

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

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

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7 CITY OF ORANGE COVE  
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10 THIS CONTRACT, made this 20<sup>th</sup> day of January, 2001, in pursuance generally  
11 of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but  
12 not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939  
13 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),  
14 October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended, and Title XXIV of  
15 the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal  
16 Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United  
17 States, and CITY OF ORANGE COVE, hereinafter referred to as the Contractor, a public agency of the  
18 State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place  
19 of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [St.] WHEREAS, the United States has constructed and is operating the Central Valley Project,  
23 California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation,

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

27 [2<sup>nd</sup>] WHEREAS, the United States constructed Friant Dam (thereby creating Millerton Lake)  
28 and the Friant-Kern and Madera Canals, hereinafter collectively referred to as the Friant Division facilities,  
29 which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract;  
30 and

31 [3<sup>rd</sup>] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United  
32 States has acquired water rights and other rights to the flows of the San Joaquin River, including without  
33 limitation the permits issued as the result of Decision 935 by the California State Water Resource Control  
34 Board and the contracts described in subdivision (n) of Article 3 of this Contract, pursuant to which the  
35 Contracting Officer develops, diverts, stores and delivers Project Water stored or flowing through Millerton  
36 Lake in accordance with State and Federal law for the benefit of Project Contractors in the Friant Division;  
37 and

38 [3.1] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water  
39 developed through the exercise of the rights described in the third (3rd) Explanatory Recital of this Contract;  
40 and

41 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
42 No. 14-06-200-5230A, as amended, which established terms for the delivery to the Contractor of Project  
43 Water from the Friant Division from February 28, 1956, to February 28, 1996; and

44 [5<sup>th</sup>] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1)  
45 of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal  
46 contract(s) identified as Contract No(s). 14-06-200-5230A-IR1, IR2, IR3, and IR4, the current of which is  
47 hereinafter referred to as the Existing Contract, which provided for the continued water service to the  
48 Contractor from December 1, 2000, through February 28, 2001; and

49 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and  
50 existing long-term Project Water service contracts following completion of appropriate environmental  
51 documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National  
52 Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing the CVPIA  
53 and the potential renewal of all existing contracts for Project Water; and

54 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
55 environmental review necessary to provide for long-term renewal of the Existing Contract; and

56 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract,  
57 pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of  
58 California, for water service from the Central Valley Project; and

59 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of its  
60 obligations under the Existing Contract; and

61 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer  
62 that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use  
63 and/or has demonstrated projected future demand for water use such that the Contractor has the capability

64 and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made  
65 available to it pursuant to this Contract; and

66 [11<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban  
67 and agricultural areas within California for more than fifty (50) years, and is considered by the Contractor as  
68 an essential portion of its water supply; and

69 [12<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project, including the  
70 Contractor's, depend upon the continued availability of water, including water service from the Central  
71 Valley Project; and

72 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to  
73 pursue measures to improve water supply, water quality, and reliability of the Project for all Project  
74 purposes; and

75 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide  
76 for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Central  
77 Valley Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
78 reasonable balance among competing demands for use of Project Water; and to comply with all applicable  
79 environmental statutes, all consistent with the legal obligations of the United States relative to the Central  
80 Valley Project; and

81 [15<sup>th</sup>] Omitted;

82 [15.1] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize  
83 undependable Class 2 Water in their service areas to, among other things, assist in the management and

84 alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for  
85 environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize  
86 flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable  
87 and beneficial use of the water; and

88 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to  
89 the Friant Division Project Contractors continuing to carry out the beneficial activities set out in the  
90 Explanatory Recital immediately above; and

91 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this Contract  
92 pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

95 DEFINITIONS

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

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

100 (b) "Charges" shall mean the payments required by Federal Reclamation law in addition  
101 to the Rates and Tiered Pricing Components specified in this Contract as determined annually by the  
102 Contracting Officer pursuant to this Contract;

103 (b2) "Class 1 Water" shall mean that supply of water stored in or flowing through

104 Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 11, and 12 of  
105 this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as  
106 a dependable water supply during each Year;

