such water to determine the most equitable and efficient allocation of such water. If the  
315 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
316 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,  
317 and policies.

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

324 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable  
325 State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall  
326 not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract.  
327 Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose shortages  
328 under Article 12 or subdivision (b) of Article 13 of this Contract.

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

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

342 (k) Project Water furnished to the Contractor during any month designated in a  
343 schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer  
344 shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1  
345 Water is called for in such schedule for such month and shall be deemed to have been accepted as  
346 Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any  
347 month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and  
348 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,  
349 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water  
350 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply  
351 available in the current Year is not sufficient to account for such additional diversions, such  
352 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply  
353 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2

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

359 (l) If the Contracting Officer determines there is a Project Water supply available  
360 at Friant Dam as the result of an unusually large water supply not otherwise storable for Project  
361 purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be  
362 made available to the Contractor and others under Section 215 of the Act of October 12, 1982,  
363 pursuant to the priorities specified below if the Contractor enters into a temporary contract with the  
364 United States not to exceed one (1) year for the delivery of such water or as otherwise provided for in  
365 Federal Reclamation law and associated regulations. Such water may be identified by the Contractor  
366 either (i) as additional water to supplement the supply of Class 1 Water and/or Class 2 Water made  
367 available to it pursuant to this Contract or, (ii) upon written notification to the Contracting Officer, as  
368 water to be credited against the Contractor's Class 2 Water supply available pursuant to this Contract.  
369 The Contracting Officer shall make water determined to be available pursuant to this subsection  
370 according to the following priorities: first, to contractors for Class 1 Water and/or Class 2 Water  
371 within the Friant Division; second, to contractors in the Cross Valley Division of the Project. The  
372 Contracting Officer will consider requests from other parties for Section 215 Water for use within the  
373 area identified as the Friant Division service area in the environmental assessment developed in  
374 connection with the execution of the Existing Contract.

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

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

390 (o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph 16 of  
391 the Settlement, the Contracting Officer is required to develop and implement a plan for recirculation,  
392 recapture, reuse, exchange or transfer of water released for restoration flows or interim flows, as  
393 those terms are defined in the Settlement, to reduce or avoid impacts to water deliveries caused by  
394 said restoration flows or interim flows. Water developed through such activities may be made  
395 available (i) to the Contractor without the need of an additional contract, and/or (ii) to others on

396 behalf of the Contractor under terms mutually acceptable to the Contractor and the Contracting  
397 Officer that are consistent with the Water Management Goal.

398 TIME FOR DELIVERY OF WATER

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

405 Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide  
406 the Contractor with the updated Long Term Historic Average. The declaration of Project operations  
407 will be expressed in terms of both Water Made Available and the Long Term Historic Average.

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

414 (c) The Contractor shall not schedule Project Water in excess of the quantity of  
415 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's

416 Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract or bank pursuant  
417 to subdivision (d) of Article 3 of this Contract during any Year.

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

431 (e) The Contractor may, during the period from and including November 1 of each  
432 Year through and including the last day of February of that Year, request delivery of any amount of  
433 the Class 1 Water estimated by the Contracting Officer to be made available to it during the following  
434 Year. The Contractor may, during the period from and including January 1 of each Year (or such  
435 earlier date as may be determined by the Contracting Officer) through and including the last day of  
436 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting

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

454 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

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

476 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
477 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water

478 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in  
479 subdivision (a) of this Article of this Contract. The Contractor shall indemnify the United States, its  
480 officers, employees, agents, and assigns on account of damage or claim of damage of any nature  
481 whatsoever for which there is legal responsibility, including property damage, personal injury, or  
482 death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of  
483 such Project Water beyond such delivery points, except for any damage or claim arising out of: (i)  
484 acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns,  
485 including any responsible Operating Non-Federal Entity, with the intent of creating the situation  
486 resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its  
487 officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii)  
488 negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including  
489 any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction  
490 of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity;  
491 Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated the  
492 malfunctioning facility(ies) from which the damage claim arose.

493 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

494 6. (a) The Contractor has established a measurement program satisfactory to the  
495 Contracting Officer; all surface water delivered for irrigation purposes within the Contractor's  
496 Service Area is measured at each agricultural turnout; and water delivered for M&I purposes is  
497 measured at each M&I service connection. The water measuring devices or water measuring  
498 methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor

499 shall be responsible for installing, operating, and maintaining and repairing all such measuring  
500 devices and implementing all such water measuring methods at no cost to the United States. The  
501 Contractor shall use the information obtained from such water measuring devices or water measuring  
502 methods to ensure its proper management of the water, to bill water users for water delivered by the  
503 Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as  
504 defined in the Contractor's water conservation plan provided for in Article 27 of this Contract.  
505 Nothing herein contained, however, shall preclude the Contractor from establishing and collecting  
506 any charges, assessments, or other revenues authorized by California law.

