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

AGREEMENT TO TRANSFER THE OPERATION, MAINTENANCE AND REPLACEMENT AND CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES RELATED TO THE CORNING AND TEHAMA-COLUSA CANALS, RED BLUFF AND CORNING PUMPING PLANTS AND ASSOCIATED WORKS

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Exhibit A: List of Project Works and Non-Conveyance Facilities
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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

AGREEMENT TO TRANSFER THE OPERATION, MAINTENANCE AND REPLACEMENT AND CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES RELATED TO THE CORNING AND TEHAMA-COLUSA CANALS, RED BLUFF AND CORNING PUMPING PLANTS AND ASSOCIATED WORKS

THIS AGREEMENT, effective the _____ day of __________, 2021, (“Effective Date”) in pursuance 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), all collectively hereinafter referred to as the Federal Reclamation laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the TEHAMA-COLUSA CANAL AUTHORITY, hereinafter referred to as the Authority, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws of the State of California. The United States and the Authority are referred to collectively as the “Parties,” and individually as a “Party.

WITNESSETH, That:

EXPLANATORY RECITALS

a. The United States Bureau of Reclamation has constructed the Sacramento River Division, Central Valley Project (Project), for storage, diversion, carriage, and distribution of water for agricultural, flood control, municipal, industrial, domestic and other beneficial uses and purposes; and

b. The Authority represents water users who contract with the United States for water service provided by the Sacramento River Division of the Project; and
c. The United States operates the Sacramento River Division of the Project for the benefit, among others, of the water users represented by the Authority; and

d. The Authority has for eight years operated and maintained certain Sacramento River Division facilities pursuant to that certain Cooperative Agreement No. 8-FC-20-05930 Between the United States of America and the Tehama-Colusa Canal Authority Providing for Operation and Maintenance of the Tehama-Colusa and Corning Canals and Associated Project Works, dated October 13, 1988; and

e. The Authority has for twenty five years operated and maintained certain Sacramento River Division facilities, and kept those facilities in good care, pursuant to that certain Agreement to Transfer Operation and Maintenance and Replacement and Certain Financial and Administrative Activities between the parties, dated September 27th, 1996, as modified on June 1, 2012; and

f. The Authority requested initiation of the renewal process for the continued OM&R of the Project Works under Contract No. 6-07-20-X0343, by letter dated August 14, 2019; and

g. The Authority, hereinafter also referred to as the Operating Non-Federal Entity, has demonstrated its ability to operate and maintain such facilities to the satisfaction of the Contracting Officer and in a manner which best and most economically serves the water users relying on those facilities; and

h. It is deemed to be in the best interests of the Parties and the Project’s water users that the continued OM&R, as well as certain administrative and financial activities, of the Project Works continue to be transferred to the Authority as the Operating Non-Federal Entity by renewing the Transfer Agreement; and
The United States also believes it to be in the best interests of the Parties and the Project’s water users to transfer to the Authority the administrative and financial responsibility to continue to perform and hereafter fund the Authority’s OM&R of the Project Works while the United States retains the responsibility to fund Capital Improvement costs of the Project Works; and

The Authority is willing to continue to assume the OM&R of the Project Works as the Operating Non-Federal Entity and perform the enumerated administrative and financial activities in accordance with the terms and conditions herein set forth; and

The National Environmental Policy Act compliance requirement for execution of this Agreement has been met by the Categorical Exclusion dated July 27, 2021; and

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) “Capital Improvement” shall mean any activity that extends the useful life of a property, plant or equipment asset, expands the capacity or efficiency of an asset, or otherwise upgrades an asset to serve needs different from, or significantly greater than, an asset’s current use, or as defined in the *Blue Book* entitled Federal Replacements, Units, Service Lives, Factors, as amended or in accordance with Federal law and accounting standards, or any other regulations, policies, guidelines, or instructions adopted thereunder.

   (b) “Irrigation Water” shall mean the use Project Water or Other Water to irrigate land primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto.

   (c) “Municipal and Industrial Water” or “M&I Water” shall mean the use of Project Water or Other Water for municipal, industrial, and miscellaneous purposes not falling
under the definition of “Irrigation Water” or within another category of water use under applicable Federal authority.

(d) “Operation, Maintenance, and Replacement” or “OM&R” shall mean the complete operation and maintenance of the Project Works, including performing, funding, and financing such repairs and replacements as are normally considered part of annual operation and maintenance functions and not considered Capital Improvement costs of the Project. OM&R shall include the performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs, but only to the extent the costs thereof are not considered Capital Improvement costs of the Project. Notwithstanding the foregoing, OM&R shall also include Capital Improvements, as that term is defined in Article 1(a) which the Authority chooses to accomplish and finance pursuant to Article 5(b).

