

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
CITY OF AVENAL  
PROVIDING FOR PROJECT WATER SERVICE  
SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT

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1        THIS CONTRACT, made this 22 day of JANUARY, 20 21, in  
2        pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or  
3        supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
4        as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
5        July 2, 1956 (70 Stat. 483), June 3 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12,  
6        1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of  
7        October 30, 1992 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for  
8        the Nation Act (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f)  
9        ("WIIN Act"), all collectively hereinafter referred to as Federal Reclamation law, between the  
10       UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by  
11       the officer executing this Contract, hereinafter referred to as the Contracting Officer, and CITY  
12       OF AVENAL, hereinafter referred to as the Contractor, a public agency of the State of  
13       California, duly organized, existing, and acting pursuant to the laws thereof;

14       WITNESSETH, That:

EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed the Delta Division Facilities, including the San Luis Unit facilities (which include the San Luis Canal, the Coalinga Canal, the Pleasant Valley Pumping Plant, and the Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4<sup>th</sup>] WHEREAS, on June 23, 1986, the Contractor assumed Contract No. 14-06-200-4619A between the United States of America and Avenal Community Services District; and

[5<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-4619A, as amended, which provided the Contractor, Project Water from the Project facilities from November 29, 1969, to December 31, 2008; and

[6<sup>th</sup>] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into binding agreements identified as Binding Agreement No. 14-06-200-4619A-BA,



which sets out the terms pursuant to which the Contractor agreed to renew its contract before the expiration date after completion of the Programmatic Environmental Impact Statement (PEIS) and other appropriate environmental documentation and negotiation of a renewal contract; and which also sets out the consequences of a subsequent decision not to renew; and

[7<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Delta Division and San Luis Unit Contract Number 14-06-200-4619A-IR1 and subsequent Interim Renewal Contracts 14-06-200-4619A-IR2 through 14-06-200-4619A-IR6, the last of which is hereinafter referred to as the “Existing Contract”, which established terms for the delivery of Project Water to the Contractor from the Delta Division and San Luis Unit, and which was in effect the date the WIIN Act was enacted; and

[8<sup>th</sup>] WHEREAS, on December 16, 2016, the 114<sup>th</sup> Congress of the United States of America enacted the WIIN Act; and

[9<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users’ association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.”; and

[10<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9

of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

[11<sup>th</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users’ association [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users’ association [Contractor] and their landowners as provided under State law.”; and

[12<sup>th</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this section, any obligations under the Federal Reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

[13<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

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

[15<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Project Water supplies available to it for

reasonable and beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and

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

[17<sup>th</sup>] WHEREAS, at the time of execution of this Contract, the United States is the sole source of water supply to the Contractor]; and

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

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

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

[21<sup>st</sup>] WHEREAS, the parties intend by this Contract to maintain a cooperative relationship in order to achieve their mutual goals; and

[22<sup>nd</sup>] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28, 2000, the United States and the State of California adopted a general target of continuously improving Delta water quality for all uses. The CALFED Agencies' target for providing safe, reliable, and affordable drinking water in a cost-effective way, is to achieve either: (a) average concentrations at Clifton Forebay and other southern and central Delta drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of public health protection using a cost-effective combination of alternative source waters, source control and treatment technologies; and

[23<sup>rd</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments, rescheduling, and conveyance of Project Water and non-Project water under this Contract as tools to minimize the impacts of a Condition of Shortage and to maximize the beneficial use of water; and

[24<sup>th</sup>] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital immediately above; and

[25<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[26<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal Reclamation law on the terms and conditions set forth below;

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

DEFINITIONS

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

(a) "Additional Capital Obligation" shall mean construction costs or other capitalized costs incurred after the Effective Date or not reflected in the Existing Capital Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) ("WIIN Act");

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

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

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

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

(f) "Contract Total" shall mean the maximum amount of water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

(g) "Contractor's Service Area" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto, which may be modified from time to time in accordance with Article 32 of this Contract without amendment of this Contract;

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

(i) "Delta Division Facilities" shall mean those existing and future Project facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the C.W. "Bill" Jones Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir, used to divert, store, and convey water to those Project Contractors entitled to receive water conveyed through the Delta-Mendota Canal;

(j) Omitted

(k) Omitted

(l) "Existing Capital Obligation" shall mean the remaining amount of construction costs or other capitalized costs allocable to the Contractor as described in Section 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, the Final 2020 Ratebooks, as adjusted to reflect payments not reflected in such schedule. The Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit "C", which is incorporated herein by reference;

(m) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting Officer that shall amortize the expenditures for construction properly allocable to the

167 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M  
168 deficits funded, less payments, over such periods as may be required under Federal Reclamation  
169 law, or applicable contract provisions. Interest will accrue on both the construction expenditures  
170 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the  
171 date incurred in the case of costs arising subsequent to October 12 1982, and shall be calculated  
172 in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of 1982.