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

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

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

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

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

123 Contract;

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

126 (h) Omitted;

127 (i) Omitted;

128 (j) Omitted;

129 (k) Omitted;

130 (l) Omitted;

131 (m) "Irrigation Water" shall mean water made available from the Project that is used  
132 primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and  
133 watering of livestock. Irrigation Water shall not include water used for purposes such as the watering of  
134 landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered  
135 to landholdings operated in units of less than five (5) acres unless the Contractor establishes to the  
136 satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use  
137 described in this subdivision of this Article;

138 (n) Omitted;

139 (n2) "Long Term Historic Average" shall mean the average of the final forecast of Water  
140 Made Available to the Contractor pursuant to this Contract and the contracts referenced in the fourth (4<sup>th</sup>)  
141 and fifth (5<sup>th</sup>) Explanatory Recitals of this Contract;

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

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

155                   (q)     “Operation and Maintenance” or “O&M” shall mean normal and reasonable care,  
156 control, operation, repair, replacement (other than Capital replacement), and maintenance of Project  
157 facilities;

158                   (r)     “Operating Non-Federal Entity” shall mean the Friant Water Users Authority,  
159 a Non-Federal entity which has the obligation to operate and maintain all or a portion of the Friant Division  
160 facilities pursuant to an agreement with the United States, and which may have funding obligations with  
161 respect thereto;

162                   (s)     “Project” shall mean the Central Valley Project owned by the United States and

163 managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

172 (w) Omitted;

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

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

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

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

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

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

188 TERM OF CONTRACT

189 2. (a) This Contract shall be effective March 1, 2001, through February 28, 2026. In the  
190 event the Contractor wishes to renew the Contract beyond February 28, 2026, the Contractor shall submit  
191 a request for renewal in writing to the Contracting Officer no later than two (2) years prior to  
192 the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of M&I  
193 Water to the Contractor shall be governed by subdivision (c) of this Article.

194 (b) Omitted.

195 (c) Provided, the Contractor is complying with all terms and conditions of this Contract  
196 and all legal obligations of the Contractor, if any, set forth in an enforceable court order, final judgment  
197 and/or settlement relating to restoration of the San Joaquin River, this Contract, insofar as it pertains to the  
198 furnishing of M&I Water to the Contractor, shall be renewed for a period of twenty-five (25) years and  
199 thereafter shall be renewed for successive periods of up to forty (40) years each, which periods shall be  
200 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to  
201 the parties and consistent with Federal and State law. The present Reclamation-wide policy, dated March  
202 20, 2000, provides that the term of such contracts shall be no more than twenty-five (25) years each,  
203 subject to a variance to allow a longer term in appropriate circumstances. The Contractor shall be afforded  
204 the opportunity to comment to the Contracting Officer on the proposed adoption and application of any  
205 revised Reclamation-wide

206 policy applicable to the delivery of Project M&I Water that would affect the term of any subsequent  
207 renewal contract with the Contractor for the furnishing of M&I Water.

208 (d) The Contracting Officer anticipates that by December 31, 2024, all authorized  
209 Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees  
210 by that date to allocate all costs that are properly assignable to the Contractor, and agrees further that, at  
211 any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision  
212 of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under  
213 subsection (c)(1) of Section 9, of the Reclamation Project Act of 1939, subject to applicable Federal law  
214 and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A  
215 condition for such conversion to occur shall be a determination by the Contracting Officer that, account  
216 being taken of the amount credited to return by the Contractor as provided for under Reclamation law, the  
217 remaining amount of construction costs assignable for ultimate return by the Contractor can probably be  
218 repaid to the United States within the term of a contract under said subsection 9(c)(1). If the remaining  
219 amount of costs that are properly assignable to the Contractor cannot be determined by December 31,  
220 2024, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a  
221 determination could not be made. Further, the Contracting Officer shall make such a determination as soon  
222 thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set  
223 out above, conversion to a contract under said subsection 9(c)(1). In the event such determination of costs  
224 has not been made at a time which allows conversion of this Contract during the term of this Contract or the  
225 Contractor has not requested conversion of this Contract within such term, the parties shall incorporate in

226 any subsequent renewal contract as described in Article 2(c) a provision that carries forth in substantially  
227 identical terms the provisions of this Article 2(d). In the event the Contracting Officer is able to make a  
228 determination of the remaining amount of costs that are properly assignable to the Contractor before  
229 December 31, 2024, the Contracting Officer shall do so at the earliest time he/she has such ability.