(e) “Other Water” shall mean water other than water conveyed or delivered pursuant to Water Delivery Contracts which the United States has a legal or contractual obligation to convey or deliver through the Project Works. Other Water includes, without limitation, water to be conveyed through the Project Works (1) pursuant to contracts under the Warren Act (43 USC 523, et seq.), Section 305 of the Act of March 5, 1992 (106 Stat. 59), Section 3408(c) of the Central Valley Project Improvement Act (106 Stat. 4706), and Section 215 of the Reclamation Reform Act of 1982 (96 Stat. 1263); (2) under other wheeling or conveyance agreements binding on the Secretary; (3) in accordance with agreements for conveyance of water to wildlife refuges and wildlife management areas; and (4) to satisfy other legally imposed obligations of the Secretary.

(f) “Party Entitled to Utilize or Receive Other Water” shall mean the party required to pay the Authority the amounts described in Article 12 in connection with the delivery
of Other Water. In the case of Other Water delivered to satisfy agreements for conveyance of 
water to wildlife refuges and wildlife management areas, as well as other legally imposed 
obligations of the Secretary, the Party Entitled to Utilize or Receive Other Water (and therefore 
required to pay the Authority the amounts described in Article 12 in connection with the delivery 
thereof) shall be the Contracting Officer.

(g) “Project” shall mean the Central Valley Project owned by the United 
States and managed by the Department of the Interior, Bureau of Reclamation.

(h) “Project Water” shall mean all water that is developed, diverted, stored, or 
delivered by the Secretary in accordance with the statutes authorizing the Project and in 
accordance with the terms and conditions of water rights acquired pursuant to California law.

(i) “Project Works” shall mean those facilities listed or described on the 
attached Exhibit A, which are incorporated herein by this reference, including but not limited to: 
the Corning and Red Bluff Pumping Plants, Corning and Tehama-Colusa Canals and related in-
line control facilities; wasteways, laterals, holding reservoirs, turnouts and measuring devices, 
associated water level control devices and water level recording instruments; appurtenant 
equipment, structures and maintenance buildings; and such other facilities as the Parties may 
agree by modification of Exhibit A, without amending this Agreement.

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

(k) “Substantial Change” shall mean 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.
“(l) “Water Delivery Contract” shall mean (1) any contract entered into by the Secretary under the provisions of Sections 9(c), 9(d) or 9(e) of the Reclamation Project Act of 1939 [43 USC 485h (c), (d) and (e)] or Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4706) pursuant to which Project Water is to be supplied from or through the Project Works and (2) any exchange contract, water rights settlement contract or similar agreement pursuant to the terms of which water is to be supplied by the Secretary from or using the Project Works.

(m) “Water Delivery Contractor” shall mean a party holding a Water Delivery Contract with the United States.

(n) “Year” shall mean the period from and including the first day of March of each calendar year through and including the last day of February of the following calendar year.

TERM OF AGREEMENT

2. (a) This Agreement shall be effective as of the Effective Date and shall remain in effect for thirty-five (35) years thereafter; Provided, That this Agreement is not terminated at an earlier date pursuant to Article 2(b) below. Subject to modification acceptable to the Contracting Officer and the Authority, the Authority shall have the option to renew this Agreement for successive periods not to exceed thirty-five (35) years each by providing written notice of such to the Contracting Officer not more than one (1) year, but not less than six (6) months, prior to the end of the then-current term, unless by mutual agreement to renew sooner.

(b) The Contracting Officer may terminate this Agreement at any time before the expiration of its term whenever the Contracting Officer determines that the Authority is in substantial violation of the Agreement as provided in this Article 2(b); Provided, That prior to the effective date of any such termination, the Contracting Officer shall first notify the Authority in writing of, the specific purported deficiencies of the Authority 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 2(b) as expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If after the designated representative of the Authority 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 the Authority’s performance under this Agreement. The Authority 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 the Authority 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 the Authority. 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) The Authority may at any time, upon giving twelve (12) months written notice, terminate this Agreement; *Provided, That* such termination shall not relieve the Authority 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 the Authority lacks funding to perform such obligations due to a failure by the United States to meet any of its obligations under this Agreement.
(d) Upon any termination of this Agreement, the United States will take over from the Authority the care, OM&R of the Project Works and the Authority shall transfer to the United States (1) title to all tools, vehicles, supplies, and equipment transferred under the original agreement 6-07-20-X0343 (to the extent still on hand) or purchased by the Authority for the purposes of this Agreement, and (2) any funds in its possession which were collected for, or allocated to, the OM&R of the Project Works for the then-current Year which are in excess of the obligations of the Authority for the OM&R of the Project Works. All other funds and reserves in the Authority’s possession, including without limitation all other funds collected for, or allocated to, the OM&R of the Project Works and the reserve funds established under Article 14 shall be retained or distributed by the Authority in accordance with the direction of the Authority’s board of directors.

(e) 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 the Authority 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) The Authority, 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 the Authority. 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 the Authority a special written notice of those necessary repairs. Except in the case of an emergency, the Authority 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 the Authority 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 the Authority as directed by the Contracting Officer.

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

(e) The Authority 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 the Authority or
the United States on Project Works required under this Agreement, regardless of who performs
those duties;

Provided, That for the purposes of this Article 3(e), the term “intentional torts”
includes acts or omissions under California law that constitute gross or willful misconduct, gross
or willful negligence, and sole negligence; and, provided further, that the term “employees of the
United States,” includes agents and independent contractors who are directly responsible to the
United States.