507           (b) To the extent the information has not otherwise been provided, upon execution  
508 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing  
509 the measurement devices or water measuring methods being used or to be used to implement  
510 subdivision (a) of this Article of this Contract and identifying the agricultural turnouts and the M&I  
511 service connections or alternative measurement programs approved by the Contracting Officer, at  
512 which such measurement devices or water measuring methods are being used, and, if applicable,  
513 identifying the locations at which such devices and/or methods are not yet being used including a  
514 time schedule for implementation at such locations. The Contracting Officer shall advise the  
515 Contractor in writing within sixty (60) days as to the adequacy of, and necessary modifications, if  
516 any, of the measuring devices or water measuring methods identified in the Contractor's report and if  
517 the Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
518 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the  
519 parties shall within sixty (60) days following the Contracting Officer's response, negotiate in good

520 faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or  
521 measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a)  
522 of this Article of this Contract.

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

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

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

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

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

540 (1) The Contractor shall pay the United States as provided for in this  
541 Article of this Contract for the Delivered Water at Rates and Charges determined in accordance with

542 policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to recover  
543 its estimated reimbursable costs included in the O&M Component of the Rate and amounts  
544 established to recover other charges and deficits, other than the construction costs. The Rates for  
545 O&M costs and Charges shall be adjusted, as appropriate, in accordance with the provisions of the  
546 SJRRSA.

547 (2) Omitted.

548 (A) Omitted.

549 (B) Project construction costs or other capitalized costs attributable  
550 to capital additions to the Project incurred after the effective date of this Contract or that are not  
551 reflected in the schedules referenced in Exhibits "C-1" and "C-2" and properly assignable to the  
552 Contractor, shall be repaid as prescribed by the SJRRSA without interest except as required by law.  
553 Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I portion of  
554 unpaid Project construction costs or other capitalized cost assigned to the Contractor until such costs  
555 are paid. Increases or decreases in Project construction costs or other capitalized costs assigned to the  
556 Contractor caused solely by annual adjustment of Project construction costs or other capitalized costs  
557 assigned to each CVP contractor by the Secretary shall not be considered in determining the amounts  
558 to be paid pursuant to this subdivision (a)(2)(B), but will be considered under subdivision (b) of this  
559 Article. A separate repayment agreement shall be established by the Contractor and the Contracting  
560 Officer to accomplish repayment of all additional Project construction costs or other capitalized costs  
561 assigned to the Contractor within the timeframe prescribed by the SJRRSA subject to the following:

562 (1) If the collective annual Project construction costs or

563 other capitalized costs that are incurred after the effective date of this Contract and properly

564 assignable to the contractors are less than \$5,000,000, then the portion of such costs properly

565 assignable to the Contractor shall be repaid in not more than five (5) years after notification of the

566 allocation. This amount is the result of a collective annual allocation of Project construction costs to

567 the contractors exercising contract conversions; Provided, That the reference to the amount of

568 \$5,000,000 shall not be a precedent in any other context.

569 (2) If the collective annual Project construction costs or

570 other capitalized costs that are incurred after the effective date of this Contract and properly

571 assignable to the contractors are \$5,000,000 or greater, then the portion of such costs properly

572 assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law. This

573 amount is the result of a collective annual allocation of Project construction costs to the contractors

574 exercising contract conversions; Provided, That the reference to the amount of \$5,000,000 shall not

575 be a precedent in any other context.

576 (b) Consistent with Section 10010(b) of the SJRRSA, following a final cost

577 allocation by the Secretary upon completion of the construction of the Central Valley Project, the

578 amounts paid by the Contractor shall be subject to adjustment to reflect the effect of any reallocation

579 of Project construction costs or other capitalized costs assigned to the Contractor that may have

580 occurred between the determination of Contractor's Existing Capital Obligation and the final cost

581 allocation. In the event that the final cost allocation, as determined by the Secretary, indicates that

582 the costs properly assignable to the Contractor, as determined by the Contracting Officer, are greater

583 than the Existing Capital Obligation and other amounts of Project construction costs or other  
584 capitalized costs paid by the Contractor, then the Contractor shall be obligated to pay the remaining  
585 allocated costs. The term of such additional repayment contract shall be no less than one (1) year and  
586 no more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment  
587 of such amount may be developed by the parties. In the event that the final cost allocation, as  
588 determined by the Secretary, indicates that the costs properly assignable to the Contractor, as  
589 determined by the Contracting Officer, are less than the Existing Capital Obligation and other  
590 amounts of Project construction costs or other capitalized costs paid by the Contractor, then the  
591 Contracting Officer shall credit such overpayment as an offset against any outstanding or future  
592 obligation of the Contractor, consistent with the SJRRSA. This Contract shall be implemented in a  
593 manner consistent with Section 10010(f) of the SJRRSA.

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

604                   (1)     For the years 2020 through 2039 inclusive, Charges shall reflect the  
605     reduction on a per acre-foot basis consistent with Section 10010(d)(1) of the SJRRSA. Exhibit “D”  
606     sets forth the reduction in Charges to offset the Financing Costs as prescribed in Section 10010(d)(1)  
607     of the SJRRSA; Provided, That if the Secretary determines such Charges are otherwise needed, an  
608     equivalent reduction will be made to O&M costs consistent with such provisions of the SJRRSA.  
609     Consistent with Section 10010(d)(1) of the SJRRSA and as shown in Exhibit “D”, the Friant  
610     Surcharge reduction has been calculated based upon the anticipated average annual water deliveries,  
611     for the purpose of this reduction only, mutually agreed upon by the Secretary and the Contractor for  
612     the period from January 1, 2020 through December 31, 2039. The Friant Surcharge reduction shall  
613     remain fixed and shall only be applied to Water Delivered pursuant to this Contract to which the  
614     Friant Surcharge applies (including but not limited to water transferred, banked, or exchanged),  
615     commencing on January 1, 2020 until such volume of Water Delivered equals 210,000 acre-feet or  
616     December 31, 2039, whichever occurs first.

