

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND [other party] TO
TRANSFER OPERATION, MAINTENANCE AND REPLACEMENT RESPONSIBILITIES
FOR [identify affected project/works]

[Project, State]

THIS AGREEMENT, effective the ____ day of _____, _____, (“Effective Date”) in pursuance of Executive Order 3446 and generally of the Act of Congress of June 17, 1902 (32 Stat.388), and the acts amendatory thereof or supplementary thereto, including Section 5 of the Act of August 13, 1914 (38 Stat. 687), [cite other laws specific to the project, contract, or activity that are needed to authorize elements of the Agreement], all collectively hereinafter referred to as the Federal Reclamation laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, and [other party], hereinafter referred to as [abbreviated name, if applicable], a [identify organizing type under authorizing state law, e.g., public agency], duly organized, existing, and acting pursuant to the laws of the State of []. The United States and [name of the other party to the agreement, referred to in bracketed guidance below as the partner] are referred to together as “Parties,” and individually as “Party.”

RECITALS

a. The United States Bureau of Reclamation has constructed [Project], for [authorized purposes, e.g., storage, diversion, carriage and distribution of water for agricultural, flood control, municipal, industrial, domestic and other beneficial uses and purposes]; and

- b. [Basic info about the partner, including name, location, authorizing state, and citations to legal authority under state law to perform under the agreement]; and
- c. [Identify the operator of the affected works, i.e., the United States, the partner, or a third party] operates [project or specific works affected by the agreement]; and
- d. [Partner] seeks to assume responsibility for the administrative and financial operation, maintenance, and replacement (OM&R) actions and activities described in Article []; and
- f. [Partner] has demonstrated to the satisfaction of the Contracting Officer its ability to execute these responsibilities in a manner that serves and protects the interests of the water users relying on the affected facilities, as described in Article [], and of the United States; and
- f. It is deemed to be in the best interests of the Parties and the Project's water users to transfer these responsibilities to [Partner] by executing this Transfer Agreement.

In consideration of the mutual and dependent covenants herein contained, the Parties mutually agree as follows:

DEFINITIONS

- 1. When used in this Agreement, the term:
 - (a) "Fiscal Year" means [e.g., the period from and including the first day of October of each calendar year through and including the last day of September of the following calendar year].
 - (b) "Financial and Administrative Operation, Maintenance and Replacement" or "OM&R" means the responsibilities described in Article [] below.
 - (c) "Project" means [].

(d) “Project Works” means [define here, or by reference to an article below or to an exhibit to the agreement].

(e) “Secretary” or “Contracting Officer” means the Secretary of the United States Department of the Interior or his/her duly authorized representative.

(f) “Substantial Change” means a modification in, or addition to, Project Works which involves changes in the original design intent, function, and/or operational parameters of the facility, or changes in benefits of the Project Works, including non-routine maintenance activities that involve construction or reconstruction of a portion of the facility.

(g) “Water Delivery Contract(s)” means [identify any water delivery contracts affected by the transferred responsibilities and associated work].

(h) [Where there are water delivery contractors other than the partner under this agreement: “Water Delivery Contractor(s)” means [].]

TERMINATION OF AGREEMENT

2. (a) The Contracting Officer may terminate this Agreement at any time before the expiration of its term whenever the Contracting Officer determines that [Partner] is in substantial violation of the Agreement as provided in this Article []; *Provided, That* prior to the effective date of any such termination, the Contracting Officer shall first notify [Partner] in writing of, the specific purported deficiencies of [Partner] in carrying out the terms and conditions of this Agreement. It is the intent of the Parties that disputes be resolved pursuant to this Article [] as expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If after the designated representative of [Partner] has met with the Contracting Officer or his or her designated representative and attempt in good faith and with the use of best efforts to resolve any dispute arising from the purported deficiency an agreement is not reached,

the Contracting Officer may issue a notice of proposed termination, which includes the specific deficiencies of [Partner]'s performance under this Agreement. [Partner] shall have at least ninety (90) days from receipt of the written notice of proposed termination to correct all deficiencies referred to in said written notice; *Provided, That* in the event of a condition which threatens the safety or integrity of the Project Works, the Contracting Officer may specify a shorter correction period which the Contracting Officer determines to be appropriate under the circumstances. In the event [Partner] does not correct all deficiencies referred to in said written notice within the applicable period, the Contracting Officer may thereafter terminate this Agreement upon thirty (30) days prior written notice to [Partner]. Any termination pursuant to this Article shall be subject to the rights and obligations of the Parties as more specifically set forth in this Agreement.