(f) Omitted.

(g) In the event the Authority is found to be operating the Project Works or
any part thereof in violation of this Agreement or the Authority 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 the Authority the care, OM&R of the Project Works by giving written notice to the
Authority of such election and the effective date thereof. Thereafter, during the period of
operation by the United States, upon notification by the Contracting Officer the Authority 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 the Authority.

(h) In addition to all other payments to be made by the Authority under this
Agreement, the Authority 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.

TRANSFER INSPECTION

4.  The Authority (including its predecessors) has been the Operating Non-Federal Entity for the Project Works since 1988. Joint inspections of the Project Works have been conducted by the United States and the Authority. The inspection reports shall be made available for the Authority’s review upon request.

CAPITAL IMPROVEMENTS AND REPAIRS

5.  (a)  Nothing in this Agreement shall be construed to require the Authority to make or fund improvements, modifications, replacements or repairs of any nature to the Project Works, the costs of which should be or will be added to the Capital Improvement costs of the Project. The identification of Capital Improvements shall be made in accordance with Federal law or any regulations, policies, guidelines or instructions adopted thereunder. The Contracting Officer’s determination of whether the costs of any improvements, modifications, replacements or repairs should be or will be added to the Capital Improvement costs of the Project shall be accepted by the Authority after the Contracting Officer has conferred in good faith with the Authority with respect thereto; Provided, That such determination shall be subject to review by a court having jurisdiction over the dispute. The Authority shall act in accordance with such determination unless and until it is reversed or modified. The Authority shall submit annual OM&R work forecasts at the start of each year. The OM&R work forecasts shall include all work to Project Works that is projected to be done in the following year and work to be done in the next three (3) years. Following the completion of a Review of Operation and Maintenance (RO&M) examination of the Project Works as set forth in Article 11 of this Agreement, if that RO&M examination identifies a potential Capital Improvement, and at such other times as the
Parties agree are necessary, the Authority and the Contracting Officer shall confer to identify any Capital Improvements planned or necessary for the Project Works for the next ten (10) years and agree upon the mechanism for accomplishing and financing the Capital Improvements.

(b) Notwithstanding the provisions of Article 5(a), in the event the Authority identifies Capital Improvements it deems necessary for the OM&R of the Project Works and the Contracting Officer is unable or unwilling to provide a mechanism for accomplishing and financing such Capital Improvements, the Authority may proceed with the accomplishment and financing of such Capital Improvements and deem the costs thereof to be OM&R costs hereunder, regardless of whether such costs are added to the Capital Improvement costs of the Project under Article 5(a). Such Capital Improvements may include, without limitation, the acquisition, repair or replacement of personal property (such as motor vehicles and heavy equipment) and the construction or improvement of structures utilized by the Authority in connection with the OM&R of the Project Works.

PERFORMANCE WORK STATEMENT, EMERGENCY ACTION PLANS AND NOTIFICATIONS

6. (a) The Authority shall maintain the Project Works in such a manner that the Project Works shall remain in good and efficient condition for the storage, diversion and carriage of water. The Authority shall perform the OM&R of the Project Works consistent with the guidelines provided by existing Designer’s Operating Criteria, standard operation procedures (SOPs) and/or manufacturer’s technical manuals for the Project Works, in accordance with such sound engineering practices as have been or may be developed for the Project Works, and in accordance with applicable Federal, State and local environmental laws. Deviations from or changes to these standards shall be approved by the Contracting Officer.
(b) The Authority shall prepare such Emergency Action Plans (EAPs) for the Project Works as are required by governmental agencies with jurisdiction over the Authority’s operations. The Authority shall furnish copies of any such plans to the Contracting Officer.

(c) In addition to implementing Article 6(b), the Authority shall notify the Contracting Officer as soon as reasonably practicable after initial observation by the Authority of any event or situation which threatens (1) the safety or integrity of the Project Works, or (2) the well-being of humans or property located adjacent to the Project Works. Notwithstanding Article 26, such notification shall be made immediately telephonically and by electronic mail.

(d) The Authority shall submit monthly reports to the Contracting Officer outlining all work accomplished.

(e) The Authority shall annually review, and as necessary update, all SOPs and EAPs and provide such updates to the Contracting Officer.

(f) The performance work statement (PWS) will consist of the OM&R work forecast, current SOPs for all the major facilities, and EAPs as applicable.

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 the Authority for such purposes without being charged any administrative fees therefor. The Authority shall ensure that no unauthorized encroachment occurs on Federal Project lands and rights-of-way. The Authority 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.