617                   (2)     Further, to fully offset the Financing Costs, Contractor shall be entitled  
618     to a reduction in other outstanding or future obligations of the Contractor in accordance with Section  
619     10010(d)(2) of the SJRRSA. The amount of such further reduction in outstanding or future  
620     obligations of the Contractor after October 1, 2019 has been computed by the Contracting Officer,  
621     and as computed, such amount is set forth in Exhibit “D”.

622                   (d)     Prior to October 1 of each Calendar Year, the Contracting Officer shall make  
623     available to the Contractor an estimate of the Rates for Project Water for the following Year and the  
624     computations and cost allocations upon which those Rates are based. The Contractor shall be

625 allowed not less than two (2) months to review and comment on such computations and cost  
626 allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the  
627 Contractor with the final Rates to be in effect for the upcoming Year, and such notification shall  
628 revise Exhibit "B". The O&M component of the Rate may be reduced as provided in the SJRRSA.

629 (e) At the time the Contractor submits the initial schedule for the delivery of  
630 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
631 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
632 applicable Rate(s) set under subdivision (a) of this Article of this Contract, for the Project Water  
633 scheduled to be delivered pursuant to this Contract during the first two (2) calendar months of the  
634 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
635 Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision  
636 (a) of this Article of this Contract, for the Water Scheduled to be delivered pursuant to this Contract  
637 during the second month immediately following. Adjustments between advance payments for Water  
638 Scheduled and payments at Rates due for Water Delivered shall be made before the end of the  
639 following month; Provided, That any revised schedule submitted by the Contractor pursuant to  
640 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract  
641 during any month shall be accompanied with appropriate advance payment, at the Rates then in  
642 effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In  
643 any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract  
644 equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water  
645 shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect

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

651 (f) The Contractor shall also make a payment in addition to the Rate(s) in  
652 subdivision (e) of this Article of this Contract to the United States for Water Delivered, at the  
653 Charges then in effect, before the end of the month following the month of delivery. The payments  
654 shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the  
655 water delivery report for the subject month prepared by the Contracting Officer. Such water delivery  
656 report shall be the basis for payment of Charges by the Contractor, and shall be provided to the  
657 Contractor by the Contracting Officer (as applicable) within five (5) days after the end of the month  
658 of delivery. The water delivery report shall be deemed a bill basis for payment of Charges for Water  
659 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the  
660 adjustment of payments due to the United States for Charges for the next month. Any amount to be  
661 paid for past due payment of Charges shall be computed pursuant to Article 21 of this Contract.

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

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

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

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

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

683 (k) The parties acknowledge and agree that the efficient administration of this  
684 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
685 policies, and procedures used for establishing Rates, Charges, and/or for making and allocating  
686 payments, other than those set forth in this Article of this Contract, may be in the mutual best interest

687 of the parties, it is expressly agreed that the parties may enter into agreements to modify the  
688 mechanisms, policies, and procedures for any of those purposes while this Contract is in effect  
689 without amending this Contract.

690 (1) (1) Omitted.

691 (2) Omitted.

692 (3) Omitted.

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

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

705

706

707 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

711 RECOVERED WATER ACCOUNT

712 9. (a) Notwithstanding any other provisions of this Contract, water delivered to the  
713 Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the Settlement and  
714 affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of \$10.00 per acre foot.  
715 Recovered Water Account water provided to the Contractor shall be administered at a priority for  
716 delivery lower than Class 2 Water and higher than Section 215 Water.

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

720 SALES, TRANSFERS, AND EXCHANGES OF WATER

721 10. (a) The right to receive Project Water provided for in this Contract may be sold,  
722 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if  
723 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable  
724 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this  
725 Contract may take place without the prior written approval of the Contracting Officer, except as  
726 provided for in subdivisions (b) and (c) of this Article of this Contract. No such Project Water sales,  
727 transfers, or exchanges shall be approved, where approval is required, absent compliance with

728 appropriate environmental documentation including but not limited to the National Environmental  
729 Policy Act and the Endangered Species Act. Such environmental documentation must include, as  
730 appropriate, an analysis of groundwater impacts and economic and social effects, including  
731 environmental justice, of the proposed Project Water sales, transfers and exchanges on both the  
732 transferor/exchanger and transferee/exchange recipient.

733 (b) In order to facilitate efficient water management by means of Project Water  
734 sales, transfers, or exchanges of the type historically carried out among Project Contractors located  
735 within the same geographical area and to allow the Contractor to participate in an accelerated water  
736 transfer program, the Contracting Officer has prepared, as appropriate, necessary environmental  
737 documentation including, but not limited to, the National Environmental Policy Act and the  
738 Endangered Species Act analyzing annual Project Water sales, transfers, or exchanges among  
739 Contractors within the same geographical area and the Contracting Officer has determined that such  
740 Project Water sales, transfers, and exchanges comply with applicable law.

