

RESOLUTION 2021-169

**APPROVE THE DRAFT CONTRACT BETWEEN THE UNITED STATES  
DEPARTMENT OF INTERIOR BUREAU OF RECLAMATION AND THE CITY FOR  
PROVIDING FOR CENTRAL VALLEY PROJECT WATER SERVICE EFFECTIVE  
DECEMBER 1, 2021, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE  
FINAL CONTRACT**

WHEREAS, in 1974, the City entered into a long-term contract with the United States Department of Interior Bureau of Reclamation (USBR) for providing the Central Valley Project water service from the Delta-Mendota Canal, and

WHEREAS, this contract was for delivery of 10,000 acre-feet of water per year and expired on December 30, 2013, and

WHEREAS, In 2004, the USBR authorized contract assignments between the City and the Banta Carbona Irrigation District (BCID), and the City and the West Side Irrigation District (WSID), and

WHEREAS, the contract assignments provided for delivery of 7,500 acre-feet of water per year (5,000 acre-feet from the BCID contract and 2,500 acre-feet from the WSID contract) from the Delta-Mendota Canal, and

WHEREAS, in 2014, the City also exercised an option for additional delivery of 2,500-acre feet from WSID, and

WHEREAS, USBR and the City have also agreed to aggregate these supplies for a combined contract in the amount of 20,000 acre-feet of water, and

WHEREAS, since 2013, the City and USBR entered into several interim renewal contracts while working to finalize a long-term contract, and

WHEREAS, USBR has determined that the City has fulfilled all of its obligations under the existing contract and USBR intends to assure uninterrupted water service and continuity of the contract in accordance with the terms of the contract, and

WHEREAS, USBR has prepared a long-term contract per Water Infrastructure Improvement for the Nation (WIIN) Act for execution by the City, and

WHEREAS, USBR is presently considering incorporating Executive Order No. 14042 requirements to the attached draft contract, therefore a final contract has not yet been released, and

WHEREAS, the final contract may be updated prior to its execution as required to include any federally mandated COVID-19 related language, and


WHEREAS, the final contract shall not have any substantive changes regarding the provision of water to the City, and

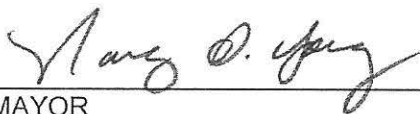
NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the draft Contract No. 14-06-200-7858A-IR1P between the United States Department of Interior Bureau of Reclamation and the City of Tracy providing for Central Valley Project Water Service and authorizes the City Manager to execute the final contract,

which shall be in substantially the same form as the attached and approved by the City Attorney.

The foregoing Resolution 2021-169 was adopted by Tracy City Council on the 16<sup>th</sup> day of November 2021, by the following vote:

AYES: COUNCIL MEMBERS: ARRIOLA, BEDOLLA, DAVIS, VARGAS, YOUNG  
NOES: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE

ATTEST:   
CITY CLERK

  
MAYOR

THE FOREGOING DOCUMENT IS CERTIFIED  
TO BE A CORRECT COPY OF THE ORIGINAL  
ON FILE IN THIS OFFICE.

BY:  CITY CLERK, CITY OF TRACY  
DATE: 12/7/2021

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
THE CITY OF TRACY  
PROVIDING FOR PROJECT WATER SERVICE  
FROM DELTA DIVISION AND FACILITIES REPAYMENT

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
THE CITY OF TRACY  
PROVIDING FOR PROJECT WATER SERVICE  
FROM DELTA DIVISION AND FACILITIES REPAYMENT

1        THIS CONTRACT, made this 15<sup>TH</sup> day of DECEMBER, 2021, in  
2        pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or  
3        supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
4        as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
5        July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
6        October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992  
7        (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act  
8        (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all  
9        collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES  
10       OF AMERICA, hereinafter referred to as the United States, represented by the officer executing  
11       this Contract, hereinafter referred to as the Contracting Officer, and THE CITY OF TRACY,  
12       hereinafter referred to as the Contractor, a public agency of the State of California, duly  
13       organized, existing, and acting pursuant to the laws thereof;

14       WITNESSETH, That:

EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related facilities which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

[4<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Contract No. 14-06-200-7858A, as amended, which established terms for the delivery to the Contractor of up to ten thousand (10,000) acre-feet of Project Water from the Delta Division Facilities from July 22, 1974, through December 13, 2013; and