230 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

231 3. (a) During each Year, consistent with all applicable State water rights, permits, and  
232 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the  
233 Contracting Officer shall make available for delivery to the Contractor 1,400 acre-feet of Class 1 Water for  
234 M&I purposes. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall  
235 be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

236 (b) Omitted.

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

239 (d) The Contractor shall make reasonable and beneficial use of all Project Water or  
240 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater banking  
241 programs, surface water storage programs, and other similar programs utilizing Project Water or other water  
242 furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent  
243 with applicable State law and result in use consistent with Reclamation law will be allowed; Provided, That  
244 any direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan submitted  
245 pursuant to Article 26 of this Contract; Provided, further, That such Water Conservation Plan demonstrates

246 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of  
247 Delivered Water is demonstrated to be reasonable for such uses and in compliance with Reclamation law.  
248 Groundwater recharge programs, groundwater banking programs, surface water storage programs, and  
249 other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted  
250 outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer,  
251 which approval will be based upon environmental documentation, Project Water rights, and Project  
252 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or  
253 guidelines.

254 (e) The Contractor shall comply with requirements applicable to the Contractor in  
255 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
256 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the  
257 Contractor's legal authority to implement. The Contractor shall comply with the limitations or requirements  
258 imposed by environmental documentation applicable to the Contractor and within its legal authority to  
259 implement regarding specific activities. Nothing herein shall be construed to prevent the Contractor from  
260 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion  
261 or other environmental documentation referred to in this Article.

262 (f) Subject to subdivisions (l) and (n) of Article 3 of this Contract, following the  
263 declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a  
264 determination whether Project Water, or other water available to the Project, can be made available to the  
265 Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without

266 adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer  
267 will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of  
268 Article 3 of this Contract, if the Contracting Officer determines that Project Water, or other water available  
269 to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability  
270 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter  
271 meet with the Contractor and other Project Contractors capable of taking such water to determine the most  
272 equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of  
273 such water, the Contracting Officer shall make such water available to the Contractor in accordance with  
274 applicable statutes, regulations, guidelines, and policies.

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

281 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable State  
282 law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof  
283 and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof  
284 shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any  
285 renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose

286 shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any  
287 subsequent renewal contracts.

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

292 (j) The Contracting Officer shall make reasonable efforts to protect the water rights and  
293 other rights described in the third (3rd) Explanatory Recital of this Contract and to provide the water  
294 available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in  
295 the capacity and to the extent permitted by law, in administrative proceedings related to the water rights and  
296 other rights described in the third (3rd) Explanatory Recital of this Contract; Provided, however, That the  
297 Contracting Officer retains the right to object to the substance of the Contractor's position in such a  
298 proceeding.

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

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

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

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

332 (m) Nothing in this Contract, nor any action or inaction of the Contractor or Contracting  
333 Officer in connection with the implementation of this Contract, is intended to override, modify, supersede or  
334 otherwise interfere with any term or condition of the water rights and other rights referred in the third (3rd)  
335 Explanatory Recital of this Contract.

