

RESOLUTION NO. 2021-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE COVE
APPROVING AN AGREEMENT WITH THE UNITED STATES BUREAU OF
RECLAMATION FOR THE CONVERSION OF THE CITY'S WATER CONTRACT AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF
OF THE CITY OF ORANGE COVE

WHEREAS, the City of Orange Cove desires to convert its existing water contract (Contract Number 14-06-200-5230A) with the United States Bureau of Reclamation (USBR) as permitted by the Water Infrastructure Improvements for the Nation Act; and

WHEREAS, the City's designated negotiators have participated in the negotiation process and an agreement has been drafted; and

WHEREAS, the language in the Agreement has been reviewed by the City's legal counsel and deemed acceptable; and

WHEREAS, the Agreement will be permanent and will not require periodic renewals and will reduce the City's water rates from the USBR; and

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Orange Cove, California, as follows:

1. The above recitals are true and correct and are adopted as the findings of the City Council.
2. The City Council hereby approves the proposed Agreement.
3. The City Council hereby authorizes the City Manager to execute the Agreement on behalf of the City.
4. This Resolution shall take effect from and after the date of its adoption.

This resolution was adopted at a Regular Meeting of the City Council of the City of Orange Cove held on November 16, 2021 by the following vote:

AYES: Lopez, Rodriguez, Cervantes, Rodriguez

NOES: None

ABSENT: Silva

ABSTAIN: None



Victor P. Lopez, Mayor

ATTEST:



June Bracamontes, City Clerk

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

CONTRACT BETWEEN THE UNITED STATES
AND
CITY OF ORANGE COVE
PROVIDING FOR PROJECT WATER SERVICE FROM FRIANT DIVISION AND
FACILITIES REPAYMENT

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Exhibit A	Contractor’s Map or Description of Service Area
Exhibit B	Rates and Charges
Exhibit C	Repayment Obligation

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

CONTRACT BETWEEN THE UNITED STATES
AND
CITY OF ORANGE COVE
PROVIDING FOR PROJECT WATER SERVICE FROM FRIANT DIVISION AND
FACILITIES REPAYMENT

1 THIS CONTRACT, made this 15TH day of DECEMBER, 2021, is entered into
2 pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary
3 thereto, including but not limited to: the Act of August 26, 1937 (50 Stat. 844), as amended and
4 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70
5 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100
6 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), and Title
7 X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349), also referred to as the San Joaquin
8 River Restoration Settlement Act hereinafter referred to as SJRRSA, and the Water
9 Infrastructure Improvements for the Nation Act (Public Law (Pub. L.) 114-322, 130 Stat. 1628),
10 Section 4011 (a-d) and (f) ("WIIN Act"), all collectively hereinafter referred to as Federal
11 Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the
12 United States and THE CITY OF ORANGE COVE, hereinafter referred to as the Contractor, a

public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in California;

WITNESSETH, That

EXPLANATORY RECITALS

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

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

[3rd] WHEREAS, the United States and the Contractor entered into Contract Number 14-06-200-5230A as amended, which established terms for the delivery to the Contractor of Project Water from the Friant Division from February 28, 1956 through February 28, 1996; and

[4th] WHEREAS, the Contractor and the United States have, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a long-term renewal contract identified as Contract Number 14-06-200-5230-LTR1, which provided for continued water service to Contractor through February 28, 2026, which was amended January 22, 2007, and is herein referred to as the "Existing Contract"; and

[5th] WHEREAS, the Contractor and the United States have, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s), identified as Contract Number (s) 14-06-200-5230A-IR1 through 14-06-200-5230A-IR4, which provided for the continued water service to Contractor from March 1, 1996 through February 28, 2001, and subsequently entered into a long-term renewal contract identified as Contract Number 14-06-200-5230-LTR1, which provided for continued water service to Contractor through February 28, 2026, which was amended January 22, 2007, and is herein referred to as the "Existing Contract"; and

[6th] WHEREAS, pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388), the United States has acquired water rights and other rights to the flows of the San Joaquin River, including without limitation the permits issued as the result of Decision 935 by the California State Water Resource Control Board and the contracts described in subdivision (n) of Article 3 of this Contract, pursuant to which the Contracting Officer develops, diverts, stores and delivers Project Water stored or flowing through Millerton Lake in accordance with State and Federal law for the benefit of Project Contractors in the Friant Division and for other specified Project purposes; and