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

745 (d) For Project Water sales, transfers, or exchanges to qualify under subdivision  
746 (b) of this Article of this Contract such Project Water sale, transfer, or exchange must: (i) be for  
747 irrigation purposes for lands irrigated within the previous three (3) years, for M&I use, groundwater  
748 recharge, groundwater banking, similar groundwater activities, surface water storage, or fish and

749 wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife  
750 refuges, groundwater basins or M&I use; (ii) occur within a single Year; (iii) occur between a  
751 willing seller and a willing buyer or willing exchangers; (iv) convey water through existing facilities  
752 with no new construction or modifications to facilities and be between existing Project Contractors  
753 and/or the Contractor and the United States, Department of the Interior; and (v) comply with all  
754 applicable Federal, State, and local or tribal laws and requirements imposed for protection of the  
755 environment and Indian Trust Assets, as defined under Federal law.

756 (e) The environmental documentation and the Contracting Officer's compliance  
757 determination for transactions described in subdivision (b) of this Article of this Contract shall be  
758 reviewed every five (5) years and updated, as necessary, prior to the expiration of the then-existing  
759 five (5) year period. All subsequent environmental documentation shall include an alternative to  
760 evaluate not less than the quantity of Project Water historically sold, transferred, or exchanged within  
761 the same geographical area.

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

767 (1) Project Water sales, transfers, and exchanges conducted under the  
768 provisions of subdivision (f) of this Article of this Contract shall not require the Contracting Officer's  
769 concurrence as to compliance with CVPIA 3405(a)(1)(A) and (I); Provided, That the Contractor

770 shall, for Project Water sales, transfers, or exchanges, with a term greater than one (1) year, provide  
771 ninety (90) days written advance notification to the Contracting Officer and similarly thirty (30) days  
772 written advance notification of any Project Water sale, transfer, or exchange with a term of less than  
773 one (1) year. The Contracting Officer shall promptly make such notice publicly available.

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

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

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

788 (g) Notwithstanding any Additional Capital Obligation that may later be  
789 established, in the case of a sale or transfer of Irrigation Water to another contractor which is  
790 otherwise subject to the acreage limitations, reporting, and Full Cost pricing provisions of the

791 Reclamation Reform Act of 1982, as amended, hereinafter referred to as the RRA, such sold or  
792 transferred Irrigation Water shall not be subject to such RRA provisions, however, in the case of a  
793 sale or transfer of Irrigation Water to the Contractor from another contractor which is subject to RRA  
794 provisions, such RRA provisions shall apply to delivery of such water.

795 APPLICATION OF PAYMENTS AND ADJUSTMENTS

796 11. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
797 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
798 the Contractor arising out of this Contract then due and payable. Overpayments of more than One  
799 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any  
800 amount of such overpayment, at the option of the Contractor, may be credited against amounts to  
801 become due to the United States by the Contractor. With respect to overpayment, such refund or  
802 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have  
803 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of  
804 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as  
805 to how to credit or refund such overpayment in response to the notice to the Contractor that it has  
806 finalized the accounts for the Year in which the overpayment was made.

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

812 TEMPORARY REDUCTIONS—RETURN FLOWS

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

817 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily  
818 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the  
819 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project  
820 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far  
821 as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due  
822 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in  
823 which case no notice need be given; Provided, That the United States shall use its best efforts to  
824 avoid any discontinuance or reduction in such service. Upon resumption of service after such  
825 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,  
826 deliver the quantity of Project Water which would have been delivered hereunder in the absence of  
827 such discontinuance or reduction.

828 (c) The United States reserves the right to all seepage and return flow water  
829 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the  
830 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States  
831 any right as seepage or return flow to water being used pursuant to this Contract for surface irrigation  
832 or underground storage either being put to reasonable and beneficial use pursuant to this Contract

833 within the Contractor's Service Area by the Contractor or those claiming by, through, or under the  
834 Contractor. For purposes of this subdivision, groundwater recharge, groundwater banking and all  
835 similar groundwater activities will be deemed to be underground storage.

836 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

842 (b) If there is a Condition of Shortage because of errors in physical operations of  
843 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions  
844 taken by the Contracting Officer to meet legal obligations, including but not limited to obligations  
845 pursuant to the Settlement then, except as provided in subdivision (a) of Article 19 of this Contract,  
846 no liability shall accrue against the United States or any of its officers, agents, or employees for any  
847 damage, direct or indirect, arising therefrom.

848 (c) The United States shall not execute contracts which together with this  
849 Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000 acre-feet  
850 per Year or Class 2 Water in excess of 1,401,475 acre-feet per Year; Provided, That, subject to  
851 subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water contracts shall not  
852 prohibit the United States from entering into temporary contracts of one year or less in duration for  
853 delivery of Project Water to other entities if such water is not necessary to meet the schedules as may

854 be submitted by all Friant Division Project Contractors entitled to receive Class 1 Water and/or Class  
855 2 Water under their contracts. Nothing in this subdivision shall limit the Contracting Officer's ability  
856 to take actions that result in the availability of new water supplies to be used for Project purposes and  
857 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until  
858 after consultation with the Friant Division Project Contractors.