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

346 July 27, 1939).

347 TIME FOR DELIVERY OF WATER

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

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

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

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

377                   (e)     The Contractor may, during the period from and including November 1 of each  
378     Year through and including the last day of February of that Year, request delivery of any amount of the  
379     Class 1 Water estimated by the Contracting Officer to be made available to it during the following Year.  
380     The Contractor may, during the period from and including January 1 of each Year (or such earlier date as  
381     may be determined by the Contracting Officer) through and including the last day of February of that Year,  
382     request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available  
383     to it during the following Year. Such water shall hereinafter be referred to as preuse water. Such request  
384     must be submitted in writing by the Contractor for a specified quantity of preuse and shall be subject to the  
385     approval of the Contracting Officer. Payment for preuse water so requested shall be at the appropriate

386 rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of  
387 delivery of any preuse water. The Contracting Officer shall deliver such preuse water in accordance with a  
388 schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to  
389 the extent such water is available and to the extent such deliveries will not interfere with the delivery of  
390 Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project  
391 facilities. The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the  
392 quantities of water that the Contracting Officer would otherwise be obligated to make available to the  
393 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted from the  
394 quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following  
395 Year shall be specified by the Contractor at the time the preuse water is requested or as revised in its first  
396 schedule for the following Year submitted in accordance with subdivision (b) of this Article, based on the  
397 availability of the following Year water supplies as determined by the Contracting Officer.

398 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

418 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be  
419 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to  
420 the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this  
421 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on  
422 account of damage or claim of damage of any nature whatsoever for which there is legal responsibility,  
423 including property damage, personal injury, or death arising out of or connected with the control, carriage,  
424 handling, use, disposal, or distribution of such Project Water beyond such delivery points, except for any  
425 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,

426 employees, agents, or assigns, including any responsible Operating Non-Federal Entity, with the intent of  
427 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or  
428 any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity;  
429 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any  
430 responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities  
431 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided, That  
432 the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning  
433 facility(ies) from which the damage claim arose.

434 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

435 6. (a) The Contractor established a measurement program satisfactory to the Contracting  
436 Officer, all surface water delivered for municipal and industrial purposes is measured at each municipal and  
437 industrial service connection. The water measuring devices or water measuring methods of comparable  
438 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for  
439 installing, operating, and maintaining and repairing all such measuring devices and implementing all such  
440 water measuring methods at no cost to the United States. The Contractor shall use the information obtained  
441 from such water measuring devices or water measuring methods to ensure its proper management of the  
442 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered  
443 for municipal and industrial purposes by customer class as defined in the Contractor's water conservation  
444 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the  
445 Contractor from establishing and collecting any charges, assessments, or other revenues authorized by  
446 California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual

447 report described in subdivision (c) of Article 26 of this Contract.

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

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

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

467 Service Area during the previous Year.

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

471 RATES AND METHOD OF PAYMENT FOR WATER

472 7. (a) The Contractor shall pay the United States as provided in this Article for all  
473 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with the  
474 Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,  
475 modified, or superseded only through a public notice and comment procedure; (ii) applicable Reclamation  
476 law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.  
477 Payments shall be made by cash transaction, wire, or any other mechanism as may be agreed to in writing  
478 by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Components  
479 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised  
480 annually.

481 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and  
482 Tiered Pricing Components as follows:

483 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide  
484 the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of  
485 the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such  
486 estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such

487 estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the  
488 Contractor in writing of the Charges to be in effect during the period  
489 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such  
490 notification shall revise Exhibit "B."

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

498 (c) At the time the Contractor submits the initial schedule for the delivery of Project  
499 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an  
500 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)  
501 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this  
502 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before  
503 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United  
504 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered  
505 pursuant to this Contract during the second month immediately following. Adjustments between advance  
506 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the

507 end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to  
508 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during  
509 any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure  
510 that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the  
511 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water  
512 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor  
513 unless and until an advance payment at the Rates then in effect for such additional Project Water is made.  
514 Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of  
515 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
516 later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried  
517 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last day of  
518 February.

519 (d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision  
520 (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered  
521 Pricing Component then in effect, before the end of the month following the month of delivery; Provided,  
522 That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to  
523 subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of M&I Water  
524 Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-  
525 Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. Such water  
526 delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the Contractor,

527 and shall be provided to the Contractor by the Operating Non-Federal Entity or the Contracting Officer (as  
528 applicable) within five (5) days after the end of the month of delivery. The water delivery report shall be  
529 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water  
530 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment  
531 of payments due to the United States for Charges for the next month. Any amount to be paid for past due  
532 payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this  
533 Contract.