[7th] WHEREAS, the water supplied to the Contractor pursuant to this Contract is Project Water developed through the exercise of the rights described in the sixth (6th) Explanatory Recital of this Contract; and

[8th] WHEREAS, pursuant to subdivision (b) of Article 14 of the Existing Contract, the terms of the Existing Contract are subject to any enforceable order, judgment and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-FM (now styled Natural Resources Defense

Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LKK/GGH) and that the Existing Contract shall be timely modified as necessary to effectuate or facilitate any final order, judgment or settlement in said litigation and which Settlement was subsequently confirmed and implemented through the SJRRSA; and

[9th] WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the WIIN Act; and

[10th] 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

[11th] 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

[12th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into pursuant to Section 4011(a)(1), (?), 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

[13th] 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

[14th] 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

[15th] 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/or has demonstrated projected future demand for water use such that the Contractor has the capability 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

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

[17th] WHEREAS, the economies of regions within the Central Valley Project, including the Contractor's, depend upon the continued availability of water, including water service from the Central Valley Project; and

[18th] 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

[19th] 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 Central Valley 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 Central Valley Project; and

[20th] WHEREAS, during Uncontrolled Seasons, Friant Division Project Contractors utilize undependable Class 2 Water in their service areas to, among other things, assist in the management and alleviation of groundwater overdraft in the Friant Division service area, provide opportunities for environmental enhancement, including restoration of the San Joaquin River below Friant Dam, minimize flooding along the San Joaquin River, encourage optimal water management, and maximize the reasonable and beneficial use of the water; and

[21st] WHEREAS, the parties desire and intend that this Contract not provide a disincentive to the Friant Division Project Contractors continuing to carry out the beneficial activities set out in the Explanatory Recital immediately above; and

[22nd] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[23rd] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[24th] 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 Components specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;

(d) "Class 1 Water" shall mean that supply of water stored in or flowing through Millerton Lake which, subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this Contract, will be available for delivery from Millerton Lake and the Friant-Kern and Madera Canals as a dependable water supply during each Year;

(e) "Class 2 Water" shall mean that supply of water which can be made available subject to the contingencies hereinafter described in Articles 3, 12, and 13 of this Contract for delivery from Millerton Lake and the Friant-Kern and Madera Canals in addition to the supply of Class 1 Water. Because of its uncertainty as to availability and time of occurrence, such water will be undependable in character and will be furnished only if, as, and when it can be made available as determined by the Contracting Officer;

(f) "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 Total;

(g) "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;

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

(i) "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 36 of this Contract without amendment of this Contract;

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

(k) Omitted;

(l) Omitted;

(m) “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, in the Final 2021 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;

(n) Omitted;

(o) Omitted;

(p) Omitted;

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

(r) Omitted;

(s) “Long Term Historic Average” shall mean the average of the final forecast of Water Made Available to the Contractor pursuant to this Contract and the contracts referenced in the third (3rd), fourth (4th) and fifth (5th) Explanatory Recitals of this Contract;

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

(u) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the delivery of M&I Water;

(v) “Operation and Maintenance” or “O&M” shall mean normal and reasonable care, control, operation, repair, replacement (other than capital replacement), and maintenance of Project facilities;

(w) “Operating Non-Federal Entity” shall mean the Friant Water Authority, or its successor, a Non-Federal entity, which has the obligation to operate and maintain all or a portion of the Friant Division Facilities pursuant to an agreement with the United States and which may have funding obligations with respect thereto;

(x) Omitted;

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

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

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

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

(cc) “Repayment Obligation” for Water Delivered as Irrigation Water shall mean the Existing Capital Obligation discounted by $\frac{1}{2}$ of the Treasury rate, which shall be the 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;

(dd) “San Joaquin River Restoration Settlement Act” or “SJRRSA” shall mean Title X, Subtitle A, of the Act of March 30, 2009 (123 Stat. 1349);

(ee) “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;

(ff) “Settlement” shall mean the Stipulation of Settlement dated September 13, 2006, the Order Approving Stipulation of Settlement, and the Judgment and further orders issued by the Court pursuant to the terms and conditions of the Settlement in Natural Resources Defense Council, et al. v. Rodgers, et al., No. CIV-S-88-1658 LLJ/GGH;

(gg) “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”;

(hh) “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;

(ii) “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;

(jj) “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

(kk) "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 January 1, 2022, 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 Contractor, 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 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) 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 FOR THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, the Settlement including the SJRRSA, and subject to the provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make available for delivery to the Contractor from the Project 1,400 acre-feet of Class 1 Water for M&I purposes. The quantity of 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) Omitted.

