

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

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

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Exhibit A - Map of Contractor's Service Area

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

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

10 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in  
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as  
13 amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2,  
14 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986  
15 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all  
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF  
17 AMERICA, hereinafter referred to as the United States, and CITY OF LINDSAY, hereinafter  
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and  
19 acting pursuant to the laws thereof;

20 WITNESSETH, That:

EXPLANATORY RECITALS

21  
22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood  
24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other  
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the  
27 San Joaquin River and their tributaries; and

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

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

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

42 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
43 No. 5-07-20-W0428, as amended, which established terms for the delivery to the Contractor of  
44 Project Water from the Friant Division from June 13, 1985, to February 28, 2025, hereinafter  
45 referred to as the Existing Contract; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99 DEFINITIONS

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

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

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

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

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

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

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

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



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

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

131 (h-i) Omitted;

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

142 (k-l) Omitted;

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

146 (n) Omitted;

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

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

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

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

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

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

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

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

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

175 (w) Omitted;

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

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

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

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

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

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

191 TERM OF CONTRACT

192 2. (a) This Contract shall be effective on March 1, 20\_\_\_\_, through February 28,  
193 20\_\_\_\_, and supersedes the Existing Contract. In the event the Contractor wishes to renew this  
194 Contract beyond February 28, 20\_\_\_\_, the Contractor shall submit a request for renewal in writing  
195 to the Contracting Officer no later than two years prior to the date this Contract expires.

196 (b) Omitted.

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

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

227 the term of this Contract or the Contractor has not requested conversion of this Contract within such  
228 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (c)  
229 of this Article a provision that carries forth in substantially identical terms the provisions of this  
230 subdivision.

231 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

232 3. (a) During each Year, consistent with all applicable State water rights, permits and  
233 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the  
234 Contracting Officer shall make available for delivery to the Contractor 2,500 acre-feet of Class 1  
235 Water for M&I purposes. Water Delivered to the Contractor in accordance with this subdivision  
236 shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

237 (b) Omitted.

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

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

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

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

266 (f) Subject to subdivisions (l) and (n) of Article 3, following the declaration of  
267 Water Made Available under Article 4 of this Contract, the Contracting Officer will make a  
268 determination whether Project Water, or other water available to the Project, can be made available to

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

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

286 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
287 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the  
288 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during  
289 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations



290 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the  
291 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of  
292 this Contract or applicable provisions of any subsequent renewal contracts.

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

296 (j) The Contracting Officer shall make reasonable efforts to protect the water  
297 rights and other rights described in the third Explanatory Recital of this Contract necessary for the  
298 Project and to provide the water available under this Contract. The Contracting Officer shall not  
299 object to participation by the Contractor, in the capacity and to the extent permitted by law, in  
300 administrative proceedings related to the water rights and other rights described in the third  
301 Explanatory Recital of this Contract; Provided, That the Contracting Officer retains the right to  
302 object to the substance of the Contractor's position in such a proceeding; Provided further, That in  
303 such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the  
304 terms of this Contract to use Project Water.

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

311 Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month,  
312 such additional diversions shall be charged first against the Contractor's remaining Class 2 Water  
313 supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply  
314 available in the current Year is not sufficient to account for such additional diversions, such  
315 additional diversions shall be charged against the Contractor's remaining Class 1 Water supply  
316 available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2  
317 Water supplies available in the current Year are not sufficient to account for such additional  
318 diversions, such additional diversions shall be charged first against the Contractor's available Class 2  
319 Water supply and then against the Contractor's available Class 1 Water supply, both for the following  
320 Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of  
321 this Contract.

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

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

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

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

353 TIME FOR DELIVERY OF WATER

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

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

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

372 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this

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

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

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

407 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

415 turnouts established pursuant to subdivision (a) of this Article.

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

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

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

436 Non-Federal Entity, with the intent of creating the situation resulting in any damage or claim;  
437 (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns,  
438 including the Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of its  
439 officers, employees, agents, or assigns including the Operating Non-Federal Entity; or (iv) damage or  
440 claims resulting from a malfunction of facilities owned and/or operated by the United States or  
441 responsible Operating Non-Federal Entity.