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

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

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

873 (3) The total quantity of Class 1 Water under Article 3 of this Contract  
874 shall be multiplied by the Class 1 apportionment coefficient and the result shall be the quantity of

875 Class 1 Water required to be delivered by the Contracting Officer to the Contractor for the respective  
876 Year, but in no event shall such amount exceed the total quantity of Class 1 Water specified in  
877 subdivision (a) of Article 3 of this Contract.

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

883 (f) In the event that in any Year there is made available to the Contractor, by  
884 reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article of  
885 this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of Article  
886 12 of this Contract, less than the quantity of water which the Contractor otherwise would be entitled  
887 to receive hereunder, there shall be made an adjustment on account of the amounts already paid to the  
888 Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in  
889 accordance with Article 11 of this Contract.

890 UNAVOIDABLE GROUNDWATER PERCOLATION

891 14. Omitted.

892 ACREAGE LIMITATION

893 15. (a) The Contractor has paid the Repayment Obligation, and notwithstanding any  
894 Additional Capital Obligation that may later be established, the provisions of section 213(a) and (b)  
895 of the RRA shall apply to lands in the Contractor's Service Area, with the effect that acreage

896 limitations, reporting, and Full Cost pricing provisions of the RRA shall no longer apply to lands in  
897 the Contractor's Service Area with respect to Water Delivered pursuant to this Contract.

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

902 (b) Project Water to which the Contractor is entitled through a separate contract,  
903 other than this Contract, that is subject to Federal Reclamation law, may be delivered to lands within  
904 the Contractor's Service Area. Notwithstanding any Additional Capital Obligation that may later be  
905 established, Project Water Delivered under this Contract may be mixed with Project Water Delivered  
906 pursuant to a contract with the United States, other than this Contract, to which acreage limitations,  
907 reporting, and the Full Cost pricing provisions of Federal Reclamation law apply without causing the  
908 application of the acreage limitations, reporting, and the Full Cost pricing provisions of Federal  
909 Reclamation law to the Water Delivered pursuant to this Contract; Provided, The terms and  
910 conditions in such other contract shall continue to apply, and if such terms and conditions so require,  
911 the lands to receive Project Water under such other contract shall be properly designated by the  
912 Contractor and such Project Water is to be delivered in accordance with the RRA including any  
913 applicable acreage limitations, reporting, and Full Cost pricing provisions.

914

915 COMPLIANCE WITH FEDERAL RECLAMATION LAW

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

919 (b) The terms of this Contract are subject to the Settlement and the SJRRSA.

920 Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of the  
921 Settlement and the SJRRSA.

922 PROTECTION OF WATER AND AIR QUALITY

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

929 (b) The Contractor shall comply with all applicable water and air pollution laws  
930 and regulations of the United States and the State of California; and shall obtain all required permits  
931 or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water  
932 by the Contractor; and shall be responsible for compliance with all Federal, State, and local water  
933 quality standards applicable to surface and subsurface drainage and/or discharges generated through  
934 the use of Federal or Contractor facilities or project water provided by the Contractor within the  
935 Contractor's Project Water Service Area.

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

938 WATER ACQUIRED BY THE CONTRACTOR  
939 OTHER THAN FROM THE UNITED STATES

940 18. (a) Omitted.

941 (b) Notwithstanding any Additional Capital Obligation that may later be  
942 established, water or water rights now owned or hereafter acquired by the Contractor other than from  
943 the United States pursuant to this Contract and Irrigation Water furnished pursuant to the terms of

944 this Contract may be simultaneously transported through the same distribution facilities of the  
945 Contractor without the payment of fees to the United States and without application of Federal  
946 Reclamation law to Water Delivered pursuant to this Contract or to lands which receive Water  
947 Delivered to Contractor pursuant to this Contract.

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

954 (1) The Contractor may introduce non-project water into Project facilities  
955 and deliver said water to lands within the Contractor's Service Area subject to payment to the United  
956 States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by  
957 the Contracting Officer. In addition, if electrical power is required to pump non-project water, the  
958 Contractor shall be responsible for obtaining the necessary power and paying the necessary charges  
959 therefor.

960 (2) Delivery of such non-project water in and through Project facilities  
961 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as  
962 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other  
963 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other

964 Project Contractors; (iv) interfere with the physical maintenance of the Project facilities; or (v) result  
965 in the United States incurring any liability or unreimbursed costs or expenses thereby.

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

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

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

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

985 OPINIONS AND DETERMINATIONS

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

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

1000 COORDINATION AND COOPERATION

1001 20. (a) In order to further their mutual goals and objectives, the Contracting Officer  
1002 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
1003 affected Project Contractors, in order to improve the operation and management of the Project. The  
1004 communication, coordination, and cooperation regarding operations and management shall include,  
1005 but not limited to, any action which will or may materially affect the quantity or quality of Project

1006 Water supply, the allocation of Project Water supply, and Project financial matters including, but not  
1007 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder  
1008 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making  
1009 authority for all actions, opinions, and determinations to be made by the respective party.

1010 (b) It is the intent of the Secretary to improve water supply reliability. To carry  
1011 out this intent:

1012 (1) The Contracting Officer will, at the request of the Contractor, assist in  
1013 the development of integrated resource management plans for the Contractor. Further, the  
1014 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to  
1015 improve water supply, water quality, and reliability.

1016 (2) The Secretary will, as appropriate, pursue program and project  
1017 implementation and authorization in coordination with Project Contractors to improve the water  
1018 supply, water quality, and reliability of the Project for all Project purposes.

