

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 18 day of August, 20005, 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
14 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986
15 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
16 collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES OF
17 AMERICA, hereinafter referred to as the United States, and the CITY OF FRESNO, hereinafter
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
19 acting pursuant to the laws thereof;

20 WITNESSETH, That:

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EXPLANATORY RECITALS

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

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

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

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

42 [4th] WHEREAS, the Contractor and the United States entered into Contract
43 No. 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
47 Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered
48 into a Binding Agreement identified as Binding Agreement No. 14-06-200-8901-BA, which sets out
49 the 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,
130 Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

131 (h-i) Omitted;

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

142 (k-l) Omitted;

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

146 (n) Omitted;

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

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

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

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

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

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

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

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

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

175 (w) Omitted;

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

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

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

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

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

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

191 TERM OF CONTRACT

192 2. (a) This Contract supersedes the Existing Contract and shall be effective on the
193 date first hereinabove written through February 28, 2045. In the event the Contractor wishes to renew
194 this Contract beyond February 28, 2045, the Contractor shall submit a request for renewal in writing
195 to the Contracting Officer no later than two years prior to the date this Contract expires.

196 (b) Omitted.

197 (c) Provided the Contractor is complying with all terms and conditions of this
198 Contract and all legal obligations of the Contractor, if any, set forth in an enforceable court order,
199 final judgment and/or settlement relating to restoration of the San Joaquin River, this Contract shall
200 be renewed for 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
210 authorized Project construction expected to occur will have occurred, and on that basis the
211 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
212 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
213 satisfaction of the conditions set out in this subdivision, this Contract shall, at the request of the
214 Contractor, be converted to a contract under subsection 9(c)(1) of the Reclamation Project Act of
215 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable to
216 the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
217 determination by the Contracting Officer that, account being taken of the amount credited to return by
218 the Contractor as provided for under Federal Reclamation law, the remaining amount of construction
219 costs assignable for ultimate return by the Contractor can probably be repaid to the United States
220 within the term of a contract under subsection 9(c)(1). If the remaining amount of costs that are
221 properly assignable to the Contractor cannot be determined during the term of this Contract, the
222 Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination
223 could not be made. Further, the Contracting Officer shall make such a determination as soon
224 thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions
225 set out above, conversion to a contract under subsection 9(c)(1). In the event such determination of
226 costs has not been made at a time which allows conversion of this Contract during the term of this

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

230 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

231 3. (a) During each Year, consistent with all applicable State water rights, permits,
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:
247 Provided 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
273 Project Water, or other water available to the Project, can be made available to the Contractor, the
274 Contracting Officer will announce the availability of such water and shall so notify the Contractor as
275 soon as practicable. The Contracting Officer will thereafter meet with the Contractor and other
276 Project Contractors capable of taking such water to determine the most equitable and efficient
277 allocation of such water. If the Contractor requests the delivery of any quantity of such water, the
278 Contracting Officer shall make such water available to the Contractor in accordance with applicable
279 statutes, regulations, guidelines, and policies.

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

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

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

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

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

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

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

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

332 shall make water determined to be available pursuant to this subsection according to the following
333 priorities: first, to long-term contractors for Class 1 Water and/or Class 2 Water within the Friant
334 Division; second, to long-term contractors in the Cross Valley Division of the Project.

335 The Contracting Officer will consider and seek to accommodate requests from other parties for
336 Section 215 Water for use within the area identified as the Friant Division service area in the
337 environmental assessment developed in connection with the execution of this Contract.

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

342 (n) The rights of the Contractor under this Contract are subject to the terms of the
343 contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and
344 Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the
345 Exchange Contractors), Contract No. 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).

TIME FOR DELIVERY OF WATER

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

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

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

372 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
373 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial

374 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
375 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior 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 water and shall be subject to the approval of the Contracting Officer. Payment for
393 preuse 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. 3

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

427 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
428 responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the
429 Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this
430 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and 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 Contract
558 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) Omitted.

606 8. Omitted.