[5<sup>th</sup>] WHEREAS, the Contractor and the United States also entered into two separate interim renewal contracts, Contract No. 14-06-200-4305A-IR13-B and Contract No. 7-07-20-W0045-IR13-B, which in the aggregate, established the terms for the delivery to the Contractor of up to 7,500 acre-feet of Project Water from the Delta-Mendota Canal through February 28, 2014; and

[6<sup>th</sup>] WHEREAS, on December 31, 2013, the Contractor and the United States, pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), entered into Interim Renewal Contract No. 14-06-200-7858A-IR1 which renewed 14-06-200-7858A, and which also incorporated the terms and conditions of Interim Renewal Contract No. 7-07-20-W0045-IR13-B dated February 29, 2012, and Interim Renewal Contract No. 14-06-200-4305A-IR13-B dated February 29, 2013, and which provided for the continued delivery of up to 17,500 acre-feet of Project Water through February 29, 2016 (hereinafter referred to as the “Interim Renewal Contract”); and

[7<sup>th</sup>] WHEREAS, based on this incorporation, Contract Nos. 7-07-20-W0045-IR13-B and 14-06-200-4305A-IR13-B were superseded and replaced by the Interim Renewal Contract which establishes the Contractor’s rights and obligations for water service from the Project; and

[8<sup>th</sup>] WHEREAS, pursuant to an August 21, 2001 “Agreement for Assignment of Entitlement to CVP Water Between the City of Tracy and The West Side Irrigation District,” as amended on September 11, 2002, the Contractor obtained an option to purchase 2,500 acre-feet of The West Side Irrigation District’s entitlement to Project Water under Contract No. 7-07-20-W0045-IR7 and the Contractor exercised that option on January 30, 2014; and

[9<sup>th</sup>] WHEREAS, the Interim Renewal Contract was amended to also include the 2,500 acre-feet from The West Side Irrigation District when the option was exercised; and

[10<sup>th</sup>] WHEREAS, the United States and the Contractor 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 No. 14-06-200-7858A-IR2 and

subsequent Interim Renewal Contract 14-06-200-7858A-IR3, hereinafter referred to as the Existing Contract, which provided for water service to the Contractor from March 1, 2016 through February 28, 2022; and

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

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

[13<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195);” and “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

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



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

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

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

[18<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
reasonable and beneficial use and expects to utilize fully for reasonable and beneficial use the  
quantity of Project Water to be made available to it pursuant to this Contract; and

[19<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by  
urban and agricultural areas within California for more than 46 years, and is considered by the  
Contractor as an essential portion of its water supply; and

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

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

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

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

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

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

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

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

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

DEFINITIONS

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

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

(b) “Assigned Water” shall mean all Project water supply acquired through assignment from the Banta Carbona Irrigation District, assignment agreement No.14-06-200-4305A-B, dated February 27, 2004, and acquired through assignment from The West Side Irrigation District, assignment agreement No. 7-07-20-W0045-B dated February 27, 2004. Prior to execution of this Contract, the Assigned Water has been delivered to the Contractor pursuant to the Existing Contract;

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

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

(e) "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;

(f) "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;

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

(h) "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 34 of this Contract without amendment of this Contract;

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

(j) "Delta Division Facilities" shall mean those existing and future Project facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the C.W. "Bill" Jones Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating

Plant, and the San Luis Reservoir, used to divert, store, and convey water to those Project Contractors entitled to receive water conveyed through the Delta-Mendota Canal;

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

(o) Omitted;

186 (p) Omitted;

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

190 (r) Omitted;

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

195 (t) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to  
196 the delivery of M&I Water;

197 (u) "Operation and Maintenance" or "O&M" shall mean normal and  
198 reasonable care, control, operation, repair, replacement (other than capital replacement), and  
199 maintenance of Project facilities;

200 (v) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)  
201 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of  
202 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this  
203 Contract was entered into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota  
204 Water Authority;

205 (w) "Project" shall mean the Central Valley Project owned by the United  
206 States and managed by the Department of the Interior, Bureau of Reclamation;

207 (x) "Project Contractors" shall mean all parties who have contracts for water  
208 service for Project Water from the Project with the United States pursuant to Federal  
209 Reclamation law;

(y) "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;

(z) "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;

(aa) "Recent Historic Average" shall mean the most recent five (5)-year average of the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding contract(s);

