

APPENDIX J

City of Fresno Water Supply Contracts with FID and USBR

COOPERATIVE AGREEMENT BETWEEN FRESNO IRRIGATION DISTRICT AND CITY OF FRESNO FOR WATER UTILIZATION AND CONVEYANCE

FRESNO COUNTY, CALIFORNIA
MAY 25 1976
H. L. MASINI, County Recorder

FEE \$

1 THIS AGREEMENT, entered into as of this 25th day of
2 May, 1976, by and between the FRESNO IRRIGATION
3 DISTRICT, a public corporation, (herein called the "DISTRICT"),
4 and the CITY OF FRESNO, a municipal corporation, (herein called
5 "CITY");

6 W I T N E S S E T H:

7 WHEREAS, Fresno Irrigation District is an irrigation dis-
8 trict organized and existing under the laws of the State of
9 California and is the owner of certain water rights and a water
10 distribution system for the distribution of water within the
11 District, and the City of Fresno is a municipal corporation
12 wholly within the exterior boundaries of said District and is
13 the owner of a water distribution system delivering water to
14 lands both in and outside the exterior boundaries of said City;
15 and

16 WHEREAS, District and City have heretofore entered into
17 a cooperative program of water utilization between said parties
18 evidenced by a written agreement for such water utilization and
19 conveyance dated August 12, 1970, which by its terms and by the
20 terms of amendments thereto will terminate on May 30, 1976; and

21 WHEREAS, District and City wish to continue with said
22 cooperative program and to make and enter into a new contract for
23 water utilization and conveyance; and

24 WHEREAS, this agreement is specifically authorized by, and
25 entered into pursuant to Chapter 9 (commencing with Section 26670),
26 Part 10, Division 11 of the California Water Code; and

27 WHEREAS, by agreement dated January 12, 1961, between City
28 and the United States of America (herein called the "City Bureau
29 Contract"), City is required and/or is entitled to purchase
30 certain water herein called City's Bureau Water from the United
31 States, commencing in 1966; and

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To be recorded without fee on behalf of Fresno Irrigation District & City

1 WHEREAS, the District has entered into certain contracts
 2 with the United States (herein called the "District Bureau
 3 Contracts") for a supplemental supply of water from the Friant-
 4 Kern Canal and for storage in Pine Flat Reservoir on the Kings
 5 River, which said District Bureau Contracts are more particularly
 6 described as follows:

7 Contract Between the United States of America
 8 and Fresno Irrigation District Providing for
 9 the Payment of the District's Share of the
 10 Cost of Pine Flat Dam and Reservoir Allocated
 11 to Irrigation, dated December 23, 1963,

12 Contract for Operation and Maintenance of
 13 Irrigation Storage Space of Pine Flat
 14 Reservoir, dated December 23, 1963,

15 Kings River Allocation Contract, dated
 16 December 23, 1963,

17 Contract between the United States and Fresno
 18 Irrigation District Providing for Water
 19 Service, dated July 20, 1964,

20 Conveyance and Covenants in Compromise and
 21 Settlement of Fresno Slough Claims, dated
 22 April 23, 1965,

23 and has entered into other contracts with the members of the
 24 Kings River Water Association (herein called the "District Intra-
 25 Association Agreements"), relating to Kings River and storage in
 26 Pine Flat Reservoir, which said contracts are more particularly
 27 described as follows:

28 Water Right Indenture, dated May 3, 1927,

29 Administrative Agreement and Monthly Diversion
 30 Schedule dated May 3, 1927,

31 Agreement Supplementing and Amending Water
 32 Right Indenture Dated May 3, 1927, and
 Supplementing and Amending Administrative
 Agreement Dated May 3, 1927, Relating to
 Kings River Water Association, and Amended
 Monthly Diversion Schedule, dated June 1, 1949,

 Agreement Admitting Kings River Water District
 As a Member of Kings River Water Association
 and Agreement Re: Centerville Bottoms
 Schedule, dated September 10, 1963,

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Agreement Supplementing and Amending Water Right Indenture Dated May 3, 1927, and Administrative Agreement Dated May 3, 1927, Each as Amended and Supplemented June 1, 1949, Relating to Kings River Water Association, dated September 10, 1963, and

WHEREAS, it is recognized by District and City that the District is primarily charged with the distribution and delivery of water within the District for agricultural use and that its canals and distribution system must primarily be used for that purpose, and

WHEREAS, it is recognized by both the District and the City that many inhabitants of the District also require water for domestic, industrial or fire protection purposes which may be supplied to them by the City, and

WHEREAS, it is recognized by District and City that both are charged with the protection and preservation of the underground water supply;

NOW, THEREFORE, it is mutually agreed as follows:

1. Term. The term of this agreement shall be for a period commencing on the date it is executed and ending at 12:00 o'clock p.m. on the last day of February in the year 1981 and thereafter, until terminated by either party as of the last day of February of any subsequent year by written notice to the other party mailed prior to September 1st of the previous year. Forthwith upon the execution of this agreement the previous agreement between the parties above referred to dated August 12, 1970, and all amendments thereto shall be terminated and shall be of no further force or effect, except that City agrees to pay District any monies owing or to become owing to District under and according to the terms of said previous agreement.

2. Approval by United States. Immediately upon the execution of this contract by the parties hereto, it shall be

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1 presented to the United States for its approval and in the event
2 of its disapproval by the United States it shall become in-
3 effective and unenforceable for any purpose until such approval
4 has been obtained.

5 This contract shall be at all times subject to all of the
6 terms and conditions of the City Bureau Contract, the District
7 Bureau Contracts and the District Intra-Association Agreements
8 and to the extent that any agreement contained herein is con-
9 trary to or inconsistent with any term or condition of those
10 contracts or agreements, this contract shall be unenforceable.
11 In the event any such agreement contained herein shall become
12 unenforceable, the entire contract may be terminated by the
13 party adversely affected as of the last day of February of the
14 next succeeding year, by written notice served upon the other
15 party on or before the first day of September of the year pre-
16 ceding such termination.