607 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

618 (b) In order to facilitate efficient water management by means of water transfers of
619 the type historically carried out among Project Contractors located within the same geographical area
620 and to allow the Contractor to participate in an accelerated water transfer program during the term of
621 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental

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

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

642 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

659 TEMPORARY REDUCTIONS--RETURN FLOWS

660 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
661 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or
662 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make

663 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
664 Contract.

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

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

682 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

703 allocating such new supplies: Provided, That the Contracting Officer shall not take such actions until
704 after consultation with the Friant Division Project Contractors.

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

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

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

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

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

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

736 13. Omitted.

737 RULES AND REGULATIONS

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

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

744 (c) Omitted.

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WATER AND AIR POLLUTION CONTROL

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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.

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QUALITY OF WATER

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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.

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

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

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766 17. (a) Omitted.

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

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

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

782 (3) Neither the United States nor the Operating Non-Federal Entity shall be
783 responsible for control, care, or distribution of the non-Project water before it is introduced into or
784 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend

785 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
786 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting
787 from the acts of the Contractor its officers', employees', agents', or assigns' act(s) in (i) extracting or
788 diverting non-Project water from any source, or (ii) diverting such non-Project water into Project
789 facilities.

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

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

798 OPINIONS AND DETERMINATIONS

799 18. (a) Where the terms of this Contract provide for actions to be based upon the
800 opinion or determination of either party to this Contract, said terms shall not be construed as
801 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
802 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
803 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
804 unreasonable opinion or determination. Each opinion or determination by either party shall be
805 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to

806 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
807 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

813 COORDINATION AND COOPERATION

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

823 (b) Within 120 days following the effective date of this Contract, the Contractor,
824 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
825 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
826 amended as necessary, separate and apart from this Contract. The goal of this process shall be to

827 provide, to the extent practicable, the means of mutual communication and interaction regarding
828 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

845 (d) Without limiting the contractual obligations of the Contracting Officer under
846 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
847 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other

848 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
849 the physical integrity of structures or facilities.

850 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

867 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

911 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

924 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

925 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
926 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
927 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
928 laws, as well as with their respective implementing regulations and guidelines imposed by the
929 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

943 24. Omitted.

944 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

953 WATER CONSERVATION

954 26. (a) Prior to the delivery of water provided from or conveyed through Federally
955 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
956 implementing an effective water conservation and efficiency program based on the Contractor's water
957 conservation plan that has been determined by the Contracting Officer to meet the conservation and
958 efficiency criteria for evaluating water conservation plans established under Federal law. The water
959 conservation and efficiency program shall contain definite water conservation objectives, appropriate
960 economically feasible water conservation measures, and time schedules for meeting those objectives.
961 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
962 continued implementation of such water conservation program. In the event the Contractor's water
963 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
964 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such

965 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
966 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
967 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
968 thereafter the Contractor immediately begins implementing its water conservation and efficiency
969 program in accordance with the time schedules therein.

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

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

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

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

986 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

994 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

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

1000 (b) The Contracting Officer has previously notified the Contractor in writing that
1001 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1002 Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating
1003 Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and
1004 conditions of the separate agreement between the United States and the Operating Non-Federal Entity
1005 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including
1006 any assessment for reserve funds, which the Operating Non-Federal Entity or such successor

1007 determines, sets, or establishes for (i) the O&M of the portion of the Project facilities operated and
1008 maintained by the Operating Non-Federal Entity or such successor, or (ii) the Friant Division's share
1009 of the operation, maintenance, and replacement costs for physical works and appurtenances
1010 associated with the Tracy Pumping Plant, the Delta-Mendota Canal, the O'Neill Pumping/Generating
1011 Plant, the Federal share of the O'Neill Forebay, the Mendota Pool, and the Federal share of San Luis
1012 Unit joint use conveyance and conveyance pumping facilities. Such direct payments to the Operating
1013 Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly
1014 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1015 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf of
1016 the United States in accordance with the separate agreement identified in subdivision (a) of this
1017 Article.