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

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

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

545 (h) The Contracting Officer shall keep its accounts pertaining to the administration of the  
546 financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so  
547 as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon

548 request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor  
549 expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water  
550 delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to  
551 resolve any discrepancies or disputes relating to accountings, reports, or information.

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

558 (j) (1) Beginning at such time as the total of the deliveries of Class 1 Water and  
559 Class 2 Water in a Year exceed eighty (80%) percent of the Contract Total, then before the end of the  
560 month following the month of delivery the Contractor shall make an additional payment to the United States  
561 equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the total of the  
562 deliveries of Class 1 Water and Class 2 Water in excess of eighty (80%) percent of the Contract Total, but  
563 less than or equal to ninety (90%) percent of the Contract Total, shall equal the one-half of the difference  
564 between the Rate established under subdivision (a) of Article 7 of this Contract and the M&I Full Cost  
565 Water Rate. The Tiered Pricing Component for the total of the deliveries of Class 1 Water and Class 2  
566 Water which exceeds ninety (90%) percent of the Contract

567 Total shall equal the difference between (i) the Rate established under subdivision (a) of Article 7 of this  
568 Contract and (ii) the M&I Full Cost Water Rate.

569 (2) Omitted.

570 (3) For purposes of determining the applicability of the Tiered Pricing

571 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
572 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

573 (k) For the term of this Contract, Rates under the respective ratesetting policies will be  
574 established to recover only reimbursable “operation and maintenance” (including any deficits) and capital  
575 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest,  
576 where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant  
577 Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer’s  
578 ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an  
579 opportunity to discuss the nature, need, and impact of the proposed change.

580 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the  
581 Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates adjusted upward or  
582 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the  
583 transferee’s point of delivery in accordance with the then applicable CVP Ratesetting Policy.

584 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting  
585 Officer is authorized to adjust determination of ability to pay every five (5) years.

586 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

590 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

601 (b) In order to facilitate efficient water management by means of water transfers of the  
602 type historically carried out among Project Contractors located within the same geographical area and to  
603 allow the Contractor to participate in an accelerated water transfer program during the term of this Contract,  
604 the Contracting Officer shall prepare, as appropriate, necessary environmental documentation including, but  
605 not limited to, the National Environmental Policy Act and the Endangered Species Act analyzing annual

606 transfers within such geographical areas and the Contracting Officer shall determine whether such transfers  
607 comply with applicable law. Following the completion of the environmental documentation, such transfers  
608 addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but  
609 shall not require prior written approval by the Contracting Officer. Such environmental documentation and  
610 the Contracting Officer's compliance determination shall be reviewed every five (5) years and updated, as  
611 necessary, prior to the expiration of the then existing five (5) -year period. All subsequent environmental  
612 documentation shall include an alternative to evaluate not less than the quantity of Project Water historically  
613 transferred within the same geographical area.

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

624 APPLICATION OF PAYMENTS AND ADJUSTMENTS

625 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
626 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the

627 Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand  
628 Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
629 overpayment at the option of the Contractor, may be credited against amounts to become due to the United  
630 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
631 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project  
632 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)  
633 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in  
634 response to the notice to the Contractor that it has finalized the accounts for the Year in which the  
635 overpayment was made.

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

641 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

664 CONSTRAINTS ON THE AVAILABILITY OF WATER

665 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means  
666 to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor

667 pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage  
668 appears probable, the Contracting Officer will notify the Contractor of said determination as soon as  
669 practicable.

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

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

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

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

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

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

704 (e) If the Contracting Officer determines there is less than the quantity of Class 2 Water  
705 which the Contractor otherwise would be entitled to receive pursuant to Article 3 of this Contract, the

706 quantity of Class 2 Water which shall be furnished to the Contractor by the Contracting Officer will be  
707 determined in the manner set forth in paragraphs (1), (2), and (3), of subdivision (d) of this Article  
708 substituting the term "Class 2" for the term "Class 1."