17 3. Definition. For the purpose of this agreement, the
18 following words shall be defined as follows:

- 19 a. "City Water Service Area" means all lands within
20 the city limits of the City of Fresno, and also
21 all lands outside the city limits of the City
22 of Fresno which are within the exterior
23 boundaries of District to which the City now
24 delivers water or hereafter consents to deliver
25 water by means of its City Water System and
26 which are not hereafter designated or assessed
27 by the District as lands receiving or to
28 receive District Water Service from the District.
- 29 b. "Included Area" means that portion of the City
30 Water Service Area which is a part of the District.
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- 1 c. "Excluded Area" means that portion of the City
- 2 Water Service Area which is not a part of the
- 3 District.
- 4 d. "City Water System" means the conduits, pipes and
- 5 other facilities owned by the City and used by the
- 6 City to convey water to lands whether in or outside
- 7 the City.
- 8 e. "District Water Service" means the furnishing of
- 9 water by the District directly to lands within the
- 10 District by means of canals, ditches or pipelines
- 11 owned or under the control of the District, or by
- 12 any means under the control of the District other
- 13 than pumping conducted by the water user directly
- 14 from the underground water supply upon the lands
- 15 receiving such water.
- 16 f. "Surface Water Supply" means all water available
- 17 or received by any means other than pumping from
- 18 the underground water supply.
- 19 g. "Agricultural Use" means the use of water primarily
- 20 in the production of agricultural crops or livestock
- 21 including but not restricted to domestic use
- 22 incidental to such agricultural purposes, the
- 23 watering of livestock and underground water
- 24 replenishment.
- 25 h. "Municipal, Industrial and Domestic Uses" means the
- 26 use of water other than for Agricultural Use.
- 27 i. "Water Year" means October 1st of one year through
- 28 September 30th of the next year.
- 29 4. Determination of Areas. A map showing the City
- 30 Water Service Area, the Included Area and the Excluded Area
- 31 and clearly indicating the total number of acres in each area
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1 as of the first day of March, 1976, entitled "City Water Service
2 Area, Included Area and Excluded Area as Defined in Cooperative
3 Agreement Between Fresno Irrigation District and City of Fresno,"
4 shall be prepared in duplicate by the Water Division of the City
5 of Fresno and approved in duplicate and in writing upon said map
6 by the Director of Public Works of the City and by the Manager
7 of the District. When so approved, said map shall be in-
8 corporated herein by reference as Exhibit A and shall become a
9 part hereof. One duplicate so approved shall be kept in the
10 office of the City and one in the office of the District. Said
11 map shall be amended and reapproved by both parties as of the
12 first day of March, 1977, and as of the first day of March of
13 each succeeding year thereafter; provided, however, that the
14 City shall keep the District currently advised on a monthly
15 basis of any new lands outside of the Fresno City Limits to
16 which it commences or consents to deliver water and the District
17 shall keep the City so advised as to any new lands designated
18 or assessed by it as lands receiving or to receive District
19 Water Service. When so amended and reapproved as of the first
20 day of March of each year, said map shall conclusively establish
21 the boundaries of and the acreage in each area for all purposes
22 of this agreement.

23 In computing the acreage in each of the areas above
24 referred to, the entire acreage shall be measured including
25 properties that may be exempt from assessment for taxation and
26 including adjacent streets, alleys, roads, highways and other
27 public ways to the center lines thereof.

28 Said map shall also show the area within which the
29 District's water shall be made available to the City under
30 Paragraph No. 6 hereof. Said area shall be designated on said
31 map as "District's Water Delivery Area".
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1 5. Payment by City to District. The City shall pay to
2 the District each year in which this contract is effective, in
3 lieu of assessments by the District upon lands in the Included
4 Area (pursuant to Water Code Section 26671, subdivision 1 b) a
5 total sum of money calculated as follows:

6 a. A sum calculated by multiplying the number of acres in
7 the Included Area as of the first day of March of
8 that year by the assessed value per acre generally
9 assigned by the District in that year to other lands in
10 the District receiving District Water Service (not
11 including the assessed value assigned to lands where
12 the service is obtained by the pumping of water from
13 the District's canals) multiplied by the assessment
14 rate determined by the District in that year for the
15 next year's District operations, and also

16 b. A sum calculated by multiplying the number of acres in
17 the Excluded Area as of the first day of March of that
18 year by the assessed value per acre generally assigned
19 by the District in that year to other lands in the
20 District (not including lands in Freewater County Water
21 District, or lands annexed from Trimmer Springs Water
22 District or other lands which for any reason are
23 subject to specially assessed valuations) which do not
24 receive District Water Service, multiplied by the
25 assessment rate determined by the District in that year
26 for the next year's District operations.

27 Said payment shall be paid each year as follows:

28 60% of each said payment shall be paid on
29 or before the 20th day of December, and
30 the remaining 40% shall be paid on or
31 before the 20th day of June, of the next
32 succeeding year.

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1 In the event of the disapproval of this agreement by the United
2 States or of any other termination of this agreement during any
3 calendar year, the total amount to be paid on or before
4 December 20th of that year and/or June 20th of the next year
5 shall still be paid.

6 Time shall be of the essence for the making of the above
7 payments. If any such payment is not made on the date provided,
8 the City shall pay to the District in addition to said payment
9 costs and penalties equal to those provided by law to be paid by
10 landowners within the District for the late payment of assess-
11 ments. These penalties are in addition to any other remedy
12 which the District may have against the City because of the City's
13 failure to pay said payment as above provided.

14 6. Water Made Available to City. Subject to all other
15 provisions of this agreement, the District shall make available
16 to the City during each calendar year (pursuant to Water Code
17 Section 26671, subsection 2) for distribution and use within the
18 Included Area of the City, at such times as shall be determined
19 by the Manager of the District, that proportion of the total
20 water diverted by the District from the Surface Water Supply
21 available to it for such year, as the acreage of the Included
22 Area, appearing on the map designated as Exhibit A, as of the
23 first day of March preceding that water year, bears to the
24 acreage of the total area in the District (including the Included
25 Area) receiving a Surface Water Supply from the District. Said
26 water shall be made available to the City in the District's
27 canals at such point or points along such canals within the area
28 designated on Exhibit A as "District's Water Delivery Area" as
29 may be designated by the City and approved by the District and
30 shall be taken from the District's canals by and at the expense
31 of the City in a manner approved by District. The City must act
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1 reasonably in designating such points or points of delivery and
2 the District must act reasonably in approving or disapproving
3 such point or points of delivery. The District shall not be
4 required to make such water available to the City at any point or
5 points which will interfere with the operation or maintenance
6 of the District's distribution system or water delivery schedule.
7 Such water may be used by the City only within the Included Area
8 for Municipal, Industrial and Domestic Uses and for Agricultural
9 Uses incidental thereto, and within the District's Water Delivery
10 Area for recharge of the underground water supply by percolation.

11 No water which has been received by the District either
12 as Class 1 or Class 2 water under its contract with the United
13 States for water service from the Friant-Kern Canal, dated
14 July 20, 1964, or which has been stored by the District in Pine
15 Flat Reservoir under the District's contracts with the United
16 States providing for such storage, dated December 23rd, 1963,
17 shall be made available to the City.