1018 (c) For so long as the O&M of any portion of the Project facilities serving the
1019 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1020 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1021 Contract representing the cost associated with the activity being performed by the Operating
1022 Non-Federal Entity or its successor.

1023 (d) In the event the O&M of the Project facilities operated and maintained by the
1024 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the
1025 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised
1026 Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project
1027 Water under this Contract representing the O&M costs of the portion of such Project facilities which

1028 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from
1029 the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1030 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this
1031 Contract.

1032 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

1033 29. The expenditure or advance of any money or the performance of any obligation of the
1034 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1035 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1036 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1037 or allotted.

1038 BOOKS, RECORDS, AND REPORTS

1039 30. (a) The Contractor shall establish and maintain accounts and other books and
1040 records pertaining to administration of the terms and conditions of this Contract, including: the
1041 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1042 water use data; and other matters that the Contracting Officer may require. Reports thereon shall be
1043 furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer
1044 may require. Subject to applicable Federal laws and regulations, each party to this Contract shall
1045 have the right during office hours to examine and make copies of the other party's books and records
1046 relating to matters covered by this Contract.

1047 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1048 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1049 such books, records, or information are reasonably related to the administration or performance of
1050 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1051 to provide the requested books, records, or information.

1052 (c) At such time as the Contractor provides information to the Contracting Officer
1053 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1054 Operating Non-Federal Entity.

1055 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1056 31. (a) The provisions of this Contract shall apply to and bind the successors and
1057 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1058 therein shall be valid until approved in writing by the Contracting Officer.

1059 (b) The assignment of any right or interest in this Contract by either party shall not
1060 interfere with the rights or obligations of the other party to this Contract absent the written
1061 concurrence of said other party.

1062 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1063 of any proposed assignment.

1064 SEVERABILITY

1065 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1066 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1067 association or other form of organization whose primary function is to represent parties to Project
1068 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1069 enforceability of a provision included in this Contract and said person, entity, association, or
1070 organization obtains a final court decision holding that such provision is legally invalid or
1071 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1072 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1073 decision identify by mutual agreement the provisions in this Contract which must be revised and

1074 (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods
1075 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1076 actions designated above, to the extent it can do so without violating any applicable provisions of
1077 law, the United States shall continue to make the quantities of Project Water specified in this Contract
1078 available to the Contractor pursuant to the provisions of this Contract which were not found to be
1079 legally invalid or unenforceable in the final court decision.

1080 RESOLUTION OF DISPUTES

1081 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1082 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1083 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1084 any matter to Department of Justice, the party shall provide to the other party 30 days' written notice
1085 of the intent to take such action: Provided, That such notice shall not be required where a delay in
1086 commencing an action would prejudice the interests of the party that intends to file suit. During the
1087 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt
1088 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge
1089 any right or remedy that the Contractor or the United States may have.

1090 OFFICIALS NOT TO BENEFIT

1091 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1092 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1093 manner as other water users or landowners.

1094

CHANGES IN CONTRACTOR'S SERVICE AREA

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

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(b) Within 30 days of receipt of a request for such a change, the Contracting

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Officer will notify the Contractor of any additional information required by the Contracting Officer

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for processing said request, and both parties will meet to establish a mutually agreeable schedule for

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timely completion of the process. Such process will analyze whether the proposed change is likely to:

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(i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of

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the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-

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constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project

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Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with

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the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting

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Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

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36. By entering into this Contract, the Contractor does not waive its rights to contest the

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validity or application in connection with the performance of the terms and conditions of this

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Contract of any Federal law or regulation: Provided, That the Contractor agrees to comply with the

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terms and conditions of this Contract unless and until relief from application of such Federal law or

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regulation to the implementing provision of the Contract is granted by a court of competent

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jurisdiction.

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NOTICES

1116 37. Any notice, demand, or request authorized or required by this Contract shall be deemed to
1117 have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the
1118 Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721,
1119 and on behalf of the United States, when mailed, postage prepaid, or delivered to the City of Fresno,
1120 Public Utilities Director, 2600 Fresno Street, Room 3065, Fresno, California 93721-3624. The
1121 designation of the addressee or the address may be changed by notice given in the same manner as
1122 provided in this Article for other notices.