442 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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



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

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

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

477 Contractor's Service Area during the previous Year.

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

481 RATES AND METHOD OF PAYMENT FOR WATER

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

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

493 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
494 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
495 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
496 the basis for such estimate. The Contractor shall be allowed not less than two months to review and  
497 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting

498 Officer shall notify the Contractor in writing of the Charges to be in effect during the period  
499 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and  
500 such notification shall revise Exhibit "B."

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

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

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

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

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

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

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

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

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

561 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,  
562 reports, or information.

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

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

580 (2) Omitted.

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

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

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

596                   (m)     Omitted.

597                   (n)     The Contractor asserts that it is not legally obligated to pay any Project deficits  
598 claimed by the United States to have accrued as of the date of this Contract or deficit-related interest  
599 charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or  
600 remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this

601 Contract and payments made hereunder, the Contractor may challenge in the appropriate  
602 administrative or judicial forums: (1) the existence, the computation, or imposition of any deficit  
603 charges accruing during the term of the Existing Contract; (2) interest accruing on any such deficits;  
604 (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United  
605 States of payments made by the Contractor under its Existing Contract; and (5) the application of  
606 such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to  
607 the benefit of any administrative or judicial ruling in favor of any other Project M&I contractor on  
608 any of these issues, and credits for payments heretofore made; Provided, That the basis for such  
609 ruling is applicable to the Contractor.

610 8. Omitted.

611 SALES, TRANSFERS, OR EXCHANGES OF WATER

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



622                   (b)     In order to facilitate efficient water management by means of water transfers of  
623 the type historically carried out among Project Contractors located within the same geographical area  
624 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
625 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental  
626 documentation including, but not limited to, documents prepared pursuant to NEPA and ESA,  
627 analyzing annual transfers within such geographical areas, and the Contracting Officer shall  
628 determine whether such transfers comply with applicable law. Following the completion of the  
629 environmental documentation, such transfers addressed in such documentation shall be conducted  
630 with advance notice to the Contracting Officer, but shall not require prior written approval by the  
631 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance  
632 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of  
633 the then-existing five-year period. All subsequent environmental documentation shall include an  
634 alternative to evaluate not less than the quantity of Project Water historically transferred within the  
635 same geographical area.

636                   (c)     For a water transfer to qualify under subdivision (b) of this Article, such water  
637 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for  
638 M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead to land  
639 conversion; and be delivered to established cropland, wildlife refuges, groundwater basins or M&I  
640 use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv)  
641 convey water through existing facilities with no new construction or modifications to facilities and be

642 between existing Project Contractors and/or the Contractor and the United States, Department of the  
643 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements  
644 imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

645 APPLICATION OF PAYMENTS AND ADJUSTMENTS

646 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
647 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
648 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000  
649 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at  
650 the option of the Contractor, may be credited against amounts to become due to the United States by  
651 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
652 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the  
653 Project Water supply provided for herein. All credits and refunds of overpayments shall be made  
654 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such  
655 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year  
656 in which the overpayment was made.

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

662 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

679 (c) The United States reserves the right to all seepage and return flow water  
680 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the  
681 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United

682 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this  
683 Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or  
684 under the Contractor.

685 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

696 (c) The United States shall not execute contracts which together with this  
697 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals  
698 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of 1,401,475  
699 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract, the  
700 limitation placed on Class 2 Water contracts shall not prohibit the United States from entering into  
701 temporary contracts of one year or less in duration for delivery of Project Water to other entities if  
702 such water is not necessary to meet the schedules as may be submitted by all Friant Division long-

703 term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under their  
704 water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to  
705 take actions that result in the availability of new water supplies to be used for Project purposes and  
706 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until  
707 after consultation with the Friant Division Project Contractors.

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

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

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

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

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

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

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

739 13. Omitted.

740 RULES AND REGULATIONS

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

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

748 (c) Omitted.

749 WATER AND AIR POLLUTION CONTROL

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

753 QUALITY OF WATER

754 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
755 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
756 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
757 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
758 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish  
759 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor  
760 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the  
761 Contractor pursuant to this Contract.

762 (b) The O&M of Project facilities shall be performed in such manner as is  
763 practicable to maintain the quality of raw water made available through such facilities at the highest  
764 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

765 responsible for compliance with all State and Federal water quality standards applicable to surface  
766 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor  
767 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

768 WATER ACQUIRED BY THE CONTRACTOR  
769 OTHER THAN FROM THE UNITED STATES

770 17. (a) Omitted.