18 The City shall not sell, transfer or exchange any of
19 said water to or with any other person or entity. However, this
20 provision shall not prevent the City from entering into separate
21 agreements with any other entity which may have a similar
22 agreement with the District for the distribution and use of
23 water received from the District under such agreements, provided
24 such separate agreements are entered into with the written
25 consent of the District first had and obtained and are subject
26 to all the terms and conditions of this agreement and the
27 District's agreements with such other entities.

28 7. Water Entitlements of Lands in Included Area. The
29 owners of lands within the Included Area covered by this agree-
30 ment shall each year be entitled to receive and use from the
31 water so made available by the District to the City, or from
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1 other water available to the City, an amount of water sufficient
 2 to supply his reasonable and beneficial needs, limited however to
 3 his proportionate share of the water made available by the
 4 District to the City under this agreement based upon the ratio
 5 which the number of acres owned by him bears to the total number
 6 of acres of land within the Included Area. The City may charge
 7 such rates as it may determine for the service of water to such
 8 lands; provided, however, no distinction shall be made between
 9 the rate charged for water received by the City from the District
 10 under this agreement and water obtained by the City from other
 11 sources.

12 8. Conveyance of City's Bureau Water. Under the City's
 13 contract with the United States providing for Water Service,
 14 dated January 12, 1961, the City may, under the circumstances
 15 therein provided, decrease the quantity of City's Bureau Water
 16 required to be furnished each year to the City by the United
 17 States pursuant to said contract. City agrees that so long as
 18 this contract with District remains in effect, it will not
 19 decrease the quantity of City's Bureau Water to be accepted and
 20 paid for by it under Schedule A in Paragraph 3(A) of said
 21 contract with the United States, without the consent of District.

22 At the request of the City, the District shall convey
 23 for the City, in the District's canals, all or such portion
 24 of the City's Bureau Water which the City shall receive from
 25 the United States under the City Bureau Contract and which is
 26 not conveyed by other means. City's Bureau Water shall be
 27 taken into the District's canals at the diversion point or
 28 points on the Friant-Kern Canal where water is delivered to the
 29 District or the City under their agreements with the United
 30 States, and shall be conveyed in such canals and delivered to the
 31 City at such points along such canals as may be designated by the
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1 City and approved by the District. The City must act reasonably
2 in designating such point or points of delivery and the District
3 must act reasonably in approving or disapproving such point or
4 points of delivery. The District shall not be required to make
5 such water available to the City at any point or points which
6 will interfere with the operation or maintenance of the District's
7 distribution system or water delivery schedule. Such water shall
8 be received by the City in the District's canals and taken from
9 the District's canals by and at the expense of the City in a
10 manner approved by the District.

11 It is agreed that if and when the City shall establish a
12 diversion point and/or facility of its own on the Friant-Kern
13 Canal for the purpose of receiving its Bureau Water, the District
14 shall have the right to use said diversion facility for its own
15 purposes as well as for the purpose of receiving the City's
16 Bureau Water for conveyance into the District, providing that
17 City's Bureau Water shall take precedence of use of the diversion
18 facility.

19 Whenever the City's Bureau Water is requested by the City,
20 the District shall have the right to exchange and to convey for the
21 City in place thereof other water in similar quality and equal
22 quantity at the point of delivery (except sewer effluent or indus-
23 ~~trial wastes~~) available to the District, and to take and use such
24 water available under the City's Bureau Contract for its own uses
25 at such times and in such manner as may be determined by the District.

26 It is understood that the conveyance by the District of
27 its own water to landowners served by it within the District
28 (including lands within the City in the Included Area) shall
29 have priority over the conveyance of the City's Bureau Water and
30 that nothing herein contained shall require the District to
31 convey City's Bureau Water at any time when, because of lack of
32 canal capacity or otherwise, the conveyance of such water would

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1 make it impossible or impractical for the District to convey its
2 own water upon the schedules established by the District. How-
3 ever, it is understood that in determining whether at any time
4 the District's canals have the capacity to convey the City's
5 Bureau Water, the conveyance of that water shall have priority
6 over the conveyance of any water brought into the District by
7 the City of Clovis, or the Fresno County Waterworks District
8 No. 19, or any other entity with which the District may have a
9 similar contract; provided, however, that in the event additional
10 canal capacity is provided by the City or any other such entity
11 at its expense to accommodate its own water, that entity's water
12 shall have priority in that additional space.

13 If it becomes necessary, the City and the District will
14 consider the enlargement of the District's canals for the pur-
15 pose of conveying City's Bureau Water, the City to pay that
16 portion of the cost of such enlargement as is for its benefit.
17 In the event of such enlargement, all lands or easements acquired
18 in connection therewith, and all additions or improvements in or
19 to the District's canals shall become the property of the
20 District but the City shall have priority in the use of such
21 additional capacity during the term of this contract. The
22 District shall not be bound to so enlarge any of its said canals,
23 and neither party shall be required to participate in or pay for
24 any such enlargement, without its consent.

25 9. Schedules of Delivery and Conveyance of Water. The
26 District will make available to and convey for the City the
27 water herein agreed to be made available to the City pursuant
28 to paragraph 6, at such times during the water year as shall be
29 determined by the District. Insofar as practicable and feasible,
30 the District will attempt to make such water available to City
31 from the District's water supply on the same water schedule that
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1 other landowners in the District receive water and in such a
2 manner as to provide the same in a continuous flow at all times
3 when water is running in the canal or canals by which such water
4 is conveyed for the City's use, but in making such determination
5 the District will take into consideration the capacity and
6 condition of said canals, the availability of water which may be
7 taken or used by the City under the terms of this agreement and
8 under the terms of the District's contracts with the United
9 States and the rules, regulations and directives of the Bureau of
10 Reclamation in connection therewith, the needs and requirements
11 of other landowners in the District, including the needs and
12 requirements of excess landowners, the entitlements of the
13 District to natural flow or unstored water from the Kings River,
14 the requirements of the contracts between the District and the
15 City of Clovis and Fresno County Waterworks District No. 19 and
16 all other factors pertaining to the distribution, apportionment
17 and use of water available to the District. Such delivery and
18 conveyance schedules may be adjusted from time to time by the
19 District in a manner reasonably calculated to best serve the needs
20 of the District and the City.

21 Subject to the same limitations of feasibility, the
22 District will convey City's Bureau Water at such times as the
23 City may request; provided, however, that the District shall
24 not be required to convey water for the City in any canal at
25 any time when work is being done upon said canal for construction,
26 improvement or maintenance and if the City requests the District
27 to convey water in any canal during any time when water is not
28 being run in said canal for other landowners, the District may
29 condition the conveyance of its said water upon payment by the
30 City of any additional cost incurred by the District because
31 thereof.