(c) [Partner] may at any time, upon giving twelve (12) months written notice, terminate this Agreement; *Provided, That* such termination shall not relieve [Partner] of any of its duties, liabilities or obligations accruing from the Effective Date of this Agreement to the effective date of such termination, except insofar as [Partner] lacks funding to perform such obligations due to a failure by the United States to meet any of its obligations under this Agreement.

(d) An Agreement review must be performed at least every fifteen (15) years. A more frequent review will be established if determined to be appropriate by the Contracting Officer. The review and update will be limited to focus on this Agreement's standard articles and incorporation of any new statutory requirements applicable to this Agreement.

OPERATION AND MAINTENANCE OF PROJECT WORKS

3. (a) The Contracting Officer has transferred, and [Partner] has accepted and assumed the care, OM&R of the Project Works. Title to the Project Works will remain in the

name of the United States, unless otherwise provided by the Congress of the United States.

(b) [Partner], without expense to the United States, will care for, OM&R the Project Works in full compliance with the terms of this Agreement and in such a manner that the Project Works remain in good and efficient condition, subject to exercise of discretion to fund and carry out Capital Improvements, as described below in Article 5(b).

(c) Necessary repairs of the Project Works will be made promptly by [Partner]. In case of unusual conditions or serious deficiencies in the OM&R of the Project Works threatening or causing interruption of water service, the Contracting Officer may issue to [Partner] a special written notice of those necessary repairs. Except in the case of an emergency, [Partner] will be given sixty (60) days to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an emergency, or if [Partner] fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within sixty (60) days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs will be paid by [Partner] as directed by the Contracting Officer.

(d) [Partner] will not make any Substantial Changes in the Project Works without first obtaining written consent of the Contracting Officer.

(e) [Partner] agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character, except for intentional torts committed by employees of the United States, brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of [Partner] or the United States on Project Works required under this Agreement, regardless of who performs those duties;

(f) [Partner] will take all reasonable measures to prevent any unauthorized encroachment on project land and rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its existence.

(g) In the event [Partner] is found to be operating the Project Works or any part thereof in violation of this Agreement or [Partner] is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this Agreement, then upon the election of the Contracting Officer, the United States may take over from [Partner] the care, OM&R of the Project Works by giving written notice to [Partner] of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer [Partner] will pay to the United States, annually in advance, the cost of the OM&R of the Project Works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, OM&R of the Project Works may be transferred back to [Partner].

(h) In addition to all other payments to be made by [Partner] under this Agreement, [Partner] will pay to the United States, following the receipt of a statement from the

Contracting Officer, all reimbursable miscellaneous costs to be incurred by the United States for any work involved in the administration and supervision of this Agreement.

(i) Nothing in this Article will be deemed to waive the sovereign immunity of the United States.

ADMINISTRATION OF FEDERAL PROJECT LANDS

7. (a) (1) The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, OM&R of the Project Works (collectively, "Project Work Lands") may be used by [Partner] for such purposes without being charged any administrative fees therefor. [Partner] shall ensure that no unauthorized encroachment occurs on Federal Project lands and rights-of-way. [Partner] does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

(b) The United States retains responsibility for compliance with the National Historic Preservation Act of 1966, and the Native American Graves Protection and Repatriation Act of 1990. [Partner] will notify the Contracting Officer and, only when on tribal land, also notify the appropriate tribal official, immediately upon the discovery of any potential historic properties or Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OM&R

11. (a) The Contracting Officer may examine the following: [Partner]'s books, records, and reports with respect to OM&R obligations under this Agreement; the Project Works being operated by [Partner]; the adequacy of the OM&R program; the reserve fund; and the water conservation program including the water conservation fund, if applicable. Notwithstanding title ownership, where the United States retains a financial, physical, or liability interest in facilities either constructed by the United States or with funds provided by the United States, the Contracting Officer may examine any or all of the Project Works providing such interest to the United States.