173 The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with  
174 Section 426.2 of the Rules and Regulations for the Reclamation Reform Act of 1982;

175 (n) Omitted

176 (o) Omitted

177 (p) "Irrigation Water" shall mean the use of Project Water to irrigate lands  
178 primarily for the production of commercial agricultural crops or livestock, and domestic and  
179 other uses that are incidental thereto;

180 (q) Omitted

181 (r) "Municipal and Industrial (M&I) Water" shall mean the use of Project  
182 Water for municipal, industrial, and miscellaneous other purposes not falling under the definition  
183 of "Irrigation Water" or within another category of water use under an applicable Federal  
184 authority;

185 (s) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to  
186 the delivery of M&I Water;

187 (t) "Operation and Maintenance" or "O&M" shall mean normal and  
188 reasonable care, control, operation, repair, replacement (other than capital replacement), and  
189 maintenance of Project facilities;

190                   (u)     “Operating Non-Federal Entity” shall mean the entity(ies), its (their)  
191 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of  
192 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this  
193 Contract was entered into, the Operating Non-Federal Entities were the San Luis & Delta-  
194 Mendota Water Authority and, with respect to San Luis Unit facilities, the California Department  
195 of Water Resources, and Westlands Water District;

196                   (v)     “Project” shall mean the Central Valley Project owned by the United  
197 States and managed by the Department of the Interior, Bureau of Reclamation;

198                   (w)     “Project Contractors” shall mean all parties who have contracts for water  
199 service for Project Water from the Project with the United States pursuant to Federal  
200 Reclamation law;

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

204                   (y)     “Rates” shall mean the payments determined annually by the Contracting  
205 Officer in accordance with the then-current applicable water ratesetting policies for the Project,  
206 as described in subdivision (a) of Article 7 of this Contract;

207                   (z)     Omitted

208                   (aa)    “Repayment Obligation” for Water Delivered as Irrigation Water shall  
209 mean the Existing Capital Obligation discounted by  $\frac{1}{2}$  of the Treasury rate, which shall be the  
210 amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN



Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act;

(bb) “Secretary” shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(cc) “Tiered Pricing Component” shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in Article 7 of this Contract and as provided for in Exhibit “B”;

(dd) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

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

(gg) “Year” shall mean the period from and including March 1 of each Calendar Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT – RIGHT TO USE OF WATER

2. (a) This Contract shall be effective February 1, 2021, hereinafter known as the “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and

Charges under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law;

(1) Provided, That the Contracting Officer shall not seek to terminate this Contract for failure to fully or timely pay applicable Rates and Charges by the Contactor, unless the Contracting Officer has first provided at least sixty (60) calendar days written notice to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay, or to diligently commence and maintain full curative payments satisfactory to the Contracting Officer within the sixty (60) calendar days' notice period;

(2) Provided, further, That the Contracting Officer shall not seek to suspend making water available or declaring Water Made Available pursuant to this Contract for non-compliance by the Contractor with the terms of this Contract or Federal law, unless the Contracting Officer has first provided at least thirty (30) calendar days written notice to the Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully cured within the thirty (30) calendar days' notice period. If the Contracting Officer has suspended making water available pursuant to this paragraph, upon cure of such non-compliance satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

(3) Provided, further, That this Contract may be terminated at any time by mutual consent of the parties hereto.

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage

limitations, reporting, and Full Cost pricing provisions of the Reclamation Reform Act of 1982 shall no longer be applicable to the Contractor pursuant to this Contract.

(c) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of June 21, 1963 (77 Stat. 68), to the extent allowed by law.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 10 and 11 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 3,500 acre-feet of Project Water for M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 22 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of any water service contract between the Contracting Officer and the Contractor in effect immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to

implement. The Existing Contract, which evidences in excess of 39 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for any required biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under this Article during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term contractual commitments, water rights and operational constraints, long-term Project Contractors

shall have a first right to acquire such water, including Project Water made available pursuant to Section 215 of the Reclamation Reform Act of 1982.

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

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 10 or subdivision (b) of Article 11 of this Contract.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivision (r) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The

Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

TIME FOR DELIVERY OF WATER

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

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

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the

Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 8 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s) thereto satisfactory to the Contracting Officer, submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

(b) The Contracting Officer, either directly or indirectly through its written agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to the Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

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

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contracting Officer either directly or indirectly through its written agreements(s) with the



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

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, and assigns, including any responsible Operating Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,

including any responsible Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity(ies).

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that, unless the Contractor establishes an alternative measurement program satisfactory to the Contracting Officer, all surface water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water; to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 22 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 22 of this Contract.

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

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

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

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

RATES, METHOD OF PAYMENT FOR WATER AND ACCELERATED  
REPAYMENT OF FACILITIES

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other obligations shall be determined in accordance with: (i) the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing Component in accordance with policies for M&I Water. The Contractor's Rates shall be established to

recover its estimated reimbursable costs included in the operation and maintenance component of the Rate and amounts established to recover deficits and other charges, if any, including construction costs as identified in the following subdivisions.