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1 10. Conveyance Losses. The City shall assume and bear
2 all conveyance losses for all water furnished by the District to
3 the City or conveyed by the District for the City under this
4 agreement. Conveyance losses chargeable to the City shall be
5 computed by multiplying the losses in that portion of any canal
6 used for such conveyance, during the period such water is being
7 so conveyed, by the total amount of water being conveyed for
8 the City in that canal during such time, divided by the total
9 amount of water flowing in that portion of that canal during the
10 same period.

11 11. Use by District of Water Not Used by City. In the
12 event the City is unable to use or does not use any part of the
13 water made available to it by the District within the area
14 designated on Exhibit A as "District's Water Delivery Area" under
15 this agreement for the purposes, at the times and in the manner
16 herein provided, the City shall lose the right to receive such
17 water, and the District shall have the right to take and use such
18 water for purposes of irrigation and percolation in such manner as
19 it may determine. In such event, insofar as the canals and
20 facilities of the District will permit, and insofar as otherwise
21 may be practicable and equitable as to other landowners, the
22 District will use such water for irrigation or percolation in areas
23 in the City or east or northeast of the City, and will discuss its
24 use with the City before it is used elsewhere. However, the
25 ultimate decision concerning such use of such water shall be
26 within the discretion of the District.

27 In the event the City is unable to use or does not use any
28 part of City's Bureau Water it is required to take under its
29 City Bureau Contract when and as required under that contract
30 or under the terms of this agreement, the City shall nevertheless
31 take and pay for said water and the District shall have the right
32 to use such water for purposes of irrigation and percolation but

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1 the City may require the District to so use such water at such
2 locations as it may direct; provided, however, in the event the
3 City does not direct the location at which said water shall be
4 used in time that it may be so used or in the event the canals
5 and facilities of the District will not permit the conveyance of
6 such water to such location when so directed, or if for any
7 other reason the conveyance of such water to such location at
8 that time is not feasible or practicable, District shall have
9 the right to use such water upon the same conditions as are
10 provided in the previous paragraph for water made available to
11 the City by the District.

12 Such use of any such water by the District as provided in
13 this paragraph shall not relieve the City from any payments
14 required to be made by it under the City Bureau Contract or
15 under the terms of this agreement and its use by the District
16 shall not require any payment from the District to the City.

17 12. Water Rights Not Transferred. Nothing in this agree-
18 ment authorizes or shall be construed or deemed to constitute the
19 sale or transfer of a water right from either party to the other.

20 13. City's Sewage Effluent. The City will retain its
21 sewage effluent within the boundaries of the District for the
22 term of this contract, except with the written consent of the
23 District first had and obtained.

24 14. No Warranty of Quality. The character or quality of
25 the water furnished or conveyed hereunder may vary from time to
26 time for reasons including, but not restricted to, the application
27 by the United States or the District of toxic chemicals to
28 control aquatic and ditch bank weeds, and the open canals of the
29 District are always subject to possible pollution from outside
30 sources. The District does not guarantee in any respect or
31 assume any responsibility for the chemical, bacterial or other
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1 quality of the water made available to the City or conveyed for
2 the City through the District's facilities.

3 15. Indemnity. The City and the District each agree to
4 indemnify the other and save the other free and harmless of and
5 from any and all liability, damage, loss, cost or expense,
6 incurred or suffered by the other, by reason of damage to the
7 property of the other or injury to any other person or property
8 arising out of its own conduct, acts, omissions or faults, in
9 connection with any matter related to this contract.

10 CITY OF PRESNO, A Municipal
11 Corporation

12 By: [Signature]
13 Title: Director of Public Works

14 Attest:

15
16 [Signature]
17 City Clerk

(City)

18 FRESNO IRRIGATION DISTRICT

19 APPROVED AS TO FORM
20 SPENCER THOMAS, JR., City Attorney

21 By Wayne N. Witchy
22 Assistant

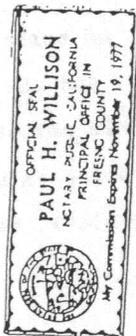
By: F A Preuss
President

23 Date MAY 20 1976

Attest: [Signature]
Secretary

(District)

24 State of California,
County of Fresno



ss. On this 25th day of May in the year one thousand nine
hundred and seventy-six before me, Paul H. Willison
a Notary Public in and for said County and State, residing therein, duly commissioned and sworn,
personally appeared: F. A. Preuss
known to me to be the President, and
Ardys T. Gorder
known to me to be the Secretary of the Fresno Irrigation District
the corporation that executed the within instrument, and known to me to be the person ^S who executed
the within instrument on behalf of the corporation therein named, and acknowledged to me that such cor-
poration executed the within instrument pursuant to its by-laws or a resolution of its board of directors.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office
in said County, the day and year in this Certificate above written.

[Signature]
Notary Public in and for said County and State

Lon's copy



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

RECEIVED

FEB 22 2005

PUBLIC WORKS
ADMINISTRATION

IN REPLY
REFER TO:

FEB 16 2005

MP-440
WTR-4.00

BHIDLEBURG @ MP. USBR. GOV

City Council
City of Fresno
2600 Fresno Street, Room 3065
Fresno, California 93721-3624

Subject: Long-Term Renewal Contract No. 14-06-200-8901-LTR1 Between the United States and the City of Fresno (City) Providing for Project Water Service from the Friant Division - Central Valley Project, California

Dear Council Members:

Enclosed are three bluebound originals of the long-term renewal contract. If the enclosed contract is acceptable to the City, please have the authorized officials of the City sign each of the bluebound originals and return all originals to this office, Attention: MP-440 (Ms. Nancy Anderson), **no later than February 24, 2005**, for execution by the Regional Director. Additionally, an original City Council Resolution approving the contract as to form and authorizing the designated officials of the City to execute the contract is to be returned along with the executed contract. Please note that the contract will be dated after execution by the Regional Director of the Mid-Pacific Region.

Execution of the contract by Reclamation is, of course, contingent upon the contractor being in compliance with all terms and conditions of its existing water service contract. After execution and completion of final processing by Reclamation, an original of the contract will be returned to the City.

Once signed, it is imperative that these contracts be returned to this office via overnight delivery service or hand carried to the nearest Area Office (see enclosed listing) by February 24, 2005. If there are any questions, please contact Ms. Barbara Hidleburg, Repayment Specialist, at 559-487-5063 (TDD 559-487-5933).