709 (f) In the event that in any Year there is made available to the Contractor, by reason of  
710 any shortage or apportionment as provided in subdivisions (a), (d) or (e) of this Article, or any  
711 discontinuance or reduction of service as set forth in subdivision (a) of Article 11 of this Contract, less than  
712 the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be  
713 made an adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for  
714 Class 1 Water and Class 2 Water for said Year in accordance with Article 10 of this Contract.

715 UNAVOIDABLE GROUNDWATER PERCOLATION

716 13. Omitted.

717 RULES AND REGULATIONS

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

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

724 (c) The parties acknowledge that, as of the effective date of this Contract, active  
725 settlement discussions are underway in NRDC v. Patterson between Friant Division water service  
726 contractors, representatives of the Contracting Officer, and the plaintiffs in NRDC v. Patterson. The mutual

727 goals of the parties to those discussions are (i) to expeditiously evaluate and implement, on a mutually  
728 acceptable basis, instream and related measures that will restore ecological functions and hydrologic and  
729 geomorphologic processes of the San Joaquin River below Friant Dam to a level that restores and maintains  
730 fish populations in good condition, including but not limited to naturally-reproducing, self-sustaining  
731 populations of chinook salmon and (ii) to accomplish these restoration goals while not adversely impacting  
732 the overall sufficiency, reliability and cost of water supplies to Friant Division water users. The Contractor  
733 has been actively participating, and intends to continue to participate in such settlement discussions. Except  
734 as provided in this Contract, this Contract does not add to the obligations of the parties, if any, relating to  
735 the San Joaquin River. This Contract does not limit or detract from the obligations of the parties, if any,  
736 relating to the San Joaquin River.

737 WATER AND AIR POLLUTION CONTROL

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

741 QUALITY OF WATER

742 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this  
743 Contract shall be operated and maintained to enable the United States to deliver Project Water to the  
744 Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August  
745 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or  
746 other existing Federal laws. The United States is under no obligation to construct or furnish water treatment  
747 facilities to maintain or to improve the quality of Water Delivered to the Contractor

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

750 (b) The Operation and Maintenance of Project facilities shall be performed in such  
751 manner as is practicable to maintain the quality of raw water made available through such facilities at the  
752 highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be  
753 responsible for compliance with all State and Federal water quality standards applicable to surface and  
754 subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or  
755 Project Water provided by the Contractor within the Contractor's Service Area.

756 WATER ACQUIRED BY THE CONTRACTOR  
757 OTHER THAN FROM THE UNITED STATES

758 17. (a) Omitted.

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

764 (1) The Contractor may introduce non-Project Water into Project facilities and  
765 deliver said water to lands within the Contractor's Service Area, subject to payment to the United States  
766 and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the CVP  
767 Ratesetting Policy and the Reclamation Reform Act of 1982, each as amended, modified or superseded

768 from time to time. In addition, if electrical power is required to pump non-Project Water  
769 through the facilities, the Contractor shall be responsible for obtaining the necessary power and paying the  
770 necessary charges therefor.

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

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

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

785 (5) After Project purposes are met, as determined by the Contracting Officer,  
786 the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities  
787 declared to be available by the Contracting Officer for conveyance and transportation of  
788 non-Project Water prior to any such remaining capacity being made available to non-Project contractors.

OPINIONS AND DETERMINATIONS

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18. (a) Where the terms of this Contract provide for actions to be based upon the opinion

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or determination of either party to this Contract, said terms shall not be construed as permitting such action

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to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties,

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notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and

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appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each

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opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of

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Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable

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under federal law to any opinion or determination implementing a specific provision of federal law embodied

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in statute or regulation.

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(b) The Contracting Officer shall have the right to make determinations necessary to

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administer this Contract that are consistent with the provisions of this Contract, the laws of the United States

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and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior.

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

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COORDINATION AND COOPERATION

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19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the

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Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project

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Contractors, in order to improve the operation and management of the Project. The communication,

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coordination, and cooperation regarding operations and management shall include, but not be limited to, any

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action which will or may materially affect the quantity or quality of Project Water supply, the allocation of

809 Project Water supply, and Project financial matters including, but not limited to, budget issues. The  
810 communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this  
811 Contract. Each party shall retain exclusive decision making authority for all actions, opinion, and  
812 determinations to be made by the respective party.