(2) In accordance with the WIIN Act, the Contractor's allocable share of Project construction costs will be repaid pursuant to the provisions of this Contract.

(A) The amount due and payable to the United States, pursuant to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth as a lump sum payment for M&I as set forth in Exhibit "C". The Repayment Obligation is due in lump sum by April 1, 2021 as provided by the WIIN Act. Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

(B) Additional Capital Obligations that are not reflected in, the schedules referenced in Exhibit "C" and properly assignable to the Contractor, shall be repaid as prescribed by the WIIN Act without interest except as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B), however, will be considered under subdivision (b) of this Article. A separate agreement shall be

established by the Contractor and the Contracting Officer to accomplish repayment of the Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the WIIN Act, subject to the following:

(1) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer notifies the Contractor of the Additional Capital Obligation; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

(2) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs properly assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law and Project ratesetting policy; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

(b) In the event that the final cost allocation referenced in Section 4011(b) of the WIIN Act determines that the costs properly assignable to the Contractor are greater than what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be not less than one (1) year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the Contractor and Contracting Officer. In the event that the final cost allocation indicates that the costs properly assignable to the

Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such overpayment as an offset against any outstanding or future obligations of the Contractor, with the exception of Restoration Fund charges pursuant to Section 3407(d) of Pub. L. 102-575.

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

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

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

(d) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the



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

(e) The Contractor shall also make a payment in addition to the Rate(s) in



subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating Non-Federal Entity(ies), by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and Tiered Pricing Component shall be computed pursuant to Article 17 of this Contract.

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

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

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

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

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

(k) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water

Rate.. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate.

(2) Omitted.

(3) For purposes of determining the applicability of the Tiered Pricing Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor transfers to others but shall not include Project Water transferred to the Contractor, nor shall it include the additional water provided to the Contractor under the provisions of subdivision (f) of Article 3 of this Contract.

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

(m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the

transferred Project Water to the transferee's point of delivery.

(n-o) Omitted

SALES, TRANSFERS, OR EXCHANGES OF WATER

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

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such

documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five (5)-year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

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

#### APPLICATION OF PAYMENTS AND ADJUSTMENTS

9. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount

of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for in this Contract. All credits and refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 21 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 21 of this Contract.

#### TEMPORARY REDUCTIONS – RETURN FLOWS

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

(b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein

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

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

#### CONSTRAINTS ON THE AVAILABILITY OF WATER

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

(b) If there is a Condition of Shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then, except as provided in subdivision (a) of Article 15 of this Contract, no liability shall accrue against the United States or any of its officers,



agents, or employees for any damage, direct or indirect, arising therefrom.

(c) Project Water furnished under this Contract will be allocated in accordance with the then-existing Project M&I Water Shortage Policy. Such policy shall be amended, modified, or superseded only through a public notice and comment procedure.

(d) By entering into this Contract, the Contractor does not waive any legal rights or remedies it may have to file or participate in any administrative or judicial proceeding contesting: (i) the sufficiency of the Project M&I Water Shortage Policy; (ii) the substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is implemented in order to allocate Project Water between M&I and irrigation purposes; Provided, That the Contractor has commenced any such judicial challenge or any administrative procedures necessary to institute any judicial challenge within six months of the policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall be interpreted to validate or invalidate the Project M&I Water Shortage Policy.

#### RULES, REGULATIONS, AND DETERMINATIONS

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

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



PROTECTION OF WATER AND AIR QUALITY

13. (a) Omitted

(b) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest level possible as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(c) The Contractor 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 Contractor; and shall 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 or Contractor facilities or Project Water provided by the Contractor within its Service Area.

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

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

14. (a) Omitted

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

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the Reclamation Reform Act of 1982,

each as amended, modified, or superseded from time to time. In addition, if electrical power is required to pump non-Project water through the facilities, the Contractor shall be responsible for obtaining the necessary power and paying the necessary charges therefore.

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

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

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

(5) After Project purposes are met, as determined by the Contracting Officer, the United States and Project Contractors entitled to Project Water from Delta Division

Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors. Other Project Contractors shall have a second priority to any remaining capacity of facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors.

OPINIONS AND DETERMINATIONS

15. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek 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. Nothing in this subdivision (a) of this Article is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

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

COORDINATION AND COOPERATION

16. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the O&M of the Project. The communication, coordination, and cooperation regarding O&M 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 issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

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

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

(1) The Contracting Officer will, at the request of the Contractor, assist in the development of integrated resource management plans for the Contractor. Further, the Contracting Officer will, as appropriate, seek authorizations for implementation of

partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

#### CHARGES FOR DELINQUENT PAYMENTS

17. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor 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 90 days or more, the Contractor 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 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest rate charged shall be the greater of either 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 rate charged will 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 charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

#### EQUAL EMPLOYMENT OPPORTUNITY

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

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

(c) The Contractor 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 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 Contractor's legal duty to furnish information.