Sincerely,

Kirk C. Rodgers
Regional Director

Enclosures - 3

cc: Mr. Martin R. McIntyre
Director of Public Works
2600 Fresno Street, Room 3065
Fresno, California 93721-3624

Mr. Robert Saperstein
Attorney
21 East Carrillo Street
Santa Barbara, California 93101
(ea w/c encls)

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

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

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

Exhibit C - Metering Plan

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 FRESNO
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM FRIANT DIVISION

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

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] 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 San
27 Joaquin River and their tributaries; and

28 [2nd] 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 [3rd] 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 [4th] WHEREAS, the Contractor and the United States entered into Contract
43 No. 14-06-200-8901, which established terms for the delivery to the Contractor of Project Water from
44 the Friant Division from March 1, 1966, to February 28, 2006, hereinafter referred to as the Existing
45 Contract; and

46 [5th] WHEREAS, the Contractor and the United States have, pursuant to Subsection
47 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
48 Binding Agreement identified as Binding Agreement No. 14-06-200-8901-BA, which sets out the
49 terms pursuant to which the Contractor agreed to renew the Existing Contract before its expiration
50 date after completion of the programmatic environmental impact statement and other appropriate
51 environmental documentation and negotiation of a renewal contract, and which also sets out the
52 consequences of a subsequent decision not to renew; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

131 (h-i) Omitted;

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

142 (k-l) Omitted;

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

146 (n) Omitted;

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

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

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

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

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

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

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

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

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

175 (w) Omitted;

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

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

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

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

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

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

191 TERM OF CONTRACT

192 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2045, and
193 supersedes the Existing Contract. In the event the Contractor wishes to renew this Contract beyond
194 February 28, 2045, the Contractor shall submit a request for renewal in writing to the Contracting
195 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 successive periods of up to 40 years each, which periods shall be consistent with the
201 then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties
202 and consistent with Federal and State law. The Contractor shall be afforded the opportunity to
203 comment to the Contracting Officer on the proposed adoption and application of any revised policy
204 applicable to the delivery of M&I Water that would limit the term of any subsequent renewal contract
205 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 authorized
210 Project construction expected to occur will have occurred, and on that basis the Contracting Officer
211 agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and
212 agrees further that, at any time after such allocation is made, and subject to satisfaction of the
213 conditions set out in this subdivision, this Contract shall, at the request of the Contractor, be
214 converted to a contract under subsection 9(c)(1) of the Reclamation Project Act of 1939, subject to
215 applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor
216 and the Contracting Officer. A condition for such conversion to occur shall be a determination by the
217 Contracting Officer that, account being taken of the amount credited to return by the Contractor as
218 provided for under Federal Reclamation law, the remaining amount of construction costs assignable
219 for ultimate return by the Contractor can probably be repaid to the United States within the term of a
220 contract under subsection 9(c)(1). If the remaining amount of costs that are properly assignable to the
221 Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify
222 the Contractor, and provide the reason(s) why such a determination could not be made. Further, the
223 Contracting Officer shall make such a determination as soon thereafter as possible so as to permit,
224 upon request of the Contractor and satisfaction of the conditions set out above, conversion to a
225 contract under subsection 9(c)(1). In the event such determination of costs has not been made at a
226 time which allows conversion of this Contract during the term of this Contract or the Contractor has

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

230 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

231 3. (a) During each Year, consistent with all applicable State water rights, permits,
232 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
233 Contract, the Contracting Officer shall make available for delivery to the Contractor 60,000 acre-feet
234 of Class 1 Water for M&I purposes. Water Delivered to the Contractor in accordance with this
235 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this
236 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 39 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 relief
264 in a court of competent jurisdiction with respect to any biological opinion or other environmental
265 documentation referred to in this Article.

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

269 available to the Contractor in addition to the Contract Total under Article 3 of this Contract during
270 the Year 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 Project
273 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 object
302 to the substance of the Contractor's position in such a proceeding; Provided further, That in such
303 proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of
304 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 exceed
327 one (1) year for the delivery of such water or, as otherwise provided for in Federal Reclamation law
328 and associated regulations. Such water may be identified by the Contractor either (i) as additional
329 water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant
330 to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited
331 against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contracting

332 Officer shall make water determined to be available pursuant to this subsection according to the
333 following priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water within the
334 Friant Division; second, to long-term contractors in the Cross Valley Division of the Project. The
335 Contracting Officer will consider and seek to accommodate requests from other parties for Section
336 215 Water for use within the area identified as the Friant Division service area in the environmental
337 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. 11r-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 No. 11r-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

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Officer shall use all reasonable means to deliver Project Water according to the approved schedule for

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the Year commencing on such March 1.

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(c) The Contractor shall not schedule Project Water in excess of the quantity of

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Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's

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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

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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 to
376 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 following
387 Year. The Contractor may, during the period from and including January 1 of each Year (or such
388 earlier date as may be determined by the Contracting Officer) through and including the last day of
389 February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting
390 Officer to be made available to it during the following Year. Such water shall hereinafter be referred
391 to as preuse water. Such request must be submitted in writing by the Contractor for a specified
392 quantity of preuse and shall be subject to the approval of the Contracting Officer. Payment for preuse
393 water so requested shall be at the appropriate rate(s) for the following Year in accordance with
394 Article 7 of this Contract and shall be made in advance of delivery of any preuse water. The

395 Contracting Officer shall deliver such preuse water in accordance with a schedule or any revision
396 thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water
397 is available and to the extent such deliveries will not interfere with the delivery of Project Water
398 entitlements to other Friant Division contractors or the physical maintenance of the Project facilities.
399 The quantities of preuse water delivered pursuant to this subdivision shall be deducted from the
400 quantities of water that the Contracting Officer would otherwise be obligated to make available to the
401 Contractor during the following Year; Provided, That the quantity of preuse water to be deducted
402 from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in
403 the following Year shall be specified by the Contractor at the time the preuse water is requested or as
404 revised in its first schedule for the following Year submitted in accordance with subdivision (b) of
405 this Article, based on the availability of the following Year water supplies as determined by the
406 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 Entity,
423 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
424 therein. For any period of time when accurate measurements have not been made, the Contracting
425 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to
426 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 assigns
431 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 Project Water Delivered beyond
434 such 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) Within five years of the date of Contract execution, the Contractor will have an
444 established measuring program satisfactory to the Contracting Officer. The Contractor shall ensure
445 that all surface water delivered for M&I purposes is measured at each M&I service connection. The
446 water measuring devices or water measuring methods of comparable effectiveness must be acceptable
447 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and
448 maintaining and repairing all such measuring devices and implementing all such water measuring
449 methods at no cost to the United States. The Contracting Officer acknowledges that the Contractor
450 has a metering plan (Exhibit "C") setting forth the milestones and schedule that the Contractor will
451 implement to comply with the requirements of this Article. Beginning January 2006, the Contractor
452 shall provide an annual written report to the Contracting Officer describing the Contractor's metering
453 plan implementation progress. The Contractor shall use the information obtained from such water
454 measuring devices or water measuring methods to ensure its proper management of the water, to bill
455 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
456 M&I purposes by customer class as defined in the Contractor's water conservation plan provided for
457 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from

458 establishing and collecting any charges, assessments, or other revenues authorized by California law.
459 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
460 described in subdivision (c) of Article 26.