1123

CONFIRMATION OF CONTRACT

1124 38. The Contractor, after the execution of this Contract, shall furnish to the Contracting
1125 Officer evidence that pursuant to the laws of the State of California the Contractor is a legally
1126 constituted entity, and the Contract is lawful, valid, and binding on the Contractor. This Contract
1127 shall not be binding on the United States until such evidence has been provided to the Contracting
1128 Officer's satisfaction.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day

and year first above written.

THE UNITED STATES OF AMERICA

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

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

CITY OF FRESNO

By: *Andrew T. Boyer*
City Manager

Attest:

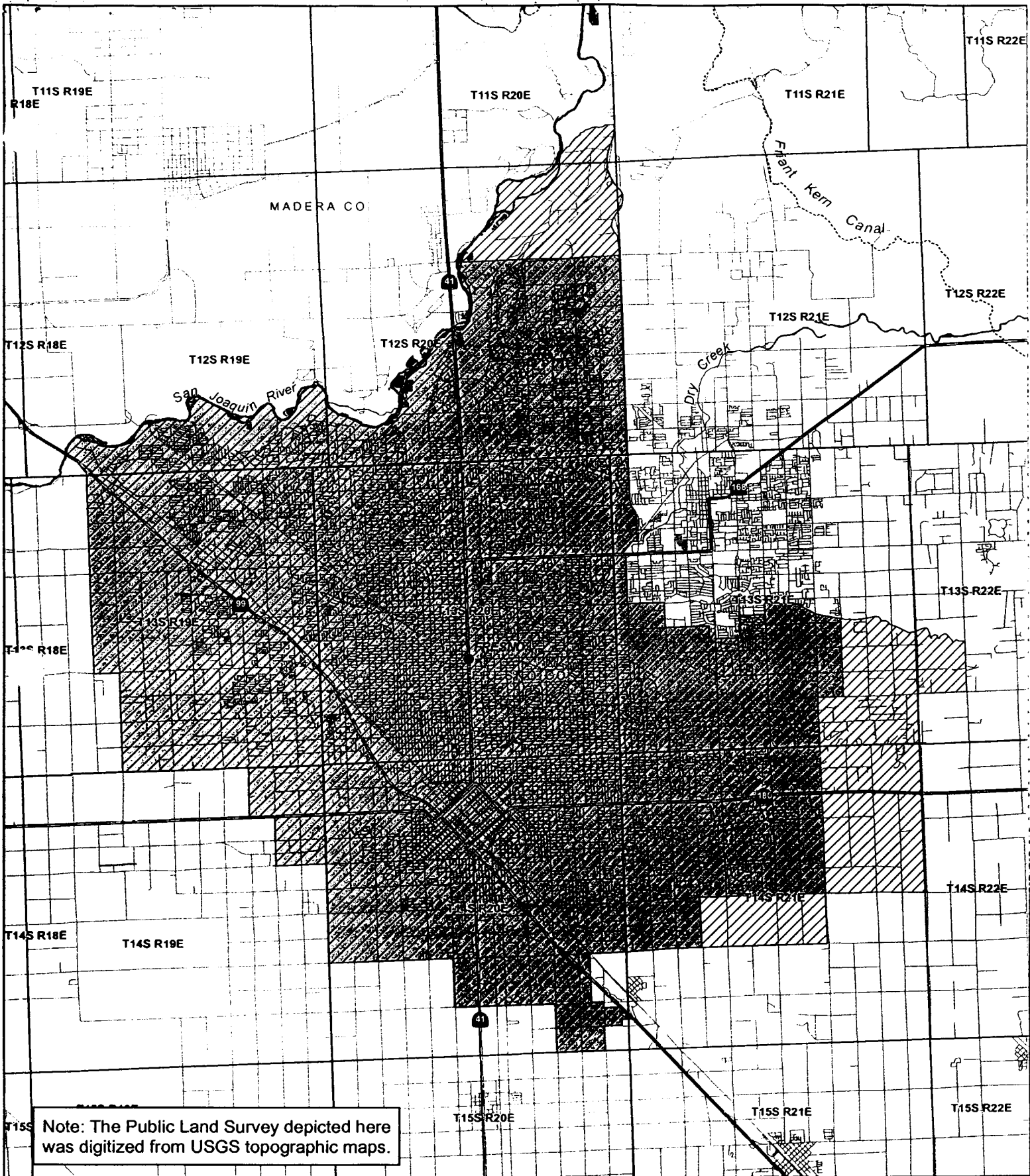
By: *Rebecca E. Klisch*
City Clerk *7-25-05*