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

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

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



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

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

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

802 OPINIONS AND DETERMINATIONS

803 18. (a) Where the terms of this Contract provide for actions to be based upon the  
804 opinion or determination of either party to this Contract, said terms shall not be construed as  
805 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
806 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

807 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or  
808 unreasonable opinion or determination. Each opinion or determination by either party shall be  
809 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to  
810 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or  
811 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

817 COORDINATION AND COOPERATION

818 19. (a) In order to further their mutual goals and objectives, the Contracting Officer  
819 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other  
820 affected Project Contractors, in order to improve the O&M of the Project. The communication,  
821 coordination, and cooperation regarding operations and management shall include, but not be limited  
822 to, any action which will or may materially affect the quantity or quality of Project Water supply, the  
823 allocation of Project Water supply, and Project financial matters including, but not limited to, budget  
824 issues. The communication, coordination, and cooperation provided for hereunder shall extend to all  
825 provisions of this Contract. Each party shall retain exclusive decision making authority for all  
826 actions, opinion, and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

854 CHARGES FOR DELINQUENT PAYMENTS

855 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
856 on delinquent installments or payments. When a payment is not received by the due date, the  
857 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
858 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
859 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
860 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
861 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
862 Contractor shall pay any fees incurred for debt collection services associated with a delinquent  
863 payment.

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

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

872 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

907 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
908 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the

909 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
910 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
911 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
912 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,  
913 That in the event the Contractor becomes involved in, or is threatened with, litigation with a  
914 subcontractor or vendor as a result of such direction, the Contractor may request the United States to  
915 enter into such litigation to protect the interests of the United States.

916 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

929 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

941 (c) The Contractor makes this agreement in consideration of and for the purpose

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

948 24. Omitted.

949 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

958 WATER CONSERVATION

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

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

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

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

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



987 conservation plan meets Reclamation's then-current conservation and efficiency criteria for  
988 evaluating water conservation plans established under Federal law.

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

991 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

999 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1000 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1001 responsibility for funding a portion of the costs of such O&M, have been transferred to the Operating  
1002 Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal  
1003 Entity. That separate agreement shall not interfere with or affect the rights or obligations of the  
1004 Contractor or the United States hereunder.

1005 (b) The Contracting Officer has previously notified the Contractor in writing that  
1006 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the  
1007 Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating

1008 Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and  
1009 conditions of the separate agreement between the United States and the Operating Non-Federal Entity  
1010 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including  
1011 any assessment for reserve funds, which the Operating Non-Federal Entity or such successor  
1012 determines, sets or establishes for (i) the O&M of the portion of the Project facilities operated and  
1013 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share  
1014 of the operation, maintenance and replacement costs for physical works and appurtenances associated  
1015 with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the  
1016 federal share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint  
1017 use conveyance and conveyance pumping facilities. Such direct payments to the Operating  
1018 Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly  
1019 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing  
1020 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf of  
1021 the United States in accordance with the separate agreement identified in subdivision (a) of this  
1022 Article.

1023 (c) For so long as the O&M of any portion of the Project facilities serving the  
1024 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the  
1025 Contracting Officer shall adjust those components of the Rates for Water Delivered under this  
1026 Contract representing the cost associated with the activity being performed by the Operating  
1027 Non-Federal Entity or its successor.

1028 (d) In the event the O&M of the Project facilities operated and maintained by the  
1029 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the  
1030 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised  
1031 Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project  
1032 Water under this Contract representing the O&M costs of the portion of such Project facilities which  
1033 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from  
1034 the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)  
1035 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this  
1036 Contract.

1037 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1038 29. The expenditure or advance of any money or the performance of any obligation of the  
1039 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1040 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1041 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1042 or allotted.

1043 BOOKS, RECORDS, AND REPORTS

1044 30. (a) The Contractor shall establish and maintain accounts and other books and  
1045 records pertaining to administration of the terms and conditions of this Contract, including: the  
1046 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1047 water use data; and other matters that the Contracting Officer may require. Reports thereon shall be  
1048 furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer  
1049 may require. Subject to applicable Federal laws and regulations, each party to this Contract shall  
1050 have the right during office hours to examine and make copies of the other party's books and records  
1051 relating to matters covered by this Contract.