1019 (3) The Secretary will coordinate with Project Contractors and the State of  
1020 California to seek improved water resource management.

1021 (4) The Secretary will coordinate actions of agencies within the  
1022 Department of the Interior that may impact the availability of water for Project purposes.

1023 (5) The Contracting Officer shall periodically, but not less than annually,  
1024 hold division level meetings to discuss Project operations, division level water management  
1025 activities, and other issues as appropriate.

1026 (c) Without limiting the contractual obligations of the Contracting Officer  
1027 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's  
1028 ability to communicate, coordinate, and cooperate with the Contractor or other interested  
1029 stakeholders or to make decisions in a timely fashion as needed to protect health, safety, physical  
1030 integrity of structures or facilities, or the Contracting Officer's ability to comply with applicable  
1031 laws.

1032 CHARGES FOR DELINQUENT PAYMENTS

1033 21. (a) The Contractor shall be subject to interest, administrative and penalty charges  
1034 on delinquent installments or payments. When a payment is not received by the due date, the  
1035 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
1036 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
1037 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
1038 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
1039 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
1040 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
1041 payment.

1042 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
1043 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
1044 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation  
1045 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
1046 date and remain fixed for the duration of the delinquent period.

1047 (c) When a partial payment on a delinquent account is received, the amount  
1048 received shall be applied, first to the penalty, second to the administrative charges, third to the  
1049 accrued interest, and finally to the overdue payment.

1050 EQUAL EMPLOYMENT OPPORTUNITY

1051 22. During the performance of this Contract, the Contractor agrees as follows:

1052 (a) The Contractor will not discriminate against any employee or applicant for  
1053 employment because of race, color, religion, sex, disability, or national origin. The Contractor will  
1054 take affirmative action to ensure that applicants are employed, and that employees are treated during  
1055 employment, without regard to their race, color, religion, sex, disability, or national origin. Such

1056 action shall include, but not be limited to the following: employment, upgrading, demotion, or  
1057 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of  
1058 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in  
1059 conspicuous places, available to employees and applicants for employment, notices to be provided by  
1060 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1061 (b) The Contractor will, in all solicitations or advertisements for employees placed by  
1062 or on behalf of the Contractor, state that all qualified applicants will receive consideration for  
1063 employment without regard to race, color, religion, sex, disability, or national origin.

1064 (c) The Contractor will send to each labor union or representative of workers with  
1065 which it has a collective bargaining agreement or other contract or understanding, a notice, to be  
1066 provided by the Contracting Officer, advising the labor union or workers' representative of the  
1067 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and  
1068 shall post copies of the notice in conspicuous places available to employees and applicants for  
1069 employment.

1070 (d) The Contractor will comply with all provisions of Executive Order No. 11246 of  
1071 September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

1072 (e) The Contractor will furnish all information and reports required by Executive  
1073 Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of  
1074 Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the  
1075 Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance  
1076 with such rules, regulations, and orders.

1077 (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses  
1078 of this contract or with any of such rules, regulations, or orders, this contract may be canceled,  
1079 terminated or suspended in whole or in part and the Contractor may be declared ineligible for further  
1080 Government contracts in accordance with procedures authorized in Executive Order 11246 of  
1081 September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in  
1082 Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of  
1083 Labor, or as otherwise provided by law.

1084 (g) The Contractor will include the provisions of paragraphs (1) through (7) in every  
1085 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of  
1086 Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such  
1087 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
1088 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
1089 means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that  
1090 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor

1091 or vendor as a result of such direction, the Contractor may request the United States to enter into such  
1092 litigation to protect the interests of the United States.

1093 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1094 23. (a) The obligation of the Contractor to pay the United States as provided in this  
1095 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation  
1096 may be distributed among the Contractor's water users and notwithstanding the default of individual  
1097 water users in their obligations to the Contractor.

1098 (b) The payment of charges becoming due hereunder is a condition precedent to  
1099 receiving benefits under this Contract. The United States shall not make water available to the  
1100 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
1101 the advance payment of water rates due the United States. The Contractor shall not furnish water  
1102 made available pursuant to this Contract for lands or parties which are in arrears in the advance  
1103 payment of water rates levied or established by the Contractor.

1104 (c) With respect to subdivision (b) of this Article of this Contract, the Contractor  
1105 shall have no obligation to require advance payment for water rates which it levies.

1106 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1107 24. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42  
1108 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
1109 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as  
1110 well as with their respective implementing regulations and guidelines imposed by the U.S.  
1111 Department of the Interior and/or Bureau of Reclamation.

1112 (b) These statutes require that no person in the United States shall, on the grounds  
1113 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the  
1114 benefits of, or be otherwise subjected to discrimination under any program or activity receiving  
1115 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor  
1116 agrees to immediately take any measures necessary to implement this obligation, including permitting  
1117 officials of the United States to inspect premises, programs, and documents.

1118 (c) The Contractor makes this agreement in consideration of and for the purpose  
1119 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
1120 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
1121 installment payments after such date on account of arrangements for Federal financial assistance  
1122 which were approved before such date. The Contractor recognizes and agrees that such Federal

1123 assistance will be extended in reliance on the representations and agreements made in this Article,  
1124 and that the United States reserves the right to seek judicial enforcement thereof.  
1125

1126 PRIVACY ACT COMPLIANCE

1127 25. Omitted.