(bb) "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;

(cc) "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;

(dd) "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";

(ee) “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;

(ff) “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;

(gg) “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

(hh) “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 TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 20,000 acre-feet of Project Water for M&I purposes. Water Delivered to the Contractor in accordance with

this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement prepared pursuant to Section 3404(c) of the CVPIA projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years prior to execution of the Existing Contract, the Recent Historic Average Water Made Available to the Contractor was 8,107 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

(d) The Contractor shall make reasonable and beneficial use of all Project Water or other water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan

submitted pursuant to Article 25 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of any water service contract between the Contracting Officer and the Contractor in effect immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of 46 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for any required biological assessment(s) prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

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

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

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract

shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

#### TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 each Calendar Year, the Contracting Officer shall announce the Contracting Officer's expected declaration of the Water Made Available. Such declaration will be expressed in terms of both Water Made Available and the Recent Historic Average and will be updated monthly, and more frequently if necessary, based on the then-

current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Recent 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 9 of this Contract during any Year.

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

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contracting Officer either directly or indirectly through its written agreements(s) with the Operating Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting Officer at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal

Entity(ies), if any, prior to making a final determination of the quantity delivered for that period of time.

(e) Absent a separate contrary written agreement with the Contractor, neither the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond delivery points specified in subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such 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, and assigns, including any responsible Operating Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns, including any responsible Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of its officers, employees, agents, and assigns, including any responsible Operating Non-Federal Entity(ies); 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 measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water; to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 25 of this Contract.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the M&I service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time

schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

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

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN

Act, as set forth in Exhibit "C", and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other obligations shall be determined in accordance with: (i) the Secretary's 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 months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B."

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

(d) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for

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

(e) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month 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. The payments shall be consistent with the quantities of M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill

for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

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

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

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



599 disposition of all Project and Contractor revenues, and a summary of all water delivery  
600 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
601 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

609 (k) (1) Beginning at such time as deliveries of Project Water in a Year  
610 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
611 delivery the Contractor shall make an additional payment to the United States equal to the  
612 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
613 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
614 Contract Total, shall equal one-half of the difference between the Rate established under  
615 subdivision (a) of this Article and the M&I Full Cost Water Rate, whichever is applicable. The  
616 Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the  
617 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of  
618 this Article and (ii) the M&I Full Cost Water Rate, whichever is applicable. For all Water  
619 Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80  
620 percent of the Contract Total, this increment shall be deemed to be divided between M&I Water

in the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

(2) Omitted.

(3) For purposes of determining the applicability of the Tiered Pricing

Component pursuant to this Article, Water Delivered shall include Project Water that the

Contractor transfers to others but shall not include Project Water transferred to the Contractor,

nor shall it include the additional water provided to the Contractor under the provisions of

subdivision (f) of Article 3 of this Contract.

(l) For the term of this Contract, Rates applied under the respective

ratesetting policies will be established to recover only reimbursable O&M (including any

deficits) and capital costs of the Project, as those terms are used in the then-current Project

ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is

applicable in accordance with the relevant Project ratesetting policy. Changes of significance in

practices which implement the Contracting Officer's ratesetting policies will not be implemented

until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,

need, and impact of the proposed change.

(m) Omitted.

(n) Omitted.

8. Omitted.

#### SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be

sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of

California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,

and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five (5)-year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

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

#### APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 24 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 24 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

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

(b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon

709 resumption of service after such discontinuance or reduction, and if requested by the Contractor,  
710 the United States will, if possible, deliver the quantity of Project Water which would have been  
711 delivered hereunder in the absence of such discontinuance or reduction.

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

718 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

724 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting  
725 or other similar operational errors affecting the Project; drought and other physical or natural  
726 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer  
727 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article  
728 17 of this Contract, no liability shall accrue against the United States or any of its officers,  
729 agents, or employees for any damage, direct or indirect, arising therefrom.

730 (c) Omitted.

731 (d) Project Water furnished under this Contract will be allocated in  
732 accordance with the then-existing Central Valley Project M&I Water Shortage Policy. Such  
733 policy shall be amended, modified, or superseded only through a public notice and comment  
734 procedure. As of the date of execution of this Contract, under the existing Central Valley Project

M&I Water Shortage Policy, the Assigned Water is afforded irrigation water reliability.