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

476 (c) All new surface water delivery systems installed within the Contractor's
477 Service Area after the effective date of this Contract shall also comply with the measurement

478 provisions described in subdivision (a) of this Article.

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

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

485 (f) In the event the provisions of subdivision (a) of this Article or any portion
486 thereof, are challenged in a judicial proceeding, the parties agree to meet and confer promptly and as
487 often as necessary to employ their reasonable best efforts to coordinate their response to the challenge
488 and, as appropriate, develop revisions to this Contract.

489 RATES AND METHOD OF PAYMENT FOR WATER

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

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

501 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
502 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
503 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
504 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
505 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
506 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
507 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
508 such notification shall revise Exhibit "B."

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

516 (c) At the time the Contractor submits the initial schedule for the delivery of
517 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
518 shall make an advance payment to the United States equal to the total amount payable pursuant to the
519 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be

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

538 (d) The Contractor shall also make a payment in addition to the Rate(s) in
539 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the

540 appropriate Tiered Pricing Component then in effect, before the end of the month following the
541 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered as
542 shown in the water delivery report for the subject month prepared by the Operating Non-Federal
543 Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. Such water
544 delivery report shall be the basis for payment of Charges and Tiered Pricing Component by the
545 Contractor, and shall be provided to the Contractor by the Operating Non-Federal Entity or the
546 Contracting Officer (as applicable) within five days after the end of the month of delivery. The water
547 delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing
548 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be
549 made through the adjustment of payments due to the United States for Charges for the next month.
550 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be
551 computed pursuant to Article 20 of this Contract.

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

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

559 (g) All revenues received by the United States from the Contractor relating to the
560 delivery of Project Water or the delivery of non-Project water through Project facilities shall be

561 allocated and applied in accordance with Federal Reclamation law and the associated rules or
562 regulations, and the then-current Project ratesetting policies for M&I Water.

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

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

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

582 deliveries of Class 1 Water and Class 2 Water in excess of 80 percent of the Contract Total, but less
583 than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the
584 Rate established under subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered
585 Pricing Component for the total of the deliveries of Class 1 Water and Class 2 Water which exceeds
586 90 percent of the Contract total shall equal the difference between (i) the Rate established under
587 subdivision (a) of this Article and (ii) the M&I Full Cost Water Rate.

588 (2) Omitted.

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

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

599 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
600 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
601 upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the

602 delivery of the transferred Project Water to the transferee's point of delivery in accordance with the
603 then-applicable Project ratesetting policy.

604 (m) Omitted.

605 (n) The Contractor asserts that it is not legally obligated to pay any Project deficits
606 claimed by the United States to have accrued as of the date of this Contract or deficit-related interest
607 charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or
608 remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this
609 Contract and payments made hereunder, the Contractor may challenge in the appropriate
610 administrative or judicial forums: (1) the existence, computation, or imposition of any deficit charges
611 accruing during the term of the Existing Contract; (2) interest accruing on any such deficits; (3) the
612 inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States
613 of payments made by the Contractor under its Existing Contract; and (5) the application of such
614 payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the
615 benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these
616 issues and credits for payments heretofore made; Provided, That the basis for such ruling is applicable
617 to the Contractor.

618 8. Omitted.

619 SALES, TRANSFERS, OR EXCHANGES OF WATER

620 9. (a) The right to receive Project Water provided for in this Contract may be sold,
621 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
622 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable

623 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
624 Contract may take place without the prior written approval of the Contracting Officer, except as
625 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
626 approved absent all appropriate environmental documentation including, but not limited to,
627 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
628 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
629 including environmental justice, of the proposed water transfers on both the transferor and transferee.

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

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

653 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

670 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

685 quantity of Project Water which would have been delivered hereunder in the absence of such
686 discontinuance or reduction.

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

693 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

704 (c) The United States shall not execute contracts which together with this
705 Contract, shall in the aggregate provide for furnishing during the life of this Contract or any renewals

706 hereof Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of
707 1,401,475 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract,
708 the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering
709 into temporary contracts of one year or less in duration for delivery of Project Water to other entities
710 if such water is not necessary to meet the schedules as may be submitted by all Friant Division long-
711 term water service contractors entitled to receive Class 1 Water and/or Class 2 Water under their
712 water service contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to
713 take actions that result in the availability of new water supplies to be used for Project purposes and
714 allocating such new supplies; Provided, That the Contracting Officer shall not take such actions until
715 after consultation with the Friant Division Project Contractors.

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

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

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

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

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

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

747 13. Omitted.

748

RULES AND REGULATIONS

749

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

753

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

756

(c) Omitted.

757

WATER AND AIR POLLUTION CONTROL

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

761

QUALITY OF WATER

762

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

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

776 WATER ACQUIRED BY THE CONTRACTOR
777 OTHER THAN FROM THE UNITED STATES

778 17. (a) Omitted.

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

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

789 (2) Delivery of such non-Project water in and through Project facilities
790 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as

791 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
792 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other
793 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

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

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

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

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OPINIONS AND DETERMINATIONS

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

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

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COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

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

862 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

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EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

923 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

936 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

937 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
938 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
939 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
940 laws, as well as with their respective implementing regulations and guidelines imposed by the
941 U.S. Department of the Interior and/or Bureau of Reclamation.

942 (b) These statutes require that no person in the United States shall, on the grounds
943 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
944 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
945 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor

946 agrees to immediately take any measures necessary to implement this obligation, including permitting
947 officials of the United States to inspect premises, programs, and documents.

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

955 24. Omitted.