(d) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(f) The Contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting 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 Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (g) 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 Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

(b) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the Contractor is in arrears in the advance payment of water rates due the United States. The Contractor shall not deliver water under the terms and conditions of this Contract for lands or parties that are in arrears in the advance payment of water rates as levied or established by the Contractor.

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

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

20. (a) The Contractor 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 1973 (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 II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, 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 being 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 Contract, the Contractor 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 Contractor makes this Contract 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 Contractor 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 Contractor 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 Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.



CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

22. (a) Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations). Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of this Article 22 have not yet been

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

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

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

(d) At five (5)-year intervals, the Contractor shall revise its water conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets the Bureau of Reclamation's then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

1012 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1013 shall be described in the Contractor's water conservation plan.

1014 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1015 23. Except as specifically provided in Article 14 of this Contract, the provisions of  
1016 this Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1017 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1018 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1019 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1020 any water user within the Contractor's Service Area acquires or has available under any other  
1021 contract pursuant to Federal Reclamation law.

1022 O&M BY THE SAN LUIS & DELTA – MENDOTA WATER AUTHORITY

1023 24. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
1024 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
1025 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate  
1026 agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San  
1027 Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or  
1028 affect the rights or obligations of the Contractor or the United States hereunder.

1029 (b) The Contracting Officer has previously notified the Contractor in writing  
1030 that the Operation and Maintenance of a portion of the Project facilities which serve the  
1031 Contractor has been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota  
1032 Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal  
1033 Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the

1034 Contracting Officer under the terms and conditions of the separate agreement between the United  
1035 States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1036 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind,  
1037 including any assessment for reserve funds, which the Operating Non-Federal Entity San Luis &  
1038 Delta-Mendota Water Authority or such successor determines, sets, or establishes for the  
1039 Operation and Maintenance of the portion of the Project facilities operated and maintained by the  
1040 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor.  
1041 Such direct payments to Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1042 Authority or such successor shall not relieve the Contractor of its obligation to pay directly to the  
1043 United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing  
1044 Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota  
1045 Water Authority collects payments on behalf of the United States in accordance with the separate  
1046 agreement identified in subdivision (a) of this Article.

1047           (c) For so long as the O&M of any portion of the Project facilities serving the  
1048 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1049 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1050 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1051 being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,  
1052 or its successor.

1053           (d) In the event the Operation and Maintenance of the Project facilities  
1054 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1055 Authority is re-assumed by the United States during the term of this Contract, the Contracting

Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit “B” which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the Operation and Maintenance costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit “B” directly to the United States in compliance with Article 7 of this Contract.

O&M BY THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

25. (a) The O&M of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the California Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity California Department of Water Resources. This separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, described in subdivision (a) of Article 24 of this Contract, all rates, charges, or assessments of any kind, including any assessment for reserve

1078 funds, which Operating Non-Federal Entity California Department of Water Resources, or such  
1079 successor determines, sets, or establishes for the O&M of the conveyance and conveyance  
1080 pumping portion of the Project facilities operated and maintained by Operating Non-Federal  
1081 Entity California Department of Water Resources, or such successor. Such direct payments to  
1082 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor,  
1083 shall not relieve the Contractor of its obligation to pay directly to the United States the  
1084 Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the  
1085 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects  
1086 payments on behalf of the United States in accordance with the separate agreement identified in  
1087 subdivision (a) of Article 24 of this Contract.

1088 (c) For so long as the O&M of any portion of the Project facilities serving the  
1089 Contractor is performed by Operating Non-Federal Entity California Department of Water  
1090 Resources, or any successor thereto, the Contracting Officer shall adjust those components of the  
1091 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1092 being performed by Operating Non-Federal Entity California Department of Water Resources, or  
1093 its successor.

1094 (d) In the event the O&M of the Project facilities operated and maintained by  
1095 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the  
1096 United States during the term of this Contract, the Contracting Officer shall so notify the  
1097 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include  
1098 the portion of the Rates and Charges, to be paid by the Contractor for Project Water under this  
1099 Contract representing the O&M costs of the portion of such Project facilities which have been re-

1100 assumed. The Contractor shall, thereafter, in the absence of written notification from the  
1101 Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component  
1102 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of  
1103 this Contract.

1104 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1105 26. The expenditure or advance of any money or the performance of any obligation of  
1106 the United States under this Contract shall be contingent upon appropriation or allotment of  
1107 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1108 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1109 not appropriated or allotted.