Where there are unauthorized encroachments on Project Works Lands, the Authority will work with the Contracting Officer to resolve the encroachments to the Contracting Officer’s satisfaction. For the purposes of this Agreement “encroachment” means any unauthorized building, structure, or object of any kind or character placed, into, over, or under any Project Works Lands.
The Contracting Officer shall not issue any rights-of-way across Project Works Lands or any leases, licenses, permits, or special-use agreements involving Project Works Lands until the Contracting Officer has determined that the grant is compatible with the Project purposes and with the OM&R of the Project Works. The Contracting Officer shall issue such rights-of-way across Project Works Lands or any leases, licenses, permits or special-use agreements involving Project Works Lands only after offering the Authority the opportunity to provide appropriate comment concerning the request. Requests for such grants that are received by the Authority shall be referred to the Contracting Officer along with appropriate comment concerning the request. A copy of all such grants issued by the Contracting Officer shall be provided to the Authority.

The Authority shall regularly inspect the Project Works Lands to identify any trespass and determine the general condition of the real property itself. Cases of trespass shall be corrected, where possible, by the Authority. Trespass cases which the Authority feels may require undue time and/or expense to correct shall be referred without delay to the Contracting Officer for resolution.

The Authority shall review land-use requests for compatibility within Project Works Lands. The Contracting Officer shall remain responsible for review and action upon all requests for use of the Project Works or Project Works Lands unless a delegation of authority to the Authority is otherwise provided for by the express written consent of the Contracting Officer.

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. The Authority 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.
OVERSIGHT AND PARTICIPATION

8. (a) The Contracting Officer shall, to the greatest extent possible, afford the Authority the opportunity to review and comment on preliminary and final development plans, environmental documents and other documents which affect the Project Works. The Authority’s comments shall be provided to the Contracting Officer; and

(b) The Parties shall, to the greatest extent possible, afford each other the opportunity to participate with city, county, State and Federal governments, or governmental groups and private concerns in meetings, hearings and other activities affecting the Project Works. The Parties shall keep each other informed of these activities.

DELIVERY OF WATER BY THE AUTHORITY

9. (a) The Authority shall convey and distribute water in and from the Project Works in accordance with the directives of the Contracting Officer, including all operating guidelines approved by the Contracting Officer, so that the Contracting Officer can satisfy all valid water delivery obligations of the United States from the Project Works, including without limitation all water delivery obligations of the United States under Water Delivery Contracts and for the delivery of Other Water. The Authority shall deliver water to each Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water entitled thereto from the Project Works through turnouts or such temporary diversion facilities as are specified in then-existing Water Delivery Contracts or other arrangements or agreements relating to Other Water specifying such turnouts and delivery points, or as may be agreed to by such Water Delivery Contractor(s) or Party Entitled to Utilize or Receive Other Water, the Authority, and the Contracting Officer.

(b) A complete list of all valid obligations of the United States to convey and distribute water in and from the Project Works is attached as Exhibit B and incorporated herein.
by this reference. Exhibit B indicates whether each obligation is under a Water Delivery Contract or is for the delivery of Other Water. The Contracting Officer shall modify Exhibit B as such obligations change or as new obligations are added without amending this Agreement.

(c) Prior to the Contracting Officer entering into, renewing or amending any Water Delivery Contract or any other agreement which requires or permits the conveyance of water through any of the Project Works, the Contracting Officer shall consult with the Authority about the terms of such contract action, and shall provide the Authority the opportunity to review and comment thereon. Any such contract action shall be taken by the Contracting Officer only after the Contracting Officer has given due consideration to, and has taken all reasonable actions to mitigate the impacts of such contract action on (1) the quantity or quality of water available to Water Delivery Contractors, or Parties Entitled to Utilize or Receive Other Water, and (2) the ability of the Authority to perform its obligations under this Agreement. The Contracting Officer shall provide the Authority a copy of all contracts entered into with Water Delivery Contractors or Parties Entitled to Utilize or Receive Other Water utilizing the Project Works for delivery or conveyance.

RESOLUTION OF DISPUTES

10. Should any dispute arise concerning delivery or conveyance of water by the Authority through the Project Works between the Authority, any Water Delivery Contractor(s) and/or any Party(ies) Entitled to Utilize or Receive Other Water from or through the Project Works, which the Authority concludes cannot be resolved through negotiations with the other party(ies) to the dispute, the Authority shall provide its final position with respect to such dispute to the other party(ies) thereto in writing and to the Contracting Officer requesting a determination of the dispute. Within sixty (60) days after such final position is provided, or such other reasonable date as may be agreed upon by the Authority and the Contracting Officer, the
Contracting Officer will issue a written determination regarding the dispute. The Contracting Officer's determination shall be accepted by the Authority and other party(ies) thereto as final and conclusive and the Authority and the other party(ies) shall promptly comply with said decision and shall operate the Project Works in conformance with such decision until the same is stayed, reversed or modified by a decision of a court of competent jurisdiction.

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: the Authority’s books, records, and reports with respect to OM&R obligations under this Agreement; the Project Works being operated by the Authority; 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 the Authority may ask the Contracting Officer to, conduct special inspections of any Project Works being operated by the Authority and special audits of the Authority’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 the Authority 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 the Authority by the Contracting Officer.

(c) The Authority 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 the Authority.