(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 Project Water or other water furnished pursuant to this Contract. 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 within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with applicable 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 26 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, through this Contract, shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of the 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 Contractor shall comply with the limitations or requirements imposed by environmental documentation applicable to the Contractor and within its legal authority to implement regarding specific activities. 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 of this Contract.

(f) Subject to subdivisions (l) and (n) of this Article of this Contract, 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 in this Article of this Contract during the Year without adversely impacting the Project or other Project Contractors and consistent with the Secretary's legal obligations. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. Subject to subdivisions (l) and (n) of this Article of this Contract, 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.

(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 "carryover." 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 "pre-use." 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 so long as the Contractor shall fulfill all of its obligations under this Contract. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (q) and (t) 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 and other rights described in the sixth (6th) Explanatory Recital of this Contract 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 water rights and other rights described in the sixth (6th) Explanatory Recital of this Contract; Provided, however, 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.

(k) Project Water furnished to the Contractor during any month designated in a schedule or revised schedule submitted by the Contractor and approved by the Contracting Officer shall be deemed to have been accepted by the Contractor as Class 1 Water to the extent that Class 1 Water is called for in such schedule for such month and shall be deemed to have been accepted as Class 2 Water to the extent Class 2 Water is called for in such schedule for such month. If in any month the Contractor diverts a quantity of water in addition to the total amount of Class 1 Water and Class 2 Water set forth in the Contractor's approved schedule or revised schedule for such month, such additional diversions shall be charged first against the Contractor's remaining Class 2 Water supply available in the current Year. To the extent the Contractor's remaining Class 2 Water supply available in the current Year is not sufficient to account for such additional diversions, such additional diversions shall be charged against the Contractor's remaining Class 1 Water supply available in the current Year. To the extent the Contractor's remaining Class 1 Water and Class 2 Water supplies available in the current Year

are not sufficient to account for such additional diversions, such additional diversions shall be charged first against the Contractor's available Class 2 Water supply and then against the Contractor's available Class 1 Water supply, both for the following Year. Payment for all additional diversions of water shall be made in accordance with Article 7 of this Contract.

(l) If the Contracting Officer determines there is a Project Water supply available at Friant Dam as the result of an unusually large water supply not otherwise storable for Project purposes or infrequent and otherwise unmanaged flood flows of short duration, such water will be made available to the Contractor and others under Section 215 of the Act of October 12, 1982, pursuant to the priorities specified below if the Contractor enters into a temporary contract with the United States not to exceed one (1) year for the delivery of such water or as otherwise provided for in Federal Reclamation law and associated regulations. Such water may be identified by the Contractor either (i) as additional water to supplement the supply of Class 1 Water and/or Class 2 Water made available to it pursuant to this Contract or, (ii) upon written notification to the Contracting Officer, as water to be credited against the Contractor's Class 2 Water supply available pursuant to this Contract. The Contracting Officer shall make water determined to be available pursuant to this subsection according to the following priorities: first, to contractors for Class 1 Water and/or Class 2 Water within the Friant Division; second, to contractors in the Cross Valley Division of the Project. The Contracting Officer will consider requests from other parties for Section 215 Water for use within the area identified as the Friant Division service area in the environmental assessment developed in connection with the execution of the Existing Contract.

(m) Nothing in this Contract, nor any action or inaction of the Contractor or Contracting Officer in connection with the implementation of this Contract, is intended to override, modify, supersede or otherwise interfere with any term or condition of the water rights and other rights referred in the sixth (6th) Explanatory Recital of this Contract.