1110 BOOKS, RECORDS, AND REPORTS

1111 27. (a) The Contractor shall establish and maintain accounts and other books and  
1112 records pertaining to administration of the terms and conditions of this Contract, including the  
1113 Contractor's financial transactions; water supply data; project operations, maintenance, and  
1114 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
1115 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
1116 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
1117 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws  
1118 and regulations, each party to this Contract shall have the right during office hours to examine  
1119 and make copies of the other party's books and records relating to matters covered by this  
1120 Contract.

1121 (b) Notwithstanding the provisions of subdivision (a) of this Article, no  
1122 books, records, or other information shall be requested from the Contractor by the Contracting  
1123 Officer unless such books, records, or information are reasonably related to the administration or  
1124 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1125 time within which to provide the requested books, records, or information.

1126 (c) At such time as the Contractor provides information to the Contracting  
1127 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided  
1128 to the Operating Non-Federal Entity(ies).



ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

28. (a) The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

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

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

SEVERABILITY

29. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project



1152 Water specified in this Contract available to the Contractor pursuant to the provisions of this  
1153 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1154 RESOLUTION OF DISPUTES

1155 30. Should any dispute arise concerning any provisions of this Contract, or the  
1156 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1157 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1158 Officer referring any matter to the Department of Justice, the party shall provide to the other  
1159 party 30 days' written notice of the intent to take such action; Provided, That such notice shall  
1160 not be required where a delay in commencing an action would prejudice the interests of the party  
1161 that intends to file suit. During the 30-day notice period, the Contractor and the Contracting  
1162 Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically  
1163 provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor  
1164 or the United States may have.

1165 OFFICIALS NOT TO BENEFIT

1166 31. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
1167 the Contractor shall benefit from this Contract other than as a water user or landowner in the  
1168 same manner as other water users or landowners.

1169 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1170 32. (a) While this Contract is in effect, no change may be made in the  
1171 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other  
1172 changes which may affect the respective rights, obligations, privileges, and duties of either the  
1173 United States or the Contractor under this Contract, including, but not limited to, dissolution,  
1174 consolidation, or merger, except upon the Contracting Officer's written consent.

1175 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1176 Officer will notify the Contractor of any additional information required by the Contracting

1177 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1178 schedule for timely completion of the process. Such process will analyze whether the proposed  
1179 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;  
1180 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or  
1181 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)  
1182 have an impact on any Project Water rights applications, permits, or licenses. In addition, the  
1183 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be  
1184 responsible for all costs incurred by the Contracting Officer in this process, and such costs will  
1185 be paid in accordance with Article 21 of this Contract.

#### 1186 FEDERAL LAWS

1187 33. By entering into this Contract, the Contractor does not waive its rights to contest  
1188 the validity or application in connection with the performance of the terms and conditions of this  
1189 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with  
1190 the terms and conditions of this Contract unless and until relief from application of such Federal  
1191 law or regulation to the implementing provision of the Contract is granted by a court of  
1192 competent jurisdiction.

#### 1193 NOTICES

1194 34. Any notice, demand, or request authorized or required by this Contract shall be  
1195 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1196 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
1197 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,  
1198 postage prepaid, or delivered to the City of Avenal, 919 Skyline Boulevard, Avenal, California  
1199 93204. The designation of the addressee or the address may be changed by notice given in the  
1200 same manner as provided in this Article for other notices.

1201 CERTIFICATION OF NONSEGREGATED FACILITIES

1202 35. The Contractor hereby certifies that it does not maintain or provide for its  
 1203 employees any segregated facilities at any of its establishments and that it does not permit its  
 1204 employees to perform their services at any location under its control where segregated facilities  
 1205 are maintained. It certifies further that it will not maintain or provide for its employees any  
 1206 segregated facilities at any of its establishments and that it will not permit its employees to  
 1207 perform their services at any location under its control where segregated facilities are  
 1208 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
 1209 Employment Opportunity clause in this Contract. As used in this certification, the term  
 1210 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
 1211 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
 1212 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
 1213 facilities provided for employees which are segregated by explicit directive or are in fact  
 1214 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
 1215 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
 1216 identical certifications from proposed subcontractors for specific time periods) it will obtain  
 1217 identical certifications from proposed subcontractors prior to the award of subcontracts  
 1218 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
 1219 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
 1220 following notice to such proposed subcontractors (except where the proposed subcontractors  
 1221 have submitted identical certifications for specific time periods):

1222 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
 1223 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1224 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract  
 1225 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment  
 1226 Opportunity clause. The certification may be submitted either for each subcontract or for all  
 1227 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
 1228 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1229 MEDIUM FOR TRANSMITTING PAYMENT

1230 36. (a) All payments from the Contractor to the United States under this Contract  
 1231 shall be by the medium requested by the United States on or before the date payment is due. The  
 1232 required method of payment may include checks, wire transfers, or other types of payment  
 1233 specified by the United States.

1234 (b) Upon execution of this Contract, the Contractor shall furnish the  
 1235 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
 1236 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
 1237 out of the Contractor's relationship with the United States.