(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 pumping 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 the Authority, as applicable, in participating in the
OM&R site examination will be borne by the Authority.

(g) Requests by the Authority 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 the Authority 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 the Authority) shall be nonreimbursable.

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

COST RECOVERY FOR AUTHORITY OM&R ACTIVITIES; TERMINATION OF WATER
DELIVERIES

12. As of the Effective Date, the Authority shall be responsible for directly funding
the OM&R of the Project Works transferred hereby. Except as otherwise provided herein, the
Parties acknowledge that the United States will no longer provide funding through the
appropriations process for such OM&R. The United States hereby delegates to the Authority all
required authority under statutes, contracts, regulations, and policies to collect for OM&R of the
Project Works. Reclamation acknowledges and agrees that the provisions of its Water Delivery
Contracts regarding the obligation to pay the Authority for the operation and maintenance of the
Project Works performed by the Authority under this Agreement, but which do not have the
same definition of OM&R as in this Agreement, were not intended to and do not limit the
delegation of authority to charge and collect for the OM&R of the Project Works as provided in
this Article 12. The procedures and authorities to be utilized by the Authority for such direct
funding are set forth in this Article 12.

(a) OM&R Budgets. Not later than ninety (90) days before the start of each
year, the Authority shall submit to each Water Delivery Contractor, and all Parties Entitled to
Utilize or Receive Other Water, the proposed budget for the next year for all activities of the
Authority to be carried out under this Agreement. The budget so developed shall include
amounts necessary to establish the reserve fund described in Article 14 hereof, and such other
reserves as may be determined to be necessary by the Authority. The Authority shall afford each
Water Delivery Contractor and all Parties Entitled to Utilize or Receive Other Water the
opportunity to submit comments on such proposed budget by (30) days before commencement of
the year. Any dispute(s) regarding the proposed budget shall be resolved in the manner
described in Article 10 hereof. The Authority shall submit the final budget for each year to the
Contracting Officer prior to the start of that year. The Authority shall use reasonable efforts to
perform its responsibilities under this Agreement in accordance with the applicable final budget.

(b) Cost Recovery Methodology. The Authority shall develop a methodology
to recover all costs incurred by the Authority in carrying out its responsibilities under this
Agreement, including without limitation all costs described in the budgets prepared pursuant to
Article 12(a) hereof.

(1) The Authority's cost recovery methodology shall (i) provide for the
equitable allocation of the costs to be recovered among Water Delivery Contractors with an
obligation to pay for water delivered or conveyed through the Project Works and all Parties
Entitled to Utilize or Receive Other Water with an obligation to pay therefor, including without
limitation the Contracting Officer; and (ii) clearly set forth the manner in which all such costs
shall be collected by the Authority, including deadlines for payments and/or deposits required of Water Delivery Contractors and all Parties Entitled to Utilize or Receive Other Water under the methodology.

(2) Such methodology shall recover costs in lieu of the conveyance OM&R cost component and the conveyance pumping OM&R cost component heretofore calculated by the United States pursuant to its ratesetting policies for the Project. In addition to OM&R costs for directly funding the OM&R of the Project Works, such methodology shall recover power costs for conveyance pumping incurred by the United States for the production or transmission of such power that are payable by the Water Delivery Contractors, Parties Entitled to Utilize or Receive Other Water, and contractors in the Sacramento River Division, in connection with the delivery or conveyance of water through the Project Works.

(3) The Authority’s cost recovery methodology and any subsequent amendments thereto shall be approved by the Authority and provided to all parties with payment obligations under this Article 12 by December 1 of each year, or not less than thirty (30) days prior to the effective date of any amendment thereof. Any dispute(s) regarding the Authority’s cost recovery methodology shall be resolved in the manner described in Article 10 hereof. The Contracting Officer has approved the Authority’s initial cost recovery methodology. All proposed amendments shall be submitted to the Contracting Officer for review and comment concurrent with the dissemination to all parties with payment obligations noted above.

(c) Deficiencies in Cost Recovery. The Authority is not obligated to provide funding from non-Federal sources for the cost of delivering water to Water Delivery Contractors or Parties Entitled to Utilize or Receive Other Water who do not pay the Authority in full for the OM&R of the Project Works.
In the event any Water Delivery Contract or obligation to deliver Other Water provides for or results in the payment of less than all of the costs to be recovered by the Authority in accordance with Article 12(b) hereof (a “deficiency”), whether resulting from the inadequacy of contract provisions between the Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water and the United States to cover the Authority's OM&R costs, delinquency in payment of amounts due as described in Article 12(d), or otherwise, the United States shall pay to the Authority the amount of any such deficiency.

Except as otherwise provided under this Article 12(c), payment for such deficiencies shall be made through a separate service contract or such other appropriate legal instrument as may be entered into by the Parties from time to time, by the terms of which the United States agrees to pay or provide funding to the Authority for water delivery services provided under this Agreement to the United States on behalf of the parties incurring the deficiencies. The solicitation and award of any service contract shall be made pursuant to the applicable Federal acquisitions laws, regulations, and policies governing such contracts, including the Federal Acquisition Regulations (FAR), and the Department of the Interior and Bureau of Reclamation Acquisition Regulations. Payments made by the United States to the Authority for such deficiencies shall become the financial obligation of the deficient Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water to the Contracting Officer.