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

13. Omitted.

#### COMPLIANCE WITH FEDERAL RECLAMATION LAWS

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

#### PROTECTION OF WATER AND AIR QUALITY

15. (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.

(e) Omitted.

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

16. (a) Omitted.

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

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy and the Reclamation Reform Act of 1982, if such Project use power policy is applicable, each as amended, modified, or superseded from time to time. In addition, if electrical power is required to pump non-Project water through the facilities, the Contractor shall be responsible for obtaining the necessary power and paying the necessary charges therefore.



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

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

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

803                               (5)     After Project purposes are met, as determined by the Contracting  
804 Officer, the United States and Project Contractors entitled to Project Water from Delta Division  
805 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be  
806 available by the Contracting Officer for conveyance and transportation of non-Project water prior  
807 to any such remaining capacity being made available to non-Project contractors. Other Project

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

#### OPINIONS AND DETERMINATIONS

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

#### COORDINATION AND COOPERATION

18. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the O&M of the Project. The communication, coordination, and cooperation regarding O&M shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall

extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

#### CHARGES FOR DELINQUENT PAYMENTS

19. (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

20. 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

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

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

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

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

22. (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.

23. Omitted.

#### CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

to in writing in advance by the Contractor. This Article shall not apply to costs for routine contract administration.

WATER CONSERVATION

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

Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of this Article 25 have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.



1004                   (b)     Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1005   Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1006   Contractor shall implement the Best Management Practices identified by the time frames issued  
1007   by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I  
1008   Water unless any such practice is determined by the Contracting Officer to be inappropriate for  
1009   the Contractor.

1010                   (c)     The Contractor shall submit to the Contracting Officer a report on the  
1011   status of its implementation of the water conservation plan on the reporting dates specified in the  
1012   then-existing conservation and efficiency criteria established under Federal law.

1013                   (d)     At five (5)-year intervals, the Contractor shall revise its water  
1014   conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating  
1015   water conservation plans established under Federal law and submit such revised water  
1016   management plan to the Contracting Officer for review and evaluation. The Contracting Officer  
1017   will then determine if the water conservation plan meets the Bureau of Reclamation's then-  
1018   existing conservation and efficiency criteria for evaluating water conservation plans established  
1019   under Federal law.

1020                   (e)     If the Contractor is engaged in direct groundwater recharge, such activity  
1021   shall be described in the Contractor's water conservation plan.

1022                   EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1023                   26.     Except as specifically provided in Article 16 of this Contract, the provisions of  
1024   this Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1025   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

27. (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 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-X0354-X) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority. 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 San Luis & Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-

1048 Mendota Water Authority or such successor. Such direct payments to Operating Non-Federal  
1049 Entity San Luis & Delta-Mendota Water Authority or such successor shall not relieve the  
1050 Contractor of its obligation to pay directly to the United States the Contractor's share of the  
1051 Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-  
1052 Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the  
1053 United States in accordance with the separate agreement identified in subdivision (a) of this  
1054 Article.

1055 (c) For so long as the O&M of any portion of the Project facilities serving the  
1056 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1057 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1058 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1059 being performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1060 or its successor.

1061 (d) In the event the O&M of the Project facilities operated and maintained by  
1062 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by  
1063 the United States during the term of this Contract, the Contracting Officer shall so notify the  
1064 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include  
1065 the portion of the Rates to be paid by the Contractor for Project Water under this Contract  
1066 representing the O&M costs of the portion of such Project facilities which have been re-assumed.  
1067 The Contractor shall, thereafter, in the absence of written notification from the Contracting  
1068 Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the  
1069 revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

28. 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

29. (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, 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, a copy of such information shall be provided to the Operating Non-Federal Entity(ies).

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

30. (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.

1099 (b) The assignment of any right or interest in this Contract by either party  
1100 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1101 written concurrence of said other party.

1102 (c) The Contracting Officer shall not unreasonably condition or withhold  
1103 approval of any proposed assignment.

1104 SEVERABILITY

1105 31. In the event that a person or entity who is neither (i) a party to a Project contract,  
1106 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)  
1107 an association or other form of organization whose primary function is to represent parties to  
1108 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1109 enforceability of a provision included in this Contract and said person, entity, association, or  
1110 organization obtains a final court decision holding that such provision is legally invalid or  
1111 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1112 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such  
1113 final court decision identify by mutual agreement the provisions in this Contract which must be  
1114 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).  
1115 The time periods specified above may be extended by mutual agreement of the parties. Pending  
1116 the completion of the actions designated above, to the extent it can do so without violating any  
1117 applicable provisions of law, the United States shall continue to make the quantities of Project  
1118 Water specified in this Contract available to the Contractor pursuant to the provisions of this  
1119 Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

32. 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 the Department of Justice, the party shall provide to the other party 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

33. 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

34. (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 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 24 of this Contract.