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CONTRACT DRAFTING CONSIDERATIONS

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37. This amended Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this amended Contract pertains. The double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated Articles. Single-spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

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CONFIRMATION OF CONTRACT

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38. Promptly after the execution of this Contract, the Contractor will provide evidence to the Contracting Officer that, pursuant to the laws of the State of California, the Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the Contractor. This Contract will not be binding on the United States until the Contractor provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the Contractor may provide or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the State of California, confirming the proceedings on the part of the Contractor for the authorization of the execution of this Contract.

1254 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1255 day and year first above written.

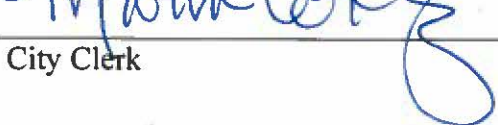
1256 UNITED STATES OF AMERICA

1257 By:   
1258 Regional Director  
1259 Interior Region 10: California-Great Basin  
1260 Bureau of Reclamation

1261 CITY OF AVENAL  
1262 (SEAL)

1263 By:   
1264 Mayor

1265 Attest:

1266 By:   
1267 City Clerk

1254 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1255 day and year first above written.

1256 UNITED STATES OF AMERICA

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY - REVIEWED BY:



OFFICE OF THE REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

1257 TIME STAMP: 1:07 pm, May 11 2020

By: \_\_\_\_\_

1258 Regional Director  
1259 Interior Region 10: California-Great Basin  
1260 Bureau of Reclamation

1261 CITY OF AVENAL

1262 (SEAL)

1263 By: \_\_\_\_\_

1264 Mayor

1265 Attest:

1266 By: \_\_\_\_\_

1267 City Clerk





## City of Avenal

Bureau of Reclamation  
California-Great Basin, Region 10  
Attention: Mr. Stanley Data  
2800 Cottage Way (CGB-440)  
Sacramento, CA 95825

January 13, 2021

**SUBJECT:** Executed Transmittal of Contract No. 14-06-200-4619A-IR1-P (Contract)  
Between the United States and City of Avenal- Delta Division, San Luis Unit -  
Central Valley Project (CVP), California

Dear Bureau of Reclamation,

Attached please find three original blue bound copies of Contract No. 14-06-200-4619A-IR1-P and three original copies of Avenal City Council Resolution 2020-03 authorizing the Mayor to execute said agreement.

Please feel free to contact me should you have any questions.

Sincerely,

Antony V. López, MPA  
City Manager  
Email: [alopez@cityofavenal.us](mailto:alopez@cityofavenal.us)

Attachments:

**Three (3) Signed Contract No. 14-06-200-4619A-IR1-P**  
**Three (3) Original Avenal City Council Resolution 2020-03**

"Oasis in the Sun – Gateway to the Coast"

919 Skyline Blvd., Avenal, CA 93204 Phone: (559) 386-5766 Fax: (559) 386-0629

**BEFORE THE CITY COUNCIL OF THE  
CITY OF AVENAL**

**IN THE MATTER OF:**

A RESOLUTION OF THE CITY  
COUNCIL OF THE CITY OF AVENAL  
TO ENTER INTO A PERPETUAL  
WATER SUPPLY CONTRACT  
BETWEEN THE UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION AND  
THE CITY OF AVENAL PROVIDING  
WATER SERVICE TO THE CITY OF  
AVENAL

**RESOLUTION 2021-03**

**WHEREAS**, the City of Avenal ("City") is solely dependent on the United States Department of the Interior, Bureau of Reclamation (USBR), Central Valley Project (CVP), for its water supply; and

**WHEREAS**, the City first entered USBR water supply contract 14-06-200-4619A, dated November 11, 1969, for a term of 40 years; and

**WHEREAS**, the lack of a completed Programmatic Environmental Impact Statement (PEIS) by the USBR prevented USBR from offering the City a new long-term contract; and

**WHEREAS**, the City entered USBR Interim Renewal contract 14-16-200-4619A-IR1, dated January 1, 2009, for a term of two years through February 28, 2011; and

**WHEREAS**, the City subsequently entered five additional Interim Renewal contracts, IR2 through IR6, each for a term of two years, with IR6 terminating February 28, 2021; and

**WHEREAS**, in 2016 the Congress of the United States of America approved the Water Infrastructure Improvements for the Nation (WIIN) Act; and

**WHEREAS**, Section 4011 of the WIIN Act allows USBR to convert water service contracts into repayment contracts; and

**WHEREAS**, repayment means the City must prepay outstanding USBR construction cost obligations assigned to the City, which costs are presently amortized in the City's USBR service rates; and

**WHEREAS**, all other terms of service and rates of the proposed WIIN Act contract are unchanged from the existing terms of service, and



**WHEREAS**, the term of the proposed WIIN Act contract is perpetual; and

**WHEREAS**, the City Council of the City of Avenal concludes that the proposed WIIN Act contract assures safe and reliable long-term water supply for the city and its residents.