If payments for deficiencies as provided in this Article 12(c) are not timely made by the United States in accordance with said service contract or other appropriate legal instrument, the Authority may exercise its rights under Article 12(d).
(d) **Termination of Water Deliveries.** Subject to subparagraphs (1) - (3) of Article 12(d), in the event any amount due to or to be collected by the Authority from a Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water pursuant to Article 12 is not paid when due (a “delinquency”), the Authority is authorized by the United States to discontinue delivery and conveyance of water to or for such Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water until such time as the delinquency is cured.

1. The Authority shall give the Contracting Officer and the delinquent party written notice of the delinquency and of the date deliveries will be terminated if the delinquency is not cured. The Contracting Officer and the Authority shall agree in writing on the appropriate timing and length of such notice period.

2. In the event, and only in the event, the Contracting Officer directs the Authority in writing to deliver or convey water to or for a delinquent party, the United States shall be liable to the Authority for the costs to be recovered from such party under Article 12(c) of this Agreement, and the Authority shall have no obligation to collect any amounts associated with such water from the delinquent parties.

(e) **Interest.** In the event any amounts due to the Authority from the United States under this Agreement are not paid when due, in addition to exercising the rights afforded the Authority under Article 12(c) and Article 12(d), the Authority will receive interest on the delinquent amounts pursuant to the Prompt Payment Act, as amended (31 USC 3901, et seq.); Provided, That the Authority shall have previously submitted appropriate invoices to the United States in accordance with 48 CFR Section 32.907-1.

(f) **Recovery of Certain Costs.** The Parties acknowledge that the OM&R of certain Project facilities benefiting parties in the Sacramento River Division will be performed
by the Tehama-Colusa Canal Authority pursuant to that certain Agreement to Transfer Operation
and Maintenance and Replacement and Certain Financial and Administrative Activities Related
to the Corning and Tehama-Colusa Canals, Red Bluff and Corning Pumping Plants, and
Associated Works.

(g) Direct Charges Replace U.S. Rate Components. After the effective date of this Agreement, the United States shall not charge water rate components for conveyance OM&R, conveyance pumping OM&R, to a Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water, except to the extent (i) financial obligations otherwise properly included in such components have been incurred by the United States and have not been included as an expense therein under the ratesetting policies for the Project; or (ii) the United States has paid or provided funding to the Authority for delivering water to a Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water to cover a deficiency in payment.

(1) To the extent the Authority’s cost recovery methodology includes recovery of power costs for conveyance pumping that are incurred by the United States for the production or transmission of such power, the Authority shall remit such funds to the Contracting Officer within thirty (30) days after receipt of the Contracting Officer's billing therefor.

(2) All costs recovered pursuant to the Authority’s cost allocation methodology and not required to be remitted to the Contracting Officer pursuant to this Article 12(g) shall be immediately available for funding the costs of the Authority pursuant to this Article 12.

(h) Deposits of Amounts Collected. Amounts collected by the Authority pursuant to this Article 12 shall be placed on deposit or otherwise invested in accordance with
the Authority's investment policy and in conformance with State law to be expended solely for purposes of this Agreement. All interest accruing on said account shall be property of the Authority, and not of the United States, and shall be applied against OM&R costs.

(i) The Contracting Officer agrees that material changes in Project operations affecting the quantity of water to be delivered or in Project finances may affect the ability of the Authority to carry out its obligations under this Agreement. Under such circumstances, the Parties will meet and confer as to emergency measures available to reduce the economic hardship to the Authority, the Water Delivery Contractors, and/or Parties Entitled to Utilize or Receive Other Water.

WATER ACCOUNTING

13. (a) The Contracting Officer’s water accounting system shall be the data utilized in maintaining water delivery records and in allocating costs for all Water Delivery Contractors and all Parties Entitled to Utilize or Receive Other Water. The water accounting system shall fully and accurately document the allocation and deliveries of water through the Project Works and account for financial transactions affecting the Water Delivery Contractors, the Sacramento River Division Contractors required to make payments via the Authority and all Parties Entitled to Utilize or Receive Other Water with an obligation to pay therefor.

(b) The Contracting Officer shall direct the Water Delivery Contractors and other Parties Entitled to Utilize or Receive Other Water to provide the Authority and the Contracting Officer with water delivery and payment information for all water delivered to said Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water pursuant to this Agreement. All water accounting records created or maintained by the Authority under this Agreement shall be subject to Article 15 and shall be accessible by the Contracting Officer.
In order to further their mutual goals and objectives, the Contracting Officer and the Authority shall communicate, coordinate, and cooperate with each other, in order to improve the OM&R of the Project, including the financing thereof. The communication, coordination, and cooperation shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters, including but not limited to, budget and water accounting issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Agreement. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

The Contracting Officer acknowledges that some or all of the Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water may appoint the Authority as agent for such parties or may otherwise designate, in writing, the Authority to act as an intermediary with the Contracting Officer concerning the water accounting or financial information. Upon notice, in writing, of such relationship, the Contracting Officer agrees to recognize the Authority in such capacity.