1128 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1129 26. In addition to all other payments to be made by the Contractor pursuant to this  
1130 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill  
1131 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1132 of direct cost incurred by the United States for work requested by the Contractor associated with this  
1133 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1134 procedures. All such amounts referred to in this Article of this Contract shall not exceed the amount  
1135 agreed to in writing in advance by the Contractor. This Article of this Contract shall not apply to  
1136 costs for routine contract administration.

1137 WATER CONSERVATION

1138 27. (a) Prior to the delivery of water provided from or conveyed through Federally  
1139 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1140 implementing an effective water conservation and efficiency program based on the Contractor's water  
1141 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
1142 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
1143 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
1144 economically feasible water conservation measures, and time schedules for meeting those objectives.

1145 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
1146 continued implementation of such water conservation program. In the event the Contractor's water  
1147 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
1148 this Article of this Contract have not yet been determined by the Contracting Officer to meet such  
1149 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
1150 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
1151 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
1152 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
1153 program in accordance with the time schedules therein.

1154 (b) Should the amount of M&I Water Delivered pursuant to subdivision (a) of  
1155 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor  
1156 shall implement the Best Management Practices identified by the time frames issued by the  
1157 California Urban Water Conservation Council for such M&I Water unless any such practice is  
1158 determined by the Contracting Officer to be inappropriate for the Contractor.

1159 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
1160 its implementation of the water conservation plan on the reporting dates specified in the then-existing  
1161 conservation and efficiency criteria established under Federal law.

1162 (d) At five (5) -year intervals, the Contractor shall revise its water conservation  
1163 plan to reflect the then-existing conservation and efficiency criteria for evaluating water conservation  
1164 plans established under Federal law and submit such revised water management plan to the  
1165 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the

1166 water conservation plan meets Reclamation's then-existing conservation and efficiency criteria for  
1167 evaluating water conservation plans established under Federal law.

1168 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1169 be described in the Contractor's water conservation plan.

1170 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1171 28. Except as specifically provided in Article 18 of this Contract, the provisions of this  
1172 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter  
1173 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
1174 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
1175 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
1176 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
1177 Reclamation law.

1178 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1179 29. (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1180 responsibility for funding a portion of the costs of such O& M, have been transferred to the Operating  
1181 Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal  
1182 Entity. That separate agreement shall not interfere with or affect the rights or obligations of the  
1183 Contractor or the United States hereunder.

1184 (b) The Contracting Officer has previously notified the Contractor in writing that  
1185 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the  
1186 Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-

1187 Federal Entity, or to any successor approved by the Contracting Officer under the terms and  
1188 conditions of the separate agreement between the United States and the Operating Non-Federal Entity  
1189 described in subdivision (a) of this Article of this Contract, all rates, charges or assessments of any  
1190 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such  
1191 successor determines, sets or establishes for (i) the O&M of the portion of the Project facilities  
1192 operated and maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant  
1193 Division's share of the operation, maintenance and replacement costs for physical works and  
1194 appurtenances associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill  
1195 Pumping/Generating Plant, the federal share of the O'Neill Forebay, the Mendota Pool, and the  
1196 federal share of San Luis Unit joint use conveyance and conveyance pumping facilities. Such direct  
1197 payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor of its  
1198 obligation to pay directly to the United States the Contractor's share of the Project Rates and  
1199 Charges, except to the extent the Operating Non-Federal Entity collects payments on behalf of the  
1200 United States in accordance with the separate agreement identified in subdivision (a) of this Article of  
1201 this Contract.

1202 (c) For so long as the O&M of any portion of the Project facilities serving the  
1203 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1204 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1205 Contract representing the cost associated with the activity being performed by the Operating Non-  
1206 Federal Entity or its successor.

1207 (d) In the event the O&M of the Project facilities operated and maintained by the  
1208 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the  
1209 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised  
1210 Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project  
1211 Water under this Contract representing the O &M costs of the portion of such Project facilities which  
1212 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from  
1213 the Contracting Officer to the contrary, pay the Rates and Charges specified in the revised Exhibit  
1214 "B" directly to the United States in compliance with Article 7 of this Contract.

1215 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1216 30. The expenditure or advance of any money or the performance of any obligation of the  
1217 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1218 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1219 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1220 or allotted.

1221 BOOKS, RECORDS, AND REPORTS

1222 31. (a) The Contractor shall establish and maintain accounts and other books and  
1223 records pertaining to administration of the terms and conditions of this Contract, including: the  
1224 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1225 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1226 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1227 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1228 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1229 during office hours to examine and make copies of the other party's books and records relating to  
1230 matters covered by this Contract.

1231 (b) Notwithstanding the provisions of subdivision (a) of this Article of this  
1232 Contract, no books, records, or other information shall be requested from the Contractor by the  
1233 Contracting Officer unless such books, records, or information are reasonably related to the

1234 administration or performance of this Contract. Any such request shall allow the Contractor a  
1235 reasonable period of time within which to provide the requested books, records, or information.

1236 (c) At such time as the Contractor provides information to the Contracting Officer  
1237 pursuant to subdivision (a) of this Article of this Contract, a copy of such information shall be  
1238 provided to the Operating Non-Federal Entity.