UPON MOTION OF COUNCIL MEMBER GRAVELLE, SECONDED BY COUNCIL MEMBER HERNÁNDEZ, THE FOLLOWING WAS PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL AT AN OFFICIAL SPECIAL MEETING HELD ON January 11, 2021, BY THE FOLLOWING VOTE:

**AYES: LOUIS GRAVELLE, RICARDO VERDUGO, PABLO HERNÁNDEZ, ALEJANDRO RAMIREZ, ALVARO PRECIADO.**

**NOES: NONE**

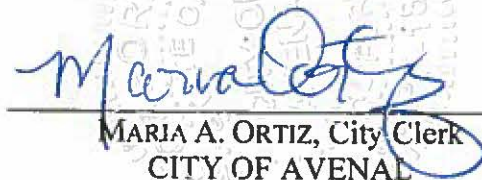
**ABSTAIN: NONE**

**ABSENT: NONE**



Alvaro Preciado, Mayor  
CITY OF AVENAL

ATTEST:



MARIA A. ORTIZ, City Clerk  
CITY OF AVENAL

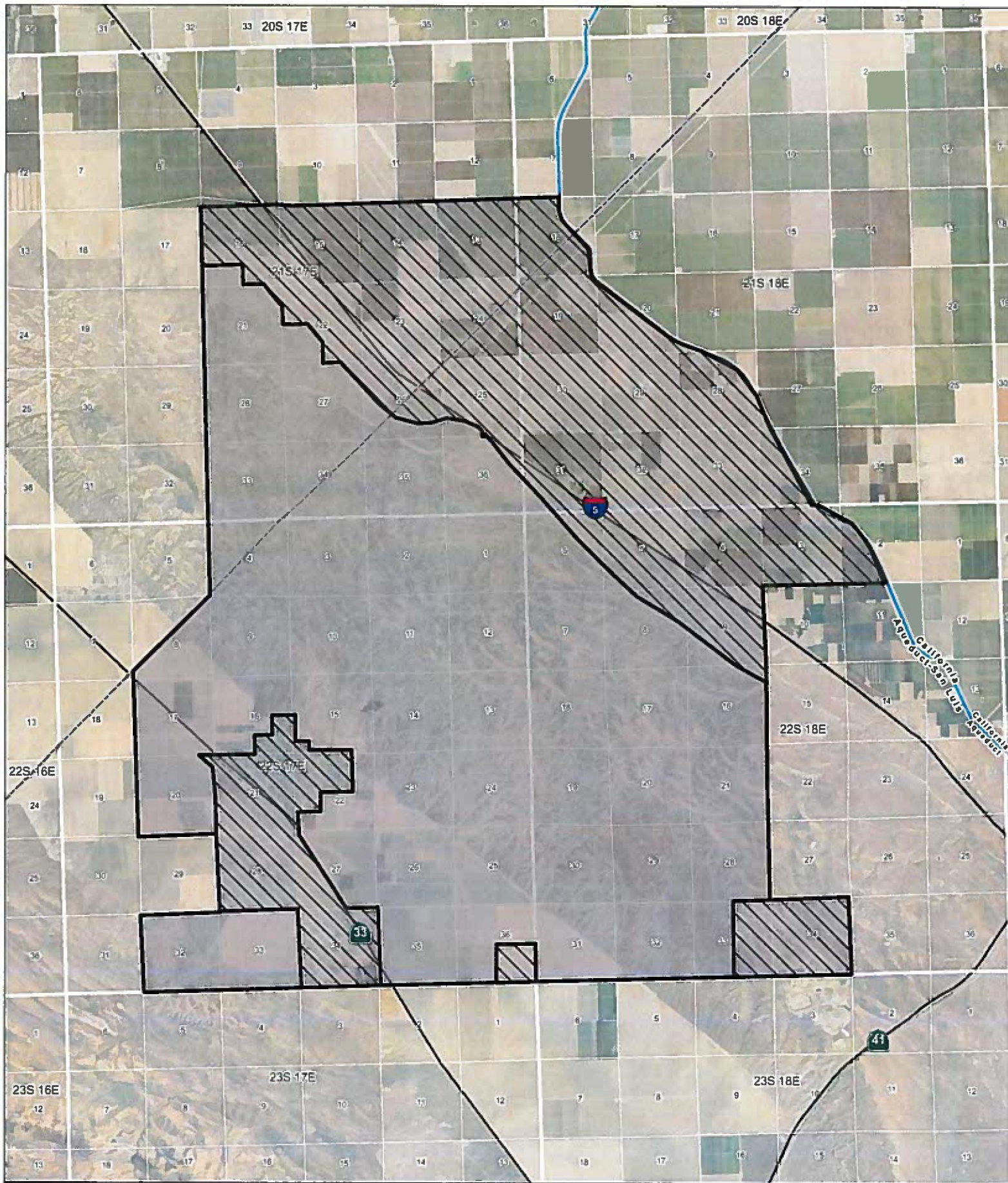
\*\*\*\*\*



**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL:**

1. Found the Recitals above to be true and correct;
2. Approved the terms of the draft of the converted WIIN Act repayment contract, titled "CONTRACT BETWEEN THE UNITED STATES AND CITY OF AVENAL PROVIDING FOR PROJECT WATER SERVICE SAN LUIS UNIT AND DELTA DIVISION AND FACILITIES REPAYMENT", which contains certain blank fields for insertion of relevant dates, information and figures;
3. Authorized the Mayor to sign the finalized WIIN contract containing all relevant dates, information and figures, upon receipt from USBR, and after Staff review and approval as to form by the City Attorney;
4. Directed City staff to diligently bring to the Council for consideration, all necessary or convenient budget adjustments which will enable the City to comply with the repayment requirements of the signed WIIN Act repayment contract; and
5. Authorized the Mayor and relevant City staff to carry out the terms and conditions of this resolution and to take all steps reasonably necessary, proper and/or convenient and/or incidental thereto.

\*\*\*\*\*





-  District Boundary
-  Contractor's Service Area

**City of Avenal**  
 Contract No. 14-06-200-4619A-IR1-P  
 Exhibit A



— BUREAU OF —  
**RECLAMATION**

Date: 7/8/2020  
 File Name: N:\Districts\Contract\city\_of\_avenal\city\_of\_avenal\_20200708.mxd

0 1 2 Miles



805-202-124



**EXHIBIT B  
CITY OF AVENAL  
2020 Rates and Charges  
(Per Acre-Foot)**

	<b>M&amp;I Only</b>
	<b>Water</b>
<b>COST-OF-SERVICE (COS) RATE</b>	
Construction Costs	\$0.00
O&M Components	
Water Marketing	\$6.12
Storage	\$14.99
<b>TOTAL COS RATE</b>	<b>\$21.11</b>
<b>CHARGES AND ASSESSMENTS</b> <i>(Payments in addition to Rates)</i>	
P.L. 102-575 Surcharge (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$21.82
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12

**EXPLANATORY NOTES**

*The CVP M&I Water Shortage Policy per EIS/EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre-feet (AF) are: 2006 = 2,908 AF; 2011 = 2,408 AF; 2017 = 2,120 AF; equals a M&I Historic use average quantity of 2,479 AF.*