**EMERGENCY RESERVE FUND**

Upon transfer of the OM&R of the Project Works under this Agreement, the Authority 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. The Authority 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) The Authority 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 California 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 California: 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 the Authority for the Project Works during the three most recent 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 the Authority 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) The Authority 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 in reduced below the current balance by expenditures therefrom, the Authority 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) In accordance with Article 3.(g) of this Agreement, during any period in which any of the Project Works are operated and maintained by the United States, the Authority agrees the reserve fund shall be available for like use by the United States.

(f) On or before October 1, of each year, the Authority 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) The Authority shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including the Authority’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.

All records and books maintained pursuant to this Agreement shall be available to, and subject at all reasonable times to inspection, examination, copying or audit by authorized representatives of affected Water Delivery Contractors, Parties Entitled to Utilize or Receive Other Water, and the Contracting Officer. Each month the Authority shall collect and certify all delivery and measurement records and report any abnormal findings to the Contracting Officer.

(b) The Authority shall maintain and verify records of actual expenditures in accordance with an accounting system prescribed by the California State Controller in compliance with California Government Code section 53891. The Contracting Officer and the Authority shall preserve and make available their respective financial and accounting records and books relating to this Agreement until the later of either (1) the final disposition of any litigation or settlement of claims arising out of performance under this Agreement, or (2) the expiration of five (5) years after the activities giving rise to the creation of such records and books. By March 31, following the completion of each Year, the Authority shall provide the Contracting Officer with a copy of its audited financial statements as of the end of the preceding Year.

(c) Until termination of this Agreement, the Authority shall retain the originals of all significant OM&R records pertinent to the Project Works and/or water operations, including modifications to Project Works; as-built drawings; maintenance and repair logs; equipment tests, equipment operations logs; emergency response plans; spill prevention control and countermeasure plans; written inquiries received by the Authority pursuant to the Federal Freedom of Information Act or analogous State law; Congressional or State Legislative
requests; or public or private claims or potential claims against the United States and/or the
Authority relative to the Project Works.

(d) Upon request by the Authority, the Contracting Officer shall make
available to the Authority those OM&R, financial and administration records relating to the
Project Works in his possession and any revisions or modifications to those records.

NOTIFICATION OF THIRD PARTIES

16. (a) To the extent the Contracting Officer has not previously done so, the
Contracting Officer shall instruct all Water Delivery Contractors and all Parties Entitled to
Utilize or Receive Other Water that the Authority is the Operating Non-Federal Entity with
respect to the Project Works. The Contracting Officer shall inform all parties to be so notified of
the Authority’s rights, authorities, and obligations under this Agreement and any other
agreements relevant to the Authority’s status as the Operating Non-Federal Entity and shall
cooperate with the Authority in ensuring that all such parties timely and properly make all
required payments to the Authority. Without limiting the foregoing, the Contracting Officer
shall direct all such parties to simultaneously provide the Authority with copies of all water
delivery schedules provided to the Contracting Officer. The Contracting Officer shall also
inform all parties to be notified pursuant to this Article 16(a) that, after March 1, 1998, the
United States has not and shall not charge the conveyance OM&R cost component, the
conveyance pumping OM&R cost component heretofore calculated by the United States
pursuant to its ratesetting policies for the Project to Water Delivery Contractors, or Parties
Entitled to Utilize or Receive Other Water, except to the extent financial obligations otherwise
properly included in such components have been incurred by the United States prior to March 1,
1998, and have not been included as an expense therein under the ratesetting policies for the
Project.
(b) All agreements providing for the delivery or conveyance of water through the Project Works entered into, renewed, or amended shall include provisions recognizing the Authority’s status as the Operating Non-Federal Entity, and shall require that the non-Federal parties to such agreements timely and properly make all required payments to the Authority. Such new, renewed, or amended agreements shall also include provisions requiring the non-Federal parties to such agreements to simultaneously provide the Authority with copies of all water delivery schedules and water delivery and payment information provided to the Contracting Officer. The Contracting Officer shall also include in all such new, renewed, or amended agreements a provision confirming that the United States shall not charge the conveyance OM&R cost component, or the conveyance pumping OM&R cost component heretofore calculated by the United States pursuant to its ratesetting policies for the Project to Water Delivery Contractors, or Parties Entitled to Utilize or Receive Other Water, except to the extent financial obligations otherwise properly included in such components have been incurred by the United States prior to the Effective Date of this Agreement and have not been included as an expense therein under the ratesetting policies for the Project.