(n) The rights of the Contractor under this Contract are subject to the terms of the contract for exchange waters, dated July 27, 1939, between the United States and the San Joaquin and Kings River Canal and Irrigation Company, Incorporated, et al., (hereinafter referred to as the Exchange Contractors), Contract No. I1r-1144, as amended. The United States agrees that it will not deliver to the Exchange Contractors thereunder waters of the San Joaquin River unless and until required by the terms of said contract, and the United States further agrees that it will not voluntarily and knowingly determine itself unable to deliver to the Exchange Contractors entitled thereto from water that is available or that may become available to it from the Sacramento River and its tributaries or the Sacramento-San Joaquin Delta those quantities required to satisfy the obligations of the United States under said Exchange Contract and under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract I1r-1145, dated July 27, 1939).

(o) Pursuant to and consistent with section 10004 of SJRRSA and Paragraph 16 of the Settlement, the Contracting Officer is required to develop and implement a plan for recirculation, recapture, reuse, exchange or transfer of water released for restoration flows or interim flows, as those terms are defined in the Settlement, to reduce or avoid impacts to water deliveries caused by said restoration flows or interim flows. Water developed through such activities may be made available (i) to the Contractor without the need of an additional contract,

and/or (ii) to others on behalf of the Contractor under terms mutually acceptable to the Contractor and the Contracting Officer that are consistent with the Water Management Goal.

TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's initial declaration of the Water Made Available. The declaration will be updated monthly and more frequently if necessary, based on 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. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Long Term Historic Average. The declaration of Project operations will be expressed in terms of both Water Made Available and the Long Term Historic Average.

(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 10 of this Contract or bank pursuant to subdivision (d) of Article 3 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), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented; Provided, *That* the total amount of water requested in that schedule or revision does not exceed the quantities announced by the Contracting Officer pursuant to the provisions of subdivision (a) of Article 3 of this Contract, and the Contracting Officer determines that there will be sufficient capacity available in the appropriate Friant Division Facilities to deliver the water in accordance with that schedule; Provided, further, *That* the Contractor shall not schedule the delivery of any water during any period as to which the Contractor is notified by the Contracting Officer or Operating Non-Federal Entity that Project facilities required to make deliveries to the Contractor will not be in operation because of scheduled O&M.

(e) The Contractor may, during the period from and including November 1 of each Year through and including the last day of February of that Year, request delivery of any amount of the Class 1 Water estimated by the Contracting Officer to be made available to it during the following Year. The Contractor may, during the period from and including January 1 of each Year (or such earlier date as may be determined by the Contracting Officer) through and including the last day of February of that Year, request delivery of any amount of Class 2 Water estimated by the Contracting Officer to be made available to it during the following Year. Such

water shall hereinafter be referred to as pre-use water. Such request must be submitted in writing by the Contractor for a specified quantity of pre-use and shall be subject to the approval of the Contracting Officer. Payment for pre-use water so requested shall be at the appropriate Rate(s) for the following Year in accordance with Article 7 of this Contract and shall be made in advance of delivery of any pre-use water. The Contracting Officer shall deliver such pre-use water in accordance with a schedule or any revision thereof submitted by the Contractor and approved by the Contracting Officer, to the extent such water is available and to the extent such deliveries will not interfere with the delivery of Project Water entitlements to other Friant Division contractors or the physical maintenance of the Project facilities. The quantities of pre-use Water Delivered pursuant to this subdivision shall be deducted from the quantities of water that the Contracting Officer would otherwise be obligated to make available to the Contractor during the following Year; *Provided, That* the quantity of pre-use water to be deducted from the quantities of either Class 1 Water or Class 2 Water to be made available to the Contractor in the following Year shall be specified by the Contractor at the time the pre-use water is requested or as revised in its first schedule for the following Year submitted in accordance with subdivision (b) of this Article of this Contract, based on the availability of the following Year water supplies as determined by the Contracting Officer.

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 a 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, the Operating Non-Federal Entity, or other appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in the Friant-Kern Canal to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this Article of this Contract.

(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 United States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery established pursuant to subdivision (a) of this Article of this Contract. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity, 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 responsible Operating Non-Federal Entity prior to making a final determination of the quantity delivered for that period of time.

(e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article of this Contract. 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 Project Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including any responsible Operating Non-Federal Entity, 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, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity; *Provided, That* the Contractor is not the Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies) from which the damage claim arose.