#### FEDERAL LAWS

35. 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.

#### NOTICES

36. 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, Bureau of Reclamation, and on behalf of the United States, when mailed, postage prepaid, or delivered to the City Manager, c/o Public Works Department, 520 Tracy Blvd., Tracy CA 95376. 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

37. (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

1170 required method of payment may include checks, wire transfers, or other types of payment  
1171 specified by the United States.

1172 (b) Upon execution of this Contract, the Contractor shall furnish the  
1173 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1174 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1175 out of the Contractor's relationship with the United States.

1176 CONTRACT DRAFTING CONSIDERATIONS

1177 38. This amended Contract has been negotiated and reviewed by the parties hereto,  
1178 each of whom is sophisticated in the matters to which this amended Contract pertains. The  
1179 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by  
1180 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1181 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.

1182 CONFIRMATION OF CONTRACT

1183 39. Promptly after the execution of this Amendment, the Contractor will provide  
1184 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the  
1185 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the  
1186 Contractor. This Contract will not be binding on the United States until the Contractor provides  
1187 evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet  
1188 the requirements of this Article, the Contractor may provide or the Contracting Officer may  
1189 require a certified copy of a final decree of a court of competent jurisdiction in the State of  
1190 California, confirming the proceedings on the part of the Contractor for the authorization of the  
1191 execution of this Contract.

1192 Under California law, there is no requirement for court validation proceedings or  
1193 decrees for municipal contractors.



1195 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1196 day and year first above written.

1197 UNITED STATES OF AMERICA  
APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY - REVIEWED BY:

  
OFFICE OF THE REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

1198 By: \_\_\_\_\_  
1199 Regional Director  
1200 Interior Region 10: California-Great Basin  
1201 Bureau of Reclamation

1202 CITY OF TRACY  
1203 (SEAL)


1204 By: \_\_\_\_\_  
1205 City Manager

1206 Attest:


1207 By: \_\_\_\_\_  
1208 Secretary



1194 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the  
1195 day and year first above written.