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

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

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

826 (2) The Secretary will, as appropriate, pursue program and project  
827 implementation and authorization in coordination with Project Contractors to improve the water supply,

828 water quality, and reliability of the Project for all Project purposes.

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

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

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

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

841 CHARGES FOR DELINQUENT PAYMENTS

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

850 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the  
851 Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate

852 of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of  
853 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain  
854 fixed for the duration of the delinquent period.

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

858 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

899 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

912 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

913 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42

914 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
915 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as  
916 with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior  
917 and/or Bureau of Reclamation.

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

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

931 PRIVACY ACT COMPLIANCE

932 24. Omitted.

933 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

940 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
941 administration.

942 WATER CONSERVATION

943 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
944 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an  
945 effective water conservation and efficiency program based on the Contractor's water conservation plan that  
946 has been determined by the Contracting Officer to meet the conservation and efficiency criteria for  
947 evaluating water conservation plans established under Federal law. The water conservation and efficiency  
948 program shall contain definite water conservation objectives, appropriate economically feasible water  
949 conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery  
950 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water  
951 conservation program. In the event the Contractor's water conservation plan or any revised water  
952 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
953 determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting  
954 Officer determines are beyond the control of the Contractor, water deliveries shall be made under this  
955 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such  
956 determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing  
957 its water conservation and efficiency program in accordance with the time schedules therein.

958 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3  
959 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement

960 the Best Management Practices identified by the time frames issued by the California Urban Water  
961 Conservation Council for such M&I Water unless any such practice is determined by the Contracting  
962 Officer to be inappropriate for the Contractor.

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

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

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

974 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

975 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract  
976 shall not be applicable to or affect non-project water or water rights now owned or hereafter acquired by  
977 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be  
978 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or  
979 curtailing any rights which the Contractor or any water user within the

980 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
981 Reclamation law.

982 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

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

988 (b) The Contracting Officer has previously notified the Contractor in writing that the  
989 Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been  
990 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the  
991 Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms  
992 and conditions of the separate agreement between the United States and the Operating Non-Federal Entity  
993 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including any  
994 assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets or  
995 establishes for (i) the Operation and Maintenance of the portion of the Project facilities operated and  
996 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share of the  
997 operation, maintenance and replacement costs for physical works and appurtenances associated with the  
998 Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the federal share of  
999 the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint use conveyance and

1000 conveyance pumping facilities. Such direct payments to the Operating Non-Federal Entity or such  
1001 successor shall not relieve the Contractor of its obligation to pay directly to the United States the  
1002 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components except to the extent the  
1003 Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the  
1004 separate agreement identified in subdivision (a) of this Article.

1005 (c) For so long as the Operation and Maintenance of any portion of the Project facilities  
1006 serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1007 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract  
1008 representing the cost associated with the activity being performed by the Operating Non-Federal Entity or  
1009 its successor.

1010 (d) In the event the Operation and Maintenance of the Project facilities operated and  
1011 maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this  
1012 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a  
1013 revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project  
1014 Water under this Contract representing the Operation and Maintenance costs of the portion of such Project  
1015 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification  
1016 from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)  
1017 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1018 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1019 29. The expenditure or advance of any money or the performance of any obligation of the

1020 United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of  
1021 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract.  
1022 No liability shall accrue to the United States in case funds are not appropriated or allotted.

1023 BOOKS, RECORDS, AND REPORTS

1024 30. (a) The Contractor shall establish and maintain accounts and other books and records  
1025 pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial  
1026 transactions, water supply data, and Project land and right-of-way agreements; water use data; and other  
1027 matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting  
1028 Officer in such form and on such date or dates as the Contracting Officer may require. Subject to  
1029 applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to  
1030 examine and make copies of the other party's books and records relating to matters covered by this  
1031 Contract.