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measurement program satisfactory to the Contracting Officer, all surface water delivered for municipal and industrial purposes within the Contractor's Service Area 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, and 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

511 management of the water, to bill water users for water delivered by the Contractor; and, if
512 applicable, to record water delivered for M&I purposes by customer class as defined in the
513 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein
514 contained, however, shall preclude the Contractor from establishing and collecting any charges,
515 assessments, or other revenues authorized by California law.

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

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

(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 on or before the twentieth (20th) 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 ratesetting policy for Irrigation Water adopted in 1988 and 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 Irrigation Water and 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 March 1, 2022 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 (2) 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 (2) 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 Contractor's 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 of this Contract, for the Project Water scheduled to be delivered pursuant to this Contract during the first two (2) 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 of this Contract, 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 sixty (60) days after the delivery of Project Water carried over 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 of this Contract 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 following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (k)(2) of this Article of this Contract. 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/Entities or, if there is no Operating Non-Federal Entity, by the Contracting Officer. Such water delivery report shall be the basis for payment of Charges and Tiered Pricing Components by the Contractor, and shall be provided to the Contractor by the Contracting Officer (as applicable) within five (5) days after the end of the month of delivery. The water delivery report shall be deemed a bill basis for 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 the Tiered Pricing Component shall be computed pursuant to Article 20 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 of this Contract.

(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 of this

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

(2) Omitted.

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

(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 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 in accordance with the then-current Project ratesetting policy.

(n) Omitted.

(o) Omitted.

8. Omitted.

RECOVERED WATER ACCOUNT

9. (a) Notwithstanding any other provisions of this Contract, water delivered to the Contractor under its Recovered Water Account as provided at Paragraph 16(b) of the Settlement and affirmed by Section 10004(a)(5) of the SJRRSA shall be at the total cost of \$10.00 per acre foot. Recovered Water Account water provided to the Contractor shall be administered at a priority for delivery lower than Class 2 Water and higher than Section 215 Water.

(b) The manner in which the Recovered Water Account will be administered will be developed in accordance with subdivision (k) of Article 7 of this Contract, the SJRRSA, and Paragraph 16 of the Settlement.

SALES, TRANSFERS, AND EXCHANGES OF WATER

10. (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 subdivisions (b) and (c) of this Article of this Contract. No such sales, transfers, or exchanges shall be approved absent compliance with appropriate environmental documentation including but not limited to the National Environmental Policy Act (NEPA) and the 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 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, the Contracting Officer has prepared, as appropriate, necessary environmental documentation including, but not limited to, the NEPA and the ESA analyzing annual transfers among Contractors within the same geographical area and the Contracting Officer shall determined that such Project Water sales, transfers, and exchanges comply with applicable law.

(c) Water transfers analyzed in the environmental documentation referenced in subdivision (b) of this Article of this Contract, shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer.

(d) The environmental documentation and the Contracting Officer's compliance determination for transactions described in subdivision (b) of this Article of this Contract shall be reviewed every five (5) 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 sold, transferred, or exchanged within the same geographical area.

(e) For transfers to qualify under subdivision (b) of this Article of this Contract such Project Water sale, transfer, or exchange must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I use, groundwater recharge, groundwater banking, 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

11. (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 One Thousand Dollars (\$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 herein. All credits and refunds of overpayments shall be made within thirty (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 25 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 25 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

12. (a) The Contracting Officer shall make all reasonable efforts to optimize delivery of the Contract Total subject to: (i) the authorized purposes and priorities of the Project; (ii) the requirements of Federal law and the Settlement; and (iii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project.

(b) The Contracting Officer or Operating Non-Federal Entity 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 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 reduction or discontinuance, 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 as seepage or return flow to water being used pursuant to this Contract for surface irrigation or underground storage either 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. For purposes of this subdivision, groundwater recharge, groundwater banking and all similar groundwater activities will be deemed to be underground storage.

CONSTRAINTS ON THE AVAILABILITY OF WATER

13. (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 18 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) The United States shall not execute contracts which together with this Contract, shall in the aggregate provide for furnishing Class 1 Water in excess of 800,000 acre-feet per Year or Class 2 Water in excess of 1,401,470 acre-feet per Year; Provided, That, subject to subdivision (l) of Article 3 of this Contract, the limitation placed on Class 2 Water contracts shall not prohibit the United States from entering into temporary contracts of one year or less in duration for delivery of Project Water to other entities if such water is not necessary to meet the schedules as may be submitted by all Friant Division Project Contractors entitled to receive Class 1 Water and/or Class 2 Water under their contracts. Nothing in this subdivision shall limit the Contracting Officer's ability to take actions that result in the availability of new water supplies to be used for Project purposes and allocating such new supplies; Provided, That the Contracting

Officer shall not take such actions until after consultation with the Friant Division Project
Contractors.