956 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

965 WATER CONSERVATION

966 26. (a) Prior to the delivery of water provided from or conveyed through Federally
967 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
968 implementing an effective water conservation and efficiency program based on the Contractor's water
969 conservation plan that has been determined by the Contracting Officer to meet the conservation and

970 efficiency criteria for evaluating water conservation plans established under Federal law. The water
971 conservation and efficiency program shall contain definite water conservation objectives, appropriate
972 economically feasible water conservation measures, and time schedules for meeting those objectives.
973 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
974 continued implementation of such water conservation program. In the event the Contractor's water
975 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
976 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
977 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
978 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
979 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
980 thereafter the Contractor immediately begins implementing its water conservation and efficiency
981 program in accordance with the time schedules therein.

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

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

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

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

998 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

999 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1000 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1001 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1002 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1003 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1004 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1005 Reclamation law.

1006 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1007 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1008 responsibility for funding a portion of the costs of such O&M, have been transferred to the Operating
1009 Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal

1010 Entity. That separate agreement shall not interfere with or affect the rights or obligations of the
1011 Contractor or the United States hereunder.

1012 (b) The Contracting Officer has previously notified the Contractor in writing that
1013 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1014 Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating
1015 Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and
1016 conditions of the separate agreement between the United States and the Operating Non-Federal Entity
1017 described in subdivision (a) of this Article, all rates, charges or assessments of any kind, including
1018 any assessment for reserve funds, which the Operating Non-Federal Entity or such successor
1019 determines, sets or establishes for (i) the O&M of the portion of the Project facilities operated and
1020 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share
1021 of the operation, maintenance and replacement costs for physical works and appurtenances associated
1022 with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating Plant, the
1023 federal share of the O'Neill Forebay, the Mendota Pool, and the federal share of San Luis Unit joint
1024 use conveyance and conveyance pumping facilities. Such direct payments to the Operating
1025 Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly
1026 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1027 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf of
1028 the United States in accordance with the separate agreement identified in subdivision (a) of this
1029 Article.

1030 (c) For so long as the O&M of any portion of the Project facilities serving the
1031 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1032 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1033 Contract representing the cost associated with the activity being performed by the Operating
1034 Non-Federal Entity or its successor.

1035 (d) In the event the O&M of the Project facilities operated and maintained by the
1036 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the
1037 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised
1038 Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project
1039 Water under this Contract representing the O&M costs of the portion of such Project facilities which
1040 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from
1041 the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1042 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this
1043 Contract.

1044 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1045 29. The expenditure or advance of any money or the performance of any obligation of the
1046 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1047 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1048 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1049 or allotted.

1050 BOOKS, RECORDS, AND REPORTS

1051 30. (a) The Contractor shall establish and maintain accounts and other books and
1052 records pertaining to administration of the terms and conditions of this Contract, including: the
1053 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1054 water use data; and other matters that the Contracting Officer may require. Reports thereon shall be

1055 furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer
1056 may require. Subject to applicable Federal laws and regulations, each party to this Contract shall
1057 have the right during office hours to examine and make copies of the other party's books and records
1058 relating to matters covered by this Contract.

1059 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1060 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1061 such books, records, or information are reasonably related to the administration or performance of
1062 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1063 to provide the requested books, records, or information.

1064 (c) At such time as the Contractor provides information to the Contracting Officer
1065 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1066 Operating Non-Federal Entity.

1067 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1068 31. (a) The provisions of this Contract shall apply to and bind the successors and
1069 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1070 therein shall be valid until approved in writing by the Contracting Officer.

1071 (b) The assignment of any right or interest in this Contract by either party shall not
1072 interfere with the rights or obligations of the other party to this Contract absent the written
1073 concurrence of said other party.

1074 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1075 of any proposed assignment.

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SEVERABILITY

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32. In the event that a person or entity who is neither (i) a party to a Project contract, nor

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(ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an

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association or other form of organization whose primary function is to represent parties to Project

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contracts, brings an action in a court of competent jurisdiction challenging the legality or

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enforceability of a provision included in this Contract and said person, entity, association, or

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organization obtains a final court decision holding that such provision is legally invalid or

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unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the

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parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court

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decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)

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within three months thereafter promptly agree on the appropriate revision(s). The time periods

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specified above may be extended by mutual agreement of the parties. Pending the completion of the

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actions designated above, to the extent it can do so without violating any applicable provisions of

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law, the United States shall continue to make the quantities of Project Water specified in this Contract

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available to the Contractor pursuant to the provisions of this Contract which were not found to be

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legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

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

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rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the

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dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring

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any matter to Department of Justice, the party shall provide to the other party 30 days' written notice

1097 of the intent to take such action; Provided, That such notice shall not be required where a delay in
1098 commencing an action would prejudice the interests of the party that intends to file suit. During the
1099 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt
1100 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge
1101 any right or remedy that the Contractor or the United States may have.

1102 OFFICIALS NOT TO BENEFIT

1103 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1104 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1105 manner as other water users or landowners.

1106 CHANGES IN CONTRACTOR'S SERVICE AREA

1107 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1108 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1109 except upon the Contracting Officer's written consent.

1110 (b) Within 30 days of receipt of a request for such a change, the Contracting
1111 Officer will notify the Contractor of any additional information required by the Contracting Officer
1112 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1113 timely completion of the process. Such process will analyze whether the proposed change is likely to:
1114 (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1115 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1116 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1117 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1118 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1119 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

1121 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1122 validity or application in connection with the performance of the terms and conditions of this
1123 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1124 terms and conditions of this Contract unless and until relief from application of such Federal law or
1125 regulation to the implementing provision of the Contract is granted by a court of competent
1126 jurisdiction.

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NOTICES

1128 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1129 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area
1130 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721, and on
1131 behalf of the United States, when mailed, postage prepaid, or delivered to the City Council of the City
1132 of Fresno, 2600 Fresno Street, Room 3065, Fresno, California 93721-3624. The designation of the
1133 addressee or the address may be changed by notice given in the same manner as provided in this
1134 Article for other notices.

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CONFIRMATION OF CONTRACT

1136 38. The Contractor, after the execution of this Contract, shall furnish to the Contracting
1137 Officer evidence that pursuant to the laws of the State of California the Contractor is a legally
1138 constituted entity, and the Contract is lawful, valid, and binding on the Contractor. This Contract
1139 shall not be binding on the United States until such evidence has been provided to the Contracting
1140 Officer's satisfaction.

1141 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1142 and year first above written.