1032 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records,  
1033 or other information shall be requested from the Contractor by the Contracting Officer unless such books,  
1034 records, or information are reasonably related to the administration or performance of this Contract. Any  
1035 such request shall allow the Contractor a reasonable period of time within which to provide the requested  
1036 books, records, or information.

1037 (c) At such time as the Contractor provides information to the Contracting Officer  
1038 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating  
1039 Non-Federal Entity.

1040 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1041 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of  
1042 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid  
1043 until approved in writing by the Contracting Officer.

1044 (b) The assignment of any right or interest in this Contract by either party shall not  
1045 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of

1046 said other party.

1047 (c) The Contracting Officer shall not unreasonably condition or withhold approval of  
1048 any proposed assignment.

1049 SEVERABILITY

1050 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a  
1051 person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or  
1052 other form of organization whose primary function is to represent parties to Project contracts, brings an  
1053 action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in  
1054 this Contract and said person, entity, association, or organization obtains a final court decision holding that  
1055 such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in  
1056 support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days  
1057 of the date of such final court decision identify by mutual agreement the provisions in this Contract which  
1058 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s).  
1059 The time periods specified above may be extended by mutual agreement of the parties. Pending the  
1060 completion of the actions designated above, to the extent it can do so without violating any applicable  
1061 provisions of law, the United States shall continue to make the quantities of Project Water specified in this  
1062 Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be  
1063 legally invalid or unenforceable in the final court decision.

1064 RESOLUTION OF DISPUTES

1065 33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights

1066 and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to  
1067 the Contractor commencing any legal action, or the Contracting Officer referring any matter to Department  
1068 of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such  
1069 action; Provided, That such notice shall not be required where a delay in commencing an action would  
1070 prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the  
1071 Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as  
1072 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor  
1073 or the United States may have.

1074 OFFICIALS NOT TO BENEFIT

1075 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1076 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as  
1077 other water users or landowners.

1078 CHANGES IN CONTRACTOR'S SERVICE AREA

1079 35. (a) While this Contract is in effect, no change may be made in the Contractor's Service  
1080 Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1081 except upon the Contracting Officer's written consent.

1082 (b) Within thirty (30) days of receipt of a request for such a change, the Contracting  
1083 Officer will notify the Contractor of any additional information required by the Contracting Officer for  
1084 processing said request, and both parties will meet to establish a mutually agreeable schedule for timely  
1085 completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in  
1086 the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay  
1087 for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which

1088 the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or  
1089 licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and  
1090 the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting  
1091 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1092 FEDERAL LAWS

1093 36. By entering into this Contract, the Contractor does not waive its rights to contest the validity  
1094 or application in connection with the performance of the terms and conditions of this Contract of any Federal  
1095 law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this  
1096 Contract unless and until relief from application of such Federal law or regulation to the implementing  
1097 provision of the Contract is granted by a court of competent jurisdiction.

1098 NOTICES

1099 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to  
1100 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area  
1101 Manager, South-Central California Area Office, 1243 “N” Street, Fresno, California 93721, and on behalf  
1102 of the United States, when mailed, postage prepaid, or delivered to the Board of City Council of the City of  
1103 Orange Cove, 633 - 6<sup>th</sup> Street, Orange Cove, California 93636. The designation of the addressee or the  
1104 address may be changed by notice given in the same manner as provided in this Article for other notices.

1105 CONFIRMATION OF CONTRACT

1106 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree  
1107 of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The  
1108 Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and  
1109 all pertinent supporting records of the court approving and confirming this Contract, and decreeing and  
1110 adjudging it to be lawful, valid, and binding on the Contractor.

1111 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1112 year first above written.

THE UNITED STATES OF AMERICA

By: /s/ William H. Luce, Jr.  
Acting Regional Director, Mid-Pacific Region  
Bureau of Reclamation

(SEAL)

CITY OF ORANGE COVE

By: /s/ Victor P. Lopez  
Mayor

Attest:

By: /s/ June Bracamonte  
City Clerk

(I:Coran.wpd)

Contract No. 14-06-200-5230-LTR1

Contract No. 14-06-200-5230-LTR1

**EXHIBIT B**  
[Initial Rates and Charges]