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

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

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

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

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

(f) In the event that in any Year there is made available to the Contractor, by reason of any shortage or apportionment as provided in subdivisions (a), (d), or (e) of this Article of this Contract, or any discontinuance or reduction of service as set forth in subdivision (b) of Article 12 of this Contract, less than the quantity of water which the Contractor otherwise would be entitled to receive hereunder, there shall be made an adjustment on account of the amounts already paid to the Contracting Officer by the Contractor for Class 1 Water and Class 2 Water for said Year in accordance with Article 11 of this Contract.

14. Omitted.

RULES, REGULATIONS, AND DETERMINATIONS

15. (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.

(c) The terms of this Contract are subject to the Settlement and the SJRRSA.

Nothing in this Contract shall be interpreted to limit or interfere with the full implementation of the Settlement and the SJRRSA.

PROTECTION OF WATER AND AIR QUALITY

16. (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

17. (a) Omitted.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States or adverse to the Project or its contractors (i.e., non-Project water), 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:

911 (1) The Contractor may introduce non-Project water into Project
912 facilities and deliver said water to lands within the Contractor's Service Area subject to payment
913 to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate
914 as determined by the Contracting Officer. In addition, if electrical power is required to pump
915 non-project water, the Contractor shall be responsible for obtaining the necessary power and
916 paying the necessary charges therefor.

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

923 (3) Neither the United States nor the Operating Non-Federal Entity
924 shall be responsible for control, care or distribution of the non-Project water before it is
925 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
926 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
927 their respective officers, agents, and employees, from any claim for damage to persons or
928 property, direct or indirect, resulting from Contractor's diversion or extraction of non-project
929 water from any source.

930 (4) Diversion of such non-Project water into Project facilities shall be
931 consistent with all applicable laws, and if involving groundwater, consistent with any
932 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 the Contractor 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.

OPINIONS AND DETERMINATIONS

18. (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 Article of this Contract 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 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

19. (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 operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not 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) 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.

(c) Without limiting the contractual obligations of the Contracting Officer hereunder, nothing in this Contract 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, physical integrity of structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

CHARGES FOR DELINQUENT PAYMENTS

20. (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

21. 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

22. (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 of this Contract, the Contractor shall have no obligation to require advance payment for water rates which it levies.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

23. (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.

24. Omitted.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

25. 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 sixty (60) days after receipt of a

1109 bill and detailed statement submitted by the Contracting Officer to the Contractor for such
1110 specific items of direct cost incurred by the United States for work requested by the Contractor
1111 associated with this Contract plus indirect costs in accordance with applicable Bureau of
1112 Reclamation policies and procedures. All such amounts referred to in this Article of this
1113 Contract shall not exceed the amount agreed to in writing in advance by the Contractor. This
1114 Article of this Contract shall not apply to costs for routine contract administration.

1115 WATER CONSERVATION

1116 26. (a) Prior to the delivery of water provided from or conveyed through
1117 Federally constructed or Federally financed facilities pursuant to this Contract, the
1118 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the
1119 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1120 Regulations).

1121 Additionally, an effective water conservation and efficiency program shall be based on the
1122 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1123 the conservation and efficiency criteria for evaluating water conservation plans established under
1124 Federal law. The water conservation and efficiency program shall contain definite water
1125 conservation objectives, appropriate economically feasible water conservation measures, and
1126 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1127 Contract shall be contingent upon the Contractor's continued implementation of such water
1128 conservation program. In the event the Contractor's water conservation plan or any revised water
1129 conservation plan completed pursuant to subdivision (d) of this Article of this Contract have not
1130 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1131 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
1132 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 Reclamation's then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

28. (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 Operating Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal Entity. That 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, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of this Article of this Contract, all rates, charges or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets or establishes for (i) the O&M

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

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

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity 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 O&M 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(s) specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

BOOKS, RECORDS, AND REPORTS

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

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

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

31. (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

32. 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 thirty (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 (3) 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 Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

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

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

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

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

FEDERAL LAWS

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

37. Omitted.

NOTICES

38. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721 and on behalf of the United States, when mailed, postage prepaid, or delivered

to the City Council of Orange Cove, 633 Sixth Street, Orange Cove, California, 93646. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

MEDIUM FOR TRANSMITTING PAYMENT

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

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

CONTRACT DRAFTING CONSIDERATIONS

40. 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.