By: *[Signature]*
Public Utilities Director

Approved as to form:

Hilda Contre Montez
City Attorney

(I:\LTRC\Final Draft LTRC's - Fresno, Tracy\City of Fresno R. O. Final Draft Contract 05-04-2005.doc)



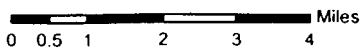
-  Contractor's Proposed Service Area (Sphere of Influence)
-  Contractor's Current Service Area

City of Fresno

Contract No. 14-06-200-8901-LTR1
EXHIBIT A



Date: October 26, 2004
File Name: N:\districts\contracts\city_of_fresno\city_of_fresno2.mxd



214-208-12705

EXHIBIT B
CITY OF FRESNO
WATER RATES AND CHARGES

2005 Rates Per Acre-Foot
M&I Water

O&M AND COST-OF-SERVICE RATES:

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/PER 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 PUB. L. 102-575 TO RESTORATION FUND***

Friant Surcharge [3406(c)(1)]	\$ 7.00
Restoration Payments [3407(d)(2)(A)]	\$15.87

* Conveyance and Conveyance Pumping Operation and Maintenance Costs were removed for ratesetting purposes and are to be billed directly to the water authorities.

** Chief Financial Officer (CFO) Adjustment and Provision for Replacement (PFR) Credit are being distributed over a 5-year period beginning in FY2003 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).

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.

*This date will be revised at the time the contract is executed on behalf of the United States.

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6 UNITED STATES
7 DEPARTMENT OF THE INTERIOR
8 BUREAU OF RECLAMATION
9 Central Valley Project, California

10 AMENDMENT TO LONG-TERM RENEWAL CONTRACT BETWEEN
11 THE UNITED STATES
12 AND
13 CITY OF FRESNO
14 PROVIDING FOR PROJECT WATER SERVICE FROM FRIANT DIVISION
15

16 THIS CONTRACT AMENDMENT, is made this 6th day of

17 April, 2007, in pursuance generally of the Act of Congress of June 17,

18 1902 (32 Stat. 388), and the acts amendatory thereof or supplementary thereto, including,

19 but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented,

20 August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483),

21 June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986

22 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706),

23 all collectively hereinafter referred to as Federal Reclamation law, between

24 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and,

25 CITY OF FRESNO, hereinafter referred to as the Contractor, a public agency of the State of

26 California, duly organized, existing, and acting pursuant to the laws thereof;

27 WITNESSETH, That:

28 EXPLANATORY RECITALS

29 [1st] WHEREAS, the United States and the Contractor entered into a contract
30 dated August 18, 2005, designated Contract No. 14-06-200-8901-LTR1, providing for water
31 service from the Central Valley Project, hereinafter referred to as the "Existing Contract;" and

32 [2nd] WHEREAS, pursuant to subdivision (b) of Article 14 of the Existing
33 Contract, the terms of the Existing Contract are subject to any enforceable order, judgment and/or
34 settlement in *NRDC v. Patterson*, No. CIVS 88-1658-LKK-EM (now styled *Natural Resources*
35 *Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658 LKK/GGH) and that the Existing
36 Contract shall be timely modified as necessary to effectuate or facilitate any final order, judgment
37 or settlement in said litigation; and

38 [3rd] WHEREAS, the parties to said litigation have reached agreement on a
39 global resolution of all Claims for Relief in the Seventh Amended Complaint, on the terms and
40 conditions stated in the Stipulation of Settlement dated September 13, 2006, designated Exhibit 1
41 in the Order Approving Stipulation dated October 23, 2006; and

42 [4th] WHEREAS, the parties hereto desire to amend the Existing Contract as
43 required by said Stipulation of Settlement.