**Additional detail of rate components is available on the Internet at:**

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

# Exhibit C<sup>a</sup>

## Repayment Obligation - Current Calculation under the WIIN Act, Section 4011 (a) (2)

### Unpaid Construction Cost from the 2020 Water Rate Books\*

Contractor: City of Avenal  
Facility: San Luis Canal - Fresno  
Contract: 14-06-200-4619A-IR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost	Discount	
Construction Cost	~ \$ -		
2019 Repayment **	\$ -		
2020 Repayment (Estimate) **	\$ -		
Adjusted Construction Cost	\$ -	\$ -	
Intertie Construction Cost (N/A):	\$ -	\$ -	
Total	\$ -	\$ -	
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1 2/1/2021		\$ -	
Payment 2 2/1/2022		\$ -	
Payment 3 2/1/2023		\$ -	
Payment 4 2/1/2024		\$ -	
Total Installment Payments		\$ -	
20 yr CMT Rates - N/A		0.000%	
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))		0.000%	

M&I Construction Cost (2020 M&I Ratebook, Sch A-2Ba)			
	Unpaid Cost		
Construction Cost:	~ \$ 468,477		
2019 Repayment **	\$ 26,037		
2020 Repayment (Estimate) **	\$ 34,873		
Adjusted Construction Cost***:	\$ 407,567		

Calculation Support: Irrigation Lump Sum or First Payment\*\*\*\* 2/1/2021  
Days Until the End of the Fiscal Year 241

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
2021	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2023	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2024	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2025	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2026	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2027	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2028	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2029	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2030	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2031-63				\$ -	\$ -	\$ -	\$ -
Total, Lump Sum Payment		\$ -				\$ -	\$ -

Amount of Reduction, Lump Sum \$ - \$ - \$ -

\* Costs are assumed to be paid and all charges are assumed to be accurate. If at a later date charges are determined to need update, they are still required. Also, unpaid charges are still a requirement under contract.

\*\* 2019 Repayment is based on the Annual Accounting Analysis for the District.

2020 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

\*\*\* Excludes Interest to payment date as Interest will be computed as an annual expense as usual.

\*\*\*\* Contractor has 60 days from the effective date of the contract or installment dates to make payment.

~ M&I Credit from Schedule A-2Ba has been applied to Irrigation Unpaid Amount.

® To be updated. The WIIN Act requires us to have a Constant Maturity Treasury rate based on the effective date of the contract.