CONFIRMATION OF CONTRACT

41. Promptly after the execution of this amended 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.

Under California law, there is no requirement for court validation proceedings or decrees for municipal contractors.

1327 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1328 and year first above written.

1329 **APPROVED AS TO LEGAL FORM AND
SUFFICIENCY - REVIEWED BY:**

THE UNITED STATES OF AMERICA

1330 
1331 **OFFICE OF THE REGIONAL SOLICITOR**
1332 **DEPARTMENT OF THE INTERIOR**
1333

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

1334 (SEAL)

CITY OF ORANGE COVE

1335
1336

By: _____
City Manager

1337 Attest:

1338 By: _____
City Clerk

1327 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1328 and year first above written.


1329 THE UNITED STATES OF AMERICA

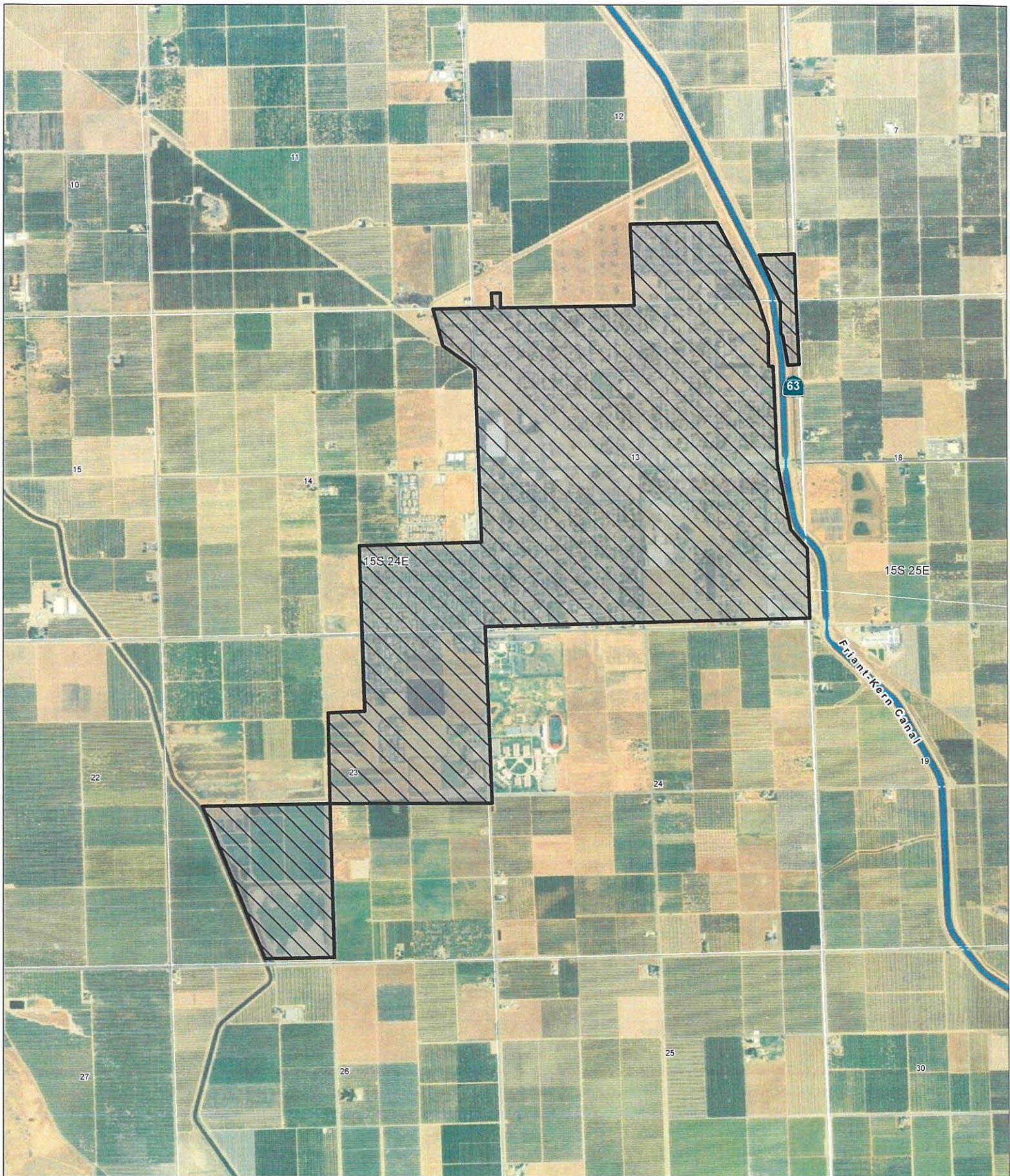
1330 By: 
1331 Regional Director
1332 Interior Region 10: California-Great Basin
1333 Bureau of Reclamation