1052 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1053 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1054 such books, records, or information are reasonably related to the administration or performance of

1055 this Contract. Any such request shall allow the Contractor a reasonable period of time within which  
1056 to provide the requested books, records, or information.

1057 (c) At such time as the Contractor provides information to the Contracting Officer  
1058 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1059 Operating Non-Federal Entity.

1060 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1061 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1062 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1063 therein shall be valid until approved in writing by the Contracting Officer.

1064 (b) The assignment of any right or interest in this Contract by either party shall not  
1065 interfere with the rights or obligations of the other party to this Contract absent the written  
1066 concurrence of said other party.

1067 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1068 of any proposed assignment.

1069 SEVERABILITY

1070 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1071 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1072 association or other form of organization whose primary function is to represent parties to Project  
1073 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1074 enforceability of a provision included in this Contract and said person, entity, association, or  
1075 organization obtains a final court decision holding that such provision is legally invalid or  
1076 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the

1077 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1078 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1079 within three months thereafter promptly agree on the appropriate revision(s). The time periods  
1080 specified above may be extended by mutual agreement of the parties. Pending the completion of the  
1081 actions designated above, to the extent it can do so without violating any applicable provisions of  
1082 law, the United States shall continue to make the quantities of Project Water specified in this  
1083 Contract available to the Contractor pursuant to the provisions of this Contract which were not found  
1084 to be legally invalid or unenforceable in the final court decision.

1085 RESOLUTION OF DISPUTES

1086 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1087 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1088 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1089 any matter to Department of Justice, the party shall provide to the other party 30 days' written notice  
1090 of the intent to take such action; Provided, That such notice shall not be required where a delay in  
1091 commencing an action would prejudice the interests of the party that intends to file suit. During the  
1092 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt  
1093 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge  
1094 any right or remedy that the Contractor or the United States may have.

1095 OFFICIALS NOT TO BENEFIT

1096 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1097 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1098 manner as other water users or landowners.

1099 CHANGES IN CONTRACTOR'S SERVICE AREA

1100 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1101 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1102 except upon the Contracting Officer's written consent.

1103 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1104 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1105 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1106 timely completion of the process. Such process will analyze whether the proposed change is likely  
1107 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability  
1108 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1109 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1110 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with  
1111 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting  
1112 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1113 FEDERAL LAWS

1114 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1115 validity or application in connection with the performance of the terms and conditions of this  
1116 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1117 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1118 regulation to the implementing provision of the Contract is granted by a court of competent

1119 jurisdiction.

1120 NOTICES

1121 37. Any notice, demand, or request authorized or required by this Contract shall be  
1122 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1123 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California  
1124 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the City  
1125 Council of the City of Lindsay, 251 East Honolulu, Lindsay, California 93247. The designation of  
1126 the addressee or the address may be changed by notice given in the same manner as provided in this  
1127 Article for other notices.

1128 CONFIRMATION OF CONTRACT

1129 38. The Contractor, after the execution of this Contract, shall furnish to the Contracting  
1130 Officer evidence that pursuant to the laws of the State of California the Contractor is a legally  
1131 constituted entity and the contract is lawful, valid, and binding on the Contractor. This Contract shall  
1132 not be binding on the United States until such evidence has been provided to the Contracting  
1133 Officer's satisfaction.

1134 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1135 and year first above written.

1136 THE UNITED STATES OF AMERICA

1137 By: \_\_\_\_\_  
1138 Regional Director, Mid-Pacific Region  
1139 Bureau of Reclamation

1140 (SEAL)

1141 CITY OF LINDSAY

1142 By: \_\_\_\_\_  
1143 City Manager

1144 Attest:

1145 By: \_\_\_\_\_  
1146 City Clerk

1147 Approved as to form:

1148 \_\_\_\_\_  
1149 City Attorney

1150 (I:\LTRC\Draft LTRC\08-07-2004 City of Lindsay R. O. Final Draft.doc)



EXHIBIT A

*Reserved for Contractor's  
Service Area/Sphere of Influence Map*

Contract No. 5-07-20-W0428-LTR1

EXHIBIT B

*Reserved for Water Rates Spreadsheet*