1239 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1240 32. (a) The provisions of this Contract shall apply to and bind the successors and  
1241 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1242 therein shall be valid until approved in writing by the Contracting Officer.

1243 (b) The assignment of any right or interest in this Contract by either party shall not  
1244 interfere with the rights or obligations of the other party to this Contract absent the written  
1245 concurrence of said other party.

1246 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1247 of any proposed assignment.

1248 SEVERABILITY

1249 33. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1250 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1251 association or other form of organization whose primary function is to represent parties to Project  
1252 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1253 enforceability of a provision included in this Contract and said person, entity, association, or  
1254 organization obtains a final court decision holding that such provision is legally invalid or  
1255 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the

1256 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final  
1257 court decision identify by mutual agreement the provisions in this Contract which must be revised  
1258 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time  
1259 periods specified above may be extended by mutual agreement of the parties. Pending the  
1260 completion of the actions designated above, to the extent it can do so without violating any applicable  
1261 provisions of law, the United States shall continue to make the quantities of Project Water specified  
1262 in this Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1263 found to be legally invalid or unenforceable in the final court decision.

1264 RESOLUTION OF DISPUTES

1265 34. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1266 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1267 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1268 any matter to Department of Justice, the party shall provide to the other party thirty (30) days written  
1269 notice of the intent to take such action; Provided, That such notice shall not be required where a delay  
1270 in commencing an action would prejudice the interests of the party that intends to file suit. During  
1271 the thirty (30) day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1272 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1273 waive or abridge any right or remedy that the Contractor or the United States may have.

1274 OFFICIALS NOT TO BENEFIT

1275 35. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1276 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1277 manner as other water users or landowners.

1278 CHANGES IN CONTRACTOR'S SERVICE AREA

1279 36. (a) While this Contract is in effect, no change may be made in the Contractor's  
1280 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or  
1281 otherwise, except upon the Contracting Officer's written consent.

1282 (b) Within thirty (30) days of receipt of a request for such a change, the  
1283 Contracting Officer will notify the Contractor of any additional information required by the  
1284 Contracting Officer for processing said request, and both parties will meet to establish a mutually  
1285 agreeable schedule for timely completion of the process. Such process will analyze whether the  
1286 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this  
1287 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this  
1288 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible;  
1289 and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,  
1290 the Contracting Officer shall comply with the National Environmental Policy Act and the Endangered  
1291 Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in  
1292 this process, and such costs will be paid in accordance with Article 26 of this Contract.

1293 FEDERAL LAWS

1294 37. By entering into this Contract, the Contractor does not waive its rights to contest the  
1295 validity or application in connection with the performance of the terms and conditions of this  
1296 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1297 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1298 regulation to the implementing provision of the Contract is granted by a court of competent  
1299 jurisdiction.

1300 EMERGENCY RESERVE FUND

1301 38. The Contractor and Contracting Officer acknowledge that the requirements to  
1302 establish and maintain a minimum reserve fund account to finance extraordinary O&M costs of  
1303 Friant Division Facilities is and will continue to be administered under Contract No. 8-07-20-X0356  
1304 titled Agreement To Transfer The Operation, Maintenance And Replacement And Certain Financial  
1305 And Administrative Activities Related To The Friant-Kern Canal And Associated Works, dated  
1306 March 1, 1998 as amended, supplemented, assigned, or renewed.

1307 MEDIUM FOR TRANSMITTING PAYMENT

1308 39. (a) All payments from the Contractor to the United States under this contract  
1309 shall be by the medium requested by the United States on or before the date payment is due. The  
1310 required method of payment may include checks, wire transfers, or other types of payment specified  
1311 by the United States.

1312 (b) Upon execution of the contract, the Contractor shall furnish the Contracting  
1313 Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the  
1314 Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the  
1315 Contractor's relationship with the United States.

1316 NOTICES

1317 40. Any notice, demand, or request authorized or required by this Contract shall be  
1318 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1319 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California  
1320 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of  
1321 Directors of Fresno Irrigation District, 2907 South Maple Avenue, Fresno California 93725. The  
1322 designation of the addressee or the address may be changed by notice given in the same manner as  
1323 provided in this Article of this Contract for other notices.

1324 CONFIRMATION OF CONTRACT

1325 41. The Contractor, after the execution of this Contract, shall promptly provide to the  
1326 Contracting Officer a decree of a court of competent jurisdiction of the State of California,  
1327 confirming the execution of this Contract. The Contractor shall furnish the United States a certified  
1328 copy of the final decree, the validation proceedings, and all pertinent supporting records of the court

1329 approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and  
1330 binding on the Contractor.

1331 CONTRACT DRAFTING CONSIDERATIONS

1332 42. Articles 1 through 15, subdivision (c) of Article 16, Articles 18 through 20,  
1333 subdivision (c) of Article 23, Articles 26 through 29, subdivisions (b) and (c) of Article 31,  
1334 subdivisions (b) and (c) of Article 32, Articles 33 through 34, subdivision (b) of Article 36, and  
1335 Articles 37 through 38 of this Contract have been drafted, negotiated, and reviewed by the parties  
1336 hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party  
1337 shall be considered to have drafted the stated Articles.  
1338

1339            IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1340    year first above written.