1334 (SEAL) CITY OF ORANGE COVE

1335 By: 
1336 City Manager

1337 Attest:

1338 By: 
City Clerk



-  District Boundary
-  Contractor's Service Area

City of Orange Cove
 Contract No. 14-06-200-5230-LTR1-P
 Exhibit A



— BUREAU OF —
RECLAMATION

Date: 4/7/2021
 File Name: N:\440\Contracts\city_of_orangecove\city_of_orangecove_20210407.mxd

0 0.25 0.5 Miles



214-202-908

EXHIBIT B
CITY OF ORANGE COVE
2021 Rates and Charges
(Per Acre-Foot)

Description		M&I Water
COST-OF-SERVICE (COS) RATES		
Construction Cost		0
O&M Components		
Water Marketing		\$ 5.97
Storage		\$ 24.62
Conveyance		0
Conveyance Pumping		0
Deficit Cost		\$ 1.31
TOTAL COS RATE		\$ 31.90
CHARGES AND ASSESSMENTS <i>(Payment in addition to COS rates)</i>		
P.L. 102-575 Surcharges		
Restoration Fund Payment [Section 3407(d)(2)(A)]		\$ 22.46
Friant Surcharge [Section 3406 (c)(1)]		\$ 7.00
P.L. 106-377 Assessments		
Trinity Public Utilities District [Appendix B, Section 203]		\$ 0.15

EXPLANATORY NOTES

Additional details of the rate components are available on the Internet at
<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

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

Unpaid Construction Cost from the 2021 Water Rate Books*

Contractor: City of Orange Cove
Facility: Friant-Kern Canal
Contract: 14-06-200-5230-LTR1-P

Irrigation Construction Cost (2021 Irrigation Ratebook, Schedule A-2Ba)

Descripti on	Unpaid Cost	Discount
Construction Cost~	0	0
2020 Repayment (Estimate)**	0	0
Adjusted Construction Cost	0	0
Intertie Construction Cost (N/A):	0	0
Total	0	0
If Paid in Installments (Used 20 yr CMT)		
Payment 1, Due 1/1/2022****		0
Payment 2, Due 1/1/2023****		0
Payment 3, Due 1/1/2024****		0
Payment 4, Due 1/1/2025****		0
Total Installment Payments		0
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 (2021 M&I Ratebook, Sch A-2Ba)

Description	Unpaid Cost
Construction Cost	\$ (22,316)
2020 Repayment (Estimate) **	\$ 0
Adjusted Construction Cost***:	\$ (22,316)

Calculation Support: Irrigation Lump Sum or First Payment****
Days Until the End of the Fiscal Year

1/1/2022
272

Unpaid Allocated Construction Cost = UACC

Unpaid Intertie Construction Cost = UICC

UACC Fiscal Year	UACC Beginning Balance	UACC Straight Line Repayment	UACC Present Value	UICC Beginning Balance	UICC Straight Line Repayment	UICC Present Value	Total Present Value
2021	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2022	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2023	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2024	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2025	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2026	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2027	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2028	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2029	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2030	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2031-2063	-	-	-	-	-	-	-
Total Lump Sum Payment			\$0			\$0	\$0
Amount of Reduction, Lump Sum			\$0			\$0	\$0

*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.

** 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.

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