(b) The Contracting Officer may, or [Partner] may ask the Contracting Officer to, conduct special inspections of any Project Works being operated by [Partner] and special audits of [Partner]'s books and records to ascertain the extent of any OM&R deficiencies to determine the remedial measures required for their correction and to assist [Partner] in solving specific problems. Except in an emergency, any special inspection or audit shall be made only after written notice thereof has been delivered to [Partner] by the Contracting Officer.

(c) [Partner] shall provide access to the Project Works, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection, or audit.

(d) The Contracting Officer shall prepare reports based on the examinations, inspections, and audits and furnish copies of such reports and any recommendations to [Partner].

(e) The costs incurred by the United States in conducting OM&R examinations, inspections, and audits and preparing associated reports and recommendations related to high- and significant-hazard dams and associated facilities shall be nonreimbursable. Associated facilities include carriage, distribution, and drainage systems; pumping and generating plants; power plant structures; tunnels/pipelines; diversion and storage dams (low-hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road; regulating reservoirs (low-hazard); fish passage and protective facilities, including hatcheries; river channelization features; rural/municipal water systems; desalting and other water treatment plants; maintenance buildings and service yards; facilities constructed under Federal loan programs (until paid out); and recreation facilities (reserved works only); and any other facilities as determined by the Contracting Officer.

(f) Expenses incurred by [Partner], as applicable, in participating in the OM&R site examination will be borne by [Partner].

(g) Requests by [Partner] for consultations, design services, or modification reviews, and the completion of any OM&R activities identified in the formal recommendations resulting from the examinations (unless otherwise noted) are to be funded as project OM&R and are reimbursable by [Partner] to the extent of current OM&R allocations.

(h) Site visit special inspections that are beyond the regularly scheduled OM&R examinations conducted to evaluate particular concerns or problems and provide assistance relative to any corrective action (either as a follow up to an OM&R examination or when requested by [Partner]) shall be nonreimbursable.

(i) The Contracting Officer may provide the State of [state] an opportunity to observe and participate in, at its own expense, the examinations and inspections. The State of [state] may be provided copies of reports and any recommendations relating to such examinations and inspections.

EMERGENCY RESERVE FUND

14. (a) Upon transfer of the OM&R of the Project Works under this Agreement, [Partner] shall accumulate and maintain a minimum reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are available for use as an emergency reserve fund. [Partner] shall establish and maintain that emergency reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service.

A minimum reserve fund account balance will be maintained to finance (1) OM&R costs; (2) costs associated with addressing conditions which threaten or cause interruption of water service;

and (3) costs associated with addressing conditions which threaten the safety or integrity of the Project Works.

(b) [Partner] shall accumulate the reserve fund with annual deposits or investments over a maximum of ten (10) years and is to be held in a Federally insured, interest- or dividend-bearing account or in securities guaranteed by the Federal Government, in the [state] Local Agency Investment Fund, or, if approved by the Contracting Officer, in any fiduciary account in a manner provided by the laws of the State of [state]: *Provided, That* money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of fifteen percent (15%) of the average annual actual OM&R costs incurred by [Partner] for the Project Works during the three most recent Fiscal Years is accumulated (excluding any OM&R costs pertaining to Capital Improvements). Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the previous balance is restored. After the initial amount is accumulated or after the previous balance is restored, the annual deposits may be discontinued, and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

(c) Upon mutual written agreement between [Partner] and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the Project; the size of the annual OM&R budget; additions to deletions from, or changes in Project Works; and OM&R costs not contemplated when this Agreement was executed.

(d) [Partner] may make expenditures from the reserve fund only for OM&R costs incurred during periods of special stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary operation and maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or for meeting betterment costs (in situations where recurrence of severe problems can be eliminated) during periods of special stress. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, [Partner] shall restore that balance within five (5) years of withdrawal by the accumulation of annual deposits which will be over and above the normal annual contribution to the reserve fund.

(e) During any period in which any of the Project Works are operated and maintained by the United States, [Partner] agrees the reserve fund shall be available for like use by the United States.

(f) On or before October 1, of each year, [Partner] shall provide a current statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

BOOKS, RECORDS, AND REPORTS

15. (a) [Partner] shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including [Partner]'s financial transactions; water supply data; OM&R logs; Project Works Lands and rights-of-way use agreements; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal law and regulations, each Party to this Agreement shall have the right during officer hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.