44 NOW, THEREFORE, in consideration of the mutual and dependent covenants
45 herein contained, it is hereby agreed as follows:

46 1. Subdivision (a) of Article 3 of the Existing Contract is deleted in its entirety, and
47 the following is substituted in lieu thereof:

48 “(a) During each Year, consistent with all applicable State water rights, permits, and
49 licenses, Federal law, and the Stipulation of Settlement dated September 13, 2006,
50 the Order Approving Stipulation of Settlement, and the Judgment and further orders
51 issued by the Court pursuant to terms and conditions of the Settlement in
52 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
53 LKK/GGH, and subject to the provisions set forth in Articles 11 and 12 of this
54 Contract, the Contracting Officer shall make available for delivery to the Contractor
55 60,000 acre-feet of Class 1 Water for M&I purposes. The quantity of Water Delivered
56 to the Contractor in accordance with this subdivision shall be scheduled and paid for
57 pursuant to the provisions of Articles 4 and 7 of this Contract.”

58 2. Subdivision (a) of Article 11 of the Existing Contract is deleted in its entirety, and
59 the following is substituted in lieu thereof:

60 “(a) Subject to: (i) the authorized purposes and priorities of the Project and the
61 requirements of Federal law, and the Stipulation of Settlement dated September 13,
62 2006, the Order Approving Stipulation of Settlement, the Judgment and further
63 orders issued by the Court pursuant to terms and conditions of the Settlement in
64 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
65 LKK/GGH and (ii) the obligations of the United States under existing contracts, or
66 renewals thereof, providing for water deliveries from the Project, the Contracting
67 Officer shall make all reasonable efforts to optimize Project Water deliveries to the
68 Contractor as provided in this Contract.”

69 3. Subdivision (b) of Article 12 of the Existing Contract is deleted in its entirety, and
70 the following is substituted in lieu thereof:

71 “(b) If there is a Condition of Shortage because of errors in physical operations of the
72 Project, drought, other physical causes beyond the control of the Contracting Officer or
73 actions taken by the Contracting Officer to meet legal obligations, including but not
74 limited to obligations pursuant to the Stipulation of Settlement dated September 13,
75 2006, the Order Approving Stipulation of Settlement, the Judgment and further
76 orders issued by the Court pursuant to terms and conditions of the Settlement in
77 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
78 LKK/GGH then, except as provided in subdivision (a) of Article 18 of this Contract,
79 no liability shall accrue against the United States or any of its officers, agents, or
80 employees for any damage, direct or indirect, arising therefrom.”

81 4. Subdivision (b) of Article 14 of the Existing Contract is deleted in its entirety, and the
82 following is substituted in lieu thereof:

83 “(b) The terms of this Contract are subject to the Stipulation of Settlement dated
84 September 13, 2006, the Order Approving Stipulation of Settlement, the Judgment and
85 further orders issued by the Court pursuant to terms and conditions of the Settlement in
86 *Natural Resources Defense Council, et al. v. Rodgers, et al.*, No. CIV-S-88-1658
87 LKK/GGH. Nothing in this Contract shall be interpreted to limit or interfere with the
88 full implementation of this Settlement, Order, the Judgment and further orders issued
89 by the Court pursuant to terms and conditions of the Settlement.”

90 5. Except as specifically amended herein, the Existing Contract is valid and shall
91 continue in full force and effect as originally written and executed.

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

94

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

THE UNITED STATES OF AMERICA

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

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98

CITY OF FRESNO

99 (SEAL)
100
101

By: *Andrew T. Saury*
City Manager

102
103
104

By: *[Signature]*
Public Utilities Director

Attest:

105
106

By: *Elvira Sommeville*
City Clerk (3/26/07)

107

Approved as to form:

108
109

By: *[Signature]*
City Attorney