1143 THE UNITED STATES OF AMERICA

1144 By: _____
1145 Regional Director, Mid-Pacific Region
1146 Bureau of Reclamation

1147 (SEAL)

1148 CITY OF FRESNO

1149 By: _____
1150 City Manager

1151 Attest:

1152 By: _____
1153 City Clerk

1154 Approved as to form:

1155 _____
1156 City Attorney

1157 (I:\LTRC\Final Draft LTRC's - Fresno, Tracy\08-07-2004 City of Fresno R. O. Final Draft
1158 Contract.doc)

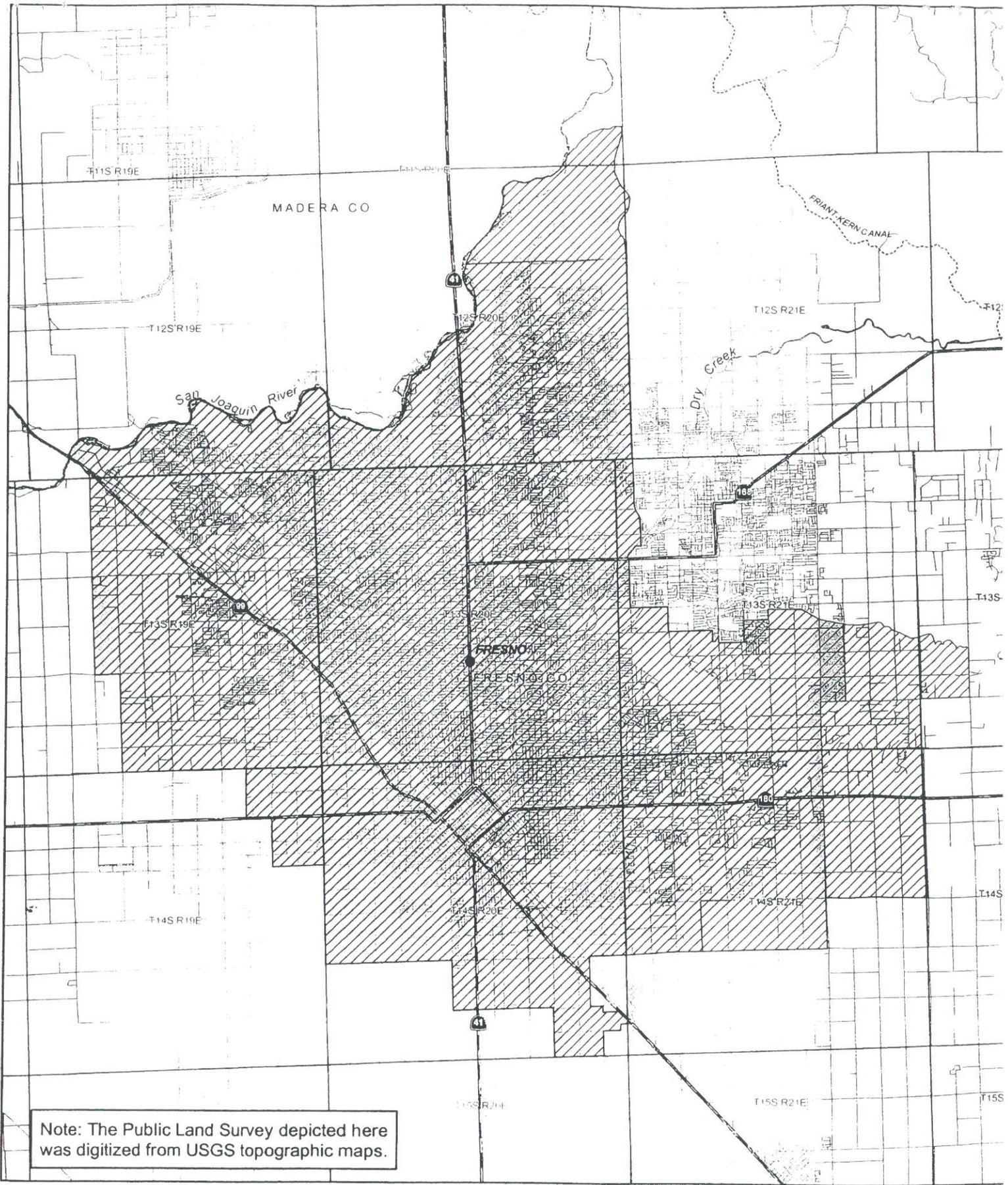
EXHIBIT B
CITY OF FRESNO
Water Rates and Charges

CONTRACT NO. 14-06-200-8901-LTR1	<u>2005 Rates Per Acre-Foot</u>
	M&I
O&M AND COST-OF-SERVICE RATES:	Water
Capital Rates:	\$20.04
O&M Rates:	
Water Marketing	\$3.89
Storage	\$6.67
Conveyance	*
Deficit Rates:	
Non-Interest Bearing	
Interest Bearing	\$53.53
CFO/PFR Adj Rate**	\$1.70
TOTAL COST-OF-SERVICE RATES (COS):	\$85.83
M&I FULL-COST RATE:	\$97.15
Tiered Pricing Component >80% <=90% of Contract	
Total [Full Cost Rate - COS Rate /2]:	\$5.66
Tiered Pricing Component >90% of Contract	
Total [Full Cost Rate - COS Rate]:	\$11.32
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND***	
Friant Surcharge [3406(c)(1)]	\$7.00
Restoration Payments [3407(d)(2)(A)]	\$15.87

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

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

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



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

-  Proposed Contractor's Service Area (Sphere of Influence)
-  Current Contractor's Service Area

City of Fresno
 Contract No. 14-06-200-8901-LTR1
EXHIBIT A



EXHIBIT C
METERING PLAN

Completion Date	Item	Comments
03/05	Contract effective	
01/06	Implementation study	Select and obtain consultant study re implementation
01/06	Submit progress report to Bureau	
12/06	Confirmation of existing meters	Verify integrity and servicing of existing meters
01/07	Submit progress report to Bureau	
06/07	Secure installation contract	Begin implementation of consultant recommendations
12/07	Draft rate ordinance	Initial development of tiered rate structure
01/08	Submit progress report to Bureau	
01/08	Initiate retrofit	Begin installation of meters on existing dwellings
12/08	Meter installation progress	29% (30,000 of approximately 105,000 units installed)
01/09	Submit progress report to Bureau	
12/09	Meter installation progress	43% (45,000 units)
01/10	Submit progress report to Bureau	
03/10	Impose new rate ordinance (fees based on metered use)	New rate structure applicable to currently metered customers. Rates to be effective as new meter installations occur.
12/10	Meter installation progress	62% (65,000 units)
01/11	Submit progress report to Bureau	
12/11	Adopt new rate ordinance	81% (85,000 units)
01/12	Submit compliance report to Bureau	
12/12	Meter installation progress	100% (105,000 units)
01/13	Submit completion report	Retrofit complete.

Schedule subject to change due to unforeseen circumstances.