CHARGES FOR DELINQUENT PAYMENTS

18. (a) [Partner] shall be subject to interest, administrative and penalty charges on delinquent payments. If a payment is not received by the due date, [Partner] shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes sixty (60) days delinquent, [Partner] shall pay, in addition to the interest charge, an administrative charge to cover to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent ninety (90) days or more, [Partner] shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of six (6) percent per year. [Partner] shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

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

CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

19. (a) [Partner] shall not allow contamination or pollution of Federal Project lands, Project waters, or Project works of the United States or administered by the United States and for which [Partner] has the responsibility for care, operation, and maintenance by its employees or agents under this Agreement. [Partner] shall also take reasonable precautions to prevent such contamination or pollution by third parties.

(b) [Partner] shall comply with all applicable Federal, State, and local laws and regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, released, or disposed of on or in Federal Project lands, Project waters, or Project works.

(c) "Hazardous material" means (1) any substance falling within the

definition of “hazardous substance,” “pollutant or contaminant,” or “hazardous waste” under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal, State, local or Tribal law.

(d) Upon discovery of any event which may or does result in contamination or pollution of Federal Project lands, Project water, or Project Works, [Partner] shall immediately undertake all measures necessary to protect public health and the environment, including measures necessary to contain or abate any such contamination or pollution, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed twenty-four (24) hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

(e) If violation of the provisions of this Article occurs and [Partner] does not take immediate corrective action, as determined by the Contracting Officer, [Partner] may be subject to remedies imposed by the Contracting Officer, which may include termination of this Agreement in accordance with Article 2(b).

(f) [Partner] shall be liable for any response action or corrective measure necessary to protect public health and the environment or to restore Federal Project lands, Project waters, or Project Works that are adversely affected as a result of such violation, and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State, local or Tribal laws and regulations concerning hazardous material. At the discretion of the Contracting Officer, the United States may also terminate this Agreement in accordance with Article 2(b) as a result of such violation.

(g) [Partner] shall defend, indemnify, protect and save the United States harmless from and against any costs, expenses, claims, damages, demands, or other liability arising from or relating to Authority’s violation of this Article.

(h) Reclamation agrees to provide information necessary for [Partner], using reasonable diligence, to comply with the provisions of this Article.

ASSIGNMENT LIMITED: SUCCESSORS AND ASSIGNS OBLIGATED

20. The provisions of this Agreement shall apply to and bind the successors and assigns of the respective Parties, but no assignment or transfer of this Agreement or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

21. The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of

funds. Absence of appropriation or allotment of funds shall not relieve [Partner] from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

22. No member of or delegate to Congress, Resident Commissioner or official of [Partner] shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

CLEAN AIR AND WATER

23. (a) [Partner] agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. § 1318), relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in those sections, and all applicable regulations and guidelines issued thereunder.

(2) That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the Effective Date unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility where the Agreement work is being performed.

(4) To insert the substance of the provisions of this Article into any nonexempt subcontract, including this subparagraph (a)(4).

(b) The following definitions apply for purposes of this Article:

(1) The term "Clean Air Act" means the Act enacted by Pub. L. 88-206 of Dec. 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

(2) The term "Clean Water Act" means the Act enacted by Pub. L. 92-500 of Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

(3) The term "clean air standards" refers to all enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or plan under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or (d)), or an approved implementation procedure under subsection 112(d) of the Clean Air Act (42 U.S.C. § 7412(d)).

(4) The term “clean water standards” refers to all enforceable limitations, controls, conditions, prohibitions, standards, and other requirements which are promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Clean Water Act (33 U.S.C. § 1317).

(5) The term “comply” refers to compliance with clean air or water standards. It also refers to compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency in accordance with the requirements of the Clean Air Act or Clean Water Act and regulations issued pursuant thereto.

(6) The term “facility” means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by a contractor or subcontractor to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

24. (a) [Partner] shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1975 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et. Seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Agreement, [Partner] agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs and documents.

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

(d) Complaints of discrimination against [Partner] shall be investigated by the Contracting Officer's Office of Civil Rights.

EQUAL OPPORTUNITY

25. During the performance of this Agreement, [Partner] agrees as follows:

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

(b) [Partner] will, in all solicitations or advertisements for employees placed by or on behalf of [Partner], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) [Partner] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with [Partner]'s legal duty to furnish information.