OPINIONS AND DETERMINATIONS

17. (a) Where the terms of this Agreement provide for actions to be based upon the opinion or determination of either Party, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious or unreasonable opinions or determinations. The Parties, notwithstanding any other provisions of this Agreement, expressly reserve the right to relief from and appropriate adjustment for any such arbitrary, capricious or unreasonable opinion or determination. Each opinion or determination by either Party shall be provided in a timely manner.
(b) The Contracting Officer shall have the right to make determinations necessary to administer this Agreement that are consistent with the expressed and implied provisions of this Agreement, the laws of the United States and the State of California, and rules and regulations applicable to the Contracting Officer. Such determinations shall be made in consultation with the Authority to the extent reasonably practicable.

CHARGES FOR DELINQUENT PAYMENTS

18. (a) The Authority shall be subject to interest, administrative and penalty charges on delinquent payments. If a payment is not received by the due date, the Authority 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, the Authority shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent ninety (90) days or more, the Authority 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. The Authority 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) The Authority 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 the Authority has the responsibility for care, operation, and maintenance by its employees or agents under this Agreement. The Authority shall also take reasonable precautions to prevent such contamination or pollution by third parties.

(b) The Authority 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.
Upon discovery of any event which may or does result in contamination or pollution of Federal Project lands, Project water, or Project Works, the Authority 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.

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

The Authority 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.

The Authority 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.

Reclamation agrees to provide information necessary for the Authority, using reasonable diligence, to comply with the provisions of this Article.

ASSIGNMENT LIMITED: SUCCESSORS AND ASSIGNS OBLIGATED

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

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 the Authority 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 the Authority 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) The Authority 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:


(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

(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


(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, the Authority 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) The Authority 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 the Authority 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. The Authority 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 the Authority shall be investigated by the Contracting Officer’s Office of Civil Rights.
25. During the performance of this Agreement, the Authority agrees as follows:

(a) The Authority will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Authority 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. The Authority 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) The Authority will, in all solicitations or advertisements for employees placed by or on behalf of the Authority, 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) The Authority 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 the Authority’s legal duty to furnish information.

(d) The Authority 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 the Authority’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) The Authority 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) The Authority 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 the Authority’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 the Authority 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) The Authority 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. The Authority 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 the Authority becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Authority 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 the Authority, when mailed, postage prepaid, or delivered to the Area Manager, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, Bureau of Reclamation, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Tehama-Colusa Canal Authority, P.O. Box 1025, Willows, CA 95988. 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.

MODIFICATIONS

27. Each Party reserves the right to propose modifications to this Agreement at any time while it is in effect. If either Party proposes any such modifications, the Parties shall promptly attempt to negotiate in good faith an amendatory Agreement to accommodate the proposed modifications.

CHANGES IN AUTHORITY’S ORGANIZATION

28. While this Agreement is in effect, no change may be made in the Authority’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 the Authority 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

29. (a) The Authority, 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) The Authority will comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Authority; 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 the Authority 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

30. 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, the Authority 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

31. (a) The Authority 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) The Authority 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 the Authority has operation and maintenance responsibility. The Authority is responsible for exercising the level of precaution necessary in
meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for reproduction 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 the Authority’s vehicles, watercraft, or equipment is required prior to entering Federal Project land or waters, the decontamination shall be performed by the Authority 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, the Authority 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 the Authority 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, the Authority 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

32. (a) All payments from the Authority 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, the Authority shall furnish the Contracting Officer with the Authority’s taxpayer’s identification number (TIN). The purpose for requiring the Authority’s TIN is for collecting and reporting any delinquent amounts arising out of the Authority’s relationship with the United States.

SUSTAINABLE OPERATION AND MAINTENANCE

33. The Authority 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.
COOPERATION/MUTUAL AID

34. (a) In situations which the Contracting Officer and the Authority determine to be emergencies or other extraordinary circumstances affecting the Project, including without limitation, the Project Works, either the Contracting Officer or the Authority may request the other to furnish personnel, materials, tools, equipment, or other resources. The Party so requested shall immediately cooperate with the other and render such assistance as the Party so requested determines to be available. Unless otherwise agreed, the Party making the request, within sixty (60) days of receipt of properly itemized bills from the other Party, shall reimburse the Party rendering such assistance for all costs properly and reasonably incurred by it in such performance. Such costs shall be determined on the basis of current charges or rates charged by the Party rendering the assistance.

(b) In instances in which the total costs of responding to emergencies or other extraordinary circumstances, whether due to a single event or condition or to multiple events or conditions, exceed or substantially deplete the Authority’s minimum reserve fund established pursuant to Article 14(b), the Contracting Officer agrees to cooperate with the Authority (1) to promptly identify sources of funding, including but not limited to, sources available from or to the United States; (2) to allocate responsibility for paying the costs of responding to such emergencies or other extraordinary circumstances, including but not limited to by determining Capital Improvements under Article 5(a); and (3) to develop a timetable for repayment of such costs that are provided by the United States and are allocated to the Authority.

AGREEMENT DRAFTING CONSIDERATIONS

35. 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 contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: ________________________________
Regional Director
Interior Region 10: California-Great Basin
Bureau of Reclamation

Tehama-Colusa Canal Authority

(SEAL)

By: ________________________________
Chair, Board of Directors

Attest:

______________________________
Secretary