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

(e) [Partner] will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules regulations and relevant orders of the Secretary of Labor.

(f) [Partner] will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the

Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(g) In the event of [Partner]'s noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended, in whole or in part and [Partner] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) [Partner] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. [Partner] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event [Partner] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, [Partner] may request the United States to enter into such litigation to protect the interests of the United States.

NOTICES

26. (a) Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of [Partner], when mailed, postage prepaid, or delivered to the Area Manager, South-Central [state] Area Office, 1243 N Street, Fresno, [state] 93721, Bureau of Reclamation, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors, Madera-Chowchilla Water & Power Authority, 12152 Road 28 ¼, Madera, [state] 93637. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

(b) This Article 26 shall not preclude the effective service of such notice by other means.

CHANGES IN [PARTNER]'S ORGANIZATION

29. While this Agreement is in effect, no change may be made in [Partner]'s organization, by inclusion or exclusion of lands or by any other changes, which may affect the respective rights, obligations, privileges, and duties of either the United States or [Partner] under this Agreement including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

PROTECTION OF WATER AND AIR QUALITY

30. (a) [Partner], without expense to the United States, will perform the OM&R of the Project Works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

(b) The United States will perform the OM&R of reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water.

(c) [Partner] will comply with all applicable water and air pollution laws and regulations of the United States and the State of [state]; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by [Partner]; and will be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal facilities or Project Water provided by [Partner] within its Project Water service area.

(d) This Article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

31. When acquiring land or an interest in land and relocating persons or personal property in connection with the construction, operation, and maintenance of Project Works, [Partner] shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. § 4601, et seq.) and Department of Transportation regulations at 49 C.F.R. part 24.

PEST MANAGEMENT

32. (a) [Partner] is responsible for complying with applicable Federal, State, and local laws, rules, and regulations related to pest management in performing its responsibilities under this Agreement.

(b) [Partner] is responsible for effectively avoiding the introduction and spread of, and for otherwise controlling, undesirable plants and animals, as defined by the Contracting Officer, on or in Federal Project lands, Federal Project waters, and Federal Project works for which and to the extent that [Partner] has operation and maintenance responsibility. [Partner] is responsible for exercising the level of precaution necessary in meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for reproductive and vegetative parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and other pests, and removing such materials before moving its vehicles, watercraft, and

equipment onto any Federal land, into any Federal Project facility waters, or out of any area on Federal Project land where work is performed.

(c) Where decontamination of [Partner]'s vehicles, watercraft, or equipment is required prior to entering Federal Project land or waters, the decontamination shall be performed by [Partner] at the point of prior use, or at an approved offsite facility able to process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the completion of work, [Partner] will perform any required decontamination within the work area before moving the vehicles, watercraft, and equipment from Federal Project lands and waters.

(d) Programs for the control of undesirable plants and animals on Federal Project lands, and in Federal Project waters and Federal Project works for which [Partner] has operation and maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, [Partner] will adhere to applicable Federal and State laws and regulations and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals, including but not limited to, the Department of the Interior Manual, Part 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3, 1999.

MEDIUM FOR TRANSMITTING PAYMENTS

33. (a) All payments from [Partner] to the United States under this Agreement shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) Upon execution of the Agreement, [Partner] shall furnish the Contracting Officer with [Partner]'s taxpayer's identification number (TIN). The purpose for requiring [Partner]'s TIN is for collecting and reporting any delinquent amounts arising out of [Partner]'s relationship with the United States.

SUSTAINABLE OPERATION AND MAINTENANCE

34. [Partner] shall comply with Section Two (2) of Executive Order 13834 "*Regarding Efficient Federal Operations*". Implementation of this Executive Order as it applies to this Agreement is provided in Exhibit C to this Agreement.

AGREEMENT DRAFTING CONSIDERATIONS

36. This Agreement has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. Articles 1 through 36 of

this Agreement have been drafted, negotiated, and reviewed by the Parties, and no one Party shall be considered to have drafted the stated Articles.

IN WITNESS WHEREOF, the Parties hereto have executed
this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Regional Director,
[Region]
Bureau of Reclamation

[Partner]

(SEAL)

By: _____
[Signor's title]

Attest:

Secretary