1196 UNITED STATES OF AMERICA

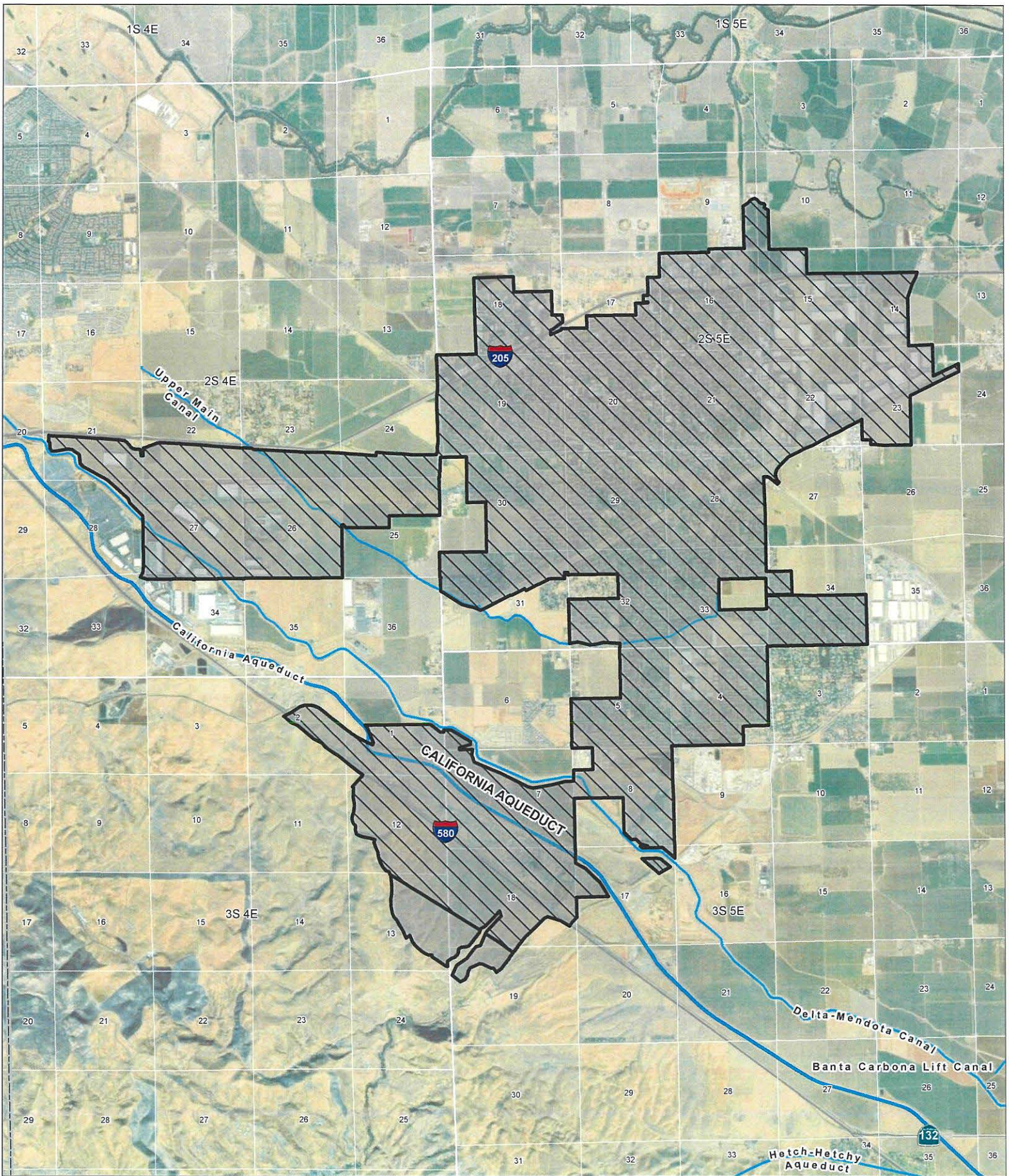
1197 By:   
1198 Regional Director  
1199 Interior Region 10: California-Great Basin  
1200 Bureau of Reclamation



1201 CITY OF TRACY  
1202 (SEAL)

1203 By:   
1204 City Manager Bob Adams  
Interim City Manager

1205 Attest:   
1206 By:   
1207 Secretary City Clerk  
Adrianne Richardson





-  District Boundary
-  Contractor's Service Area

# **City of Tracy** Contract No. 14-06-200-7858A-IR1-P Exhibit A



— BUREAU OF —  
RECLAMATION





**EXHIBIT B  
CITY OF TRACY  
2021 Rates and Charges  
(Per Acre-Foot)**

Description	M&I Water
<b>COST-OF-SERVICE (COS) RATES</b>	
Construction Cost	0
O&M Components	
Water Marketing	\$ 8.97
Storage	\$ 24.62
Deficit Cost	\$ 0.99
<b>TOTAL COS RATE (Tier 1 Rate)</b>	<b>\$ 34.58</b>
<b>CHARGES AND ASSESSMENTS (Payment in addition to COS rates)</b>	
P.L. 102-575 Surcharges	
Restoration Fund Payment [Section 3407(d)(2)(A)]	\$ 22.46
P.L. 106-377 Assessments	
Trinity Public Utilities District [Appendix B, Section 203]	\$ 0.15

**EXPLANATORY NOTES**

*The CVP M&I Water Shortage Policy per EIS/EIR dated August 2015 and Record of Decision dated November 2015 defines the M&I Historic Use as the average quantity of CVP water put to beneficial use during the last three years of water deliveries, unconstrained (100% allocation) by the availability of CVP water for South of the Delta. Contractor's last three years in acre-feet (AF) are: 2011 = 4,927 AF; 2017 = 5,140 AF; 2019 = 7,724 AF; equals a M&I Historic use average quantity of 5,930 AF. In addition, The City of Tracy is the successor of two agriculture water service contract supplies from Banta Carbona Irrigation District of 5,000 acre-feet, and The Westside Irrigation District of up to 5,000 acre-feet. Water Shortages for these quantities will be allocated consistent with the then-existing M&I WSP.*

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 Tracy  
Facility: Friant-Kern Canal  
Contract: 5-07-20-W0428-L/TR1-P

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

Description	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 (2020 M&I Ratebook, Sch A-2Ba)

Description	Unpaid Cost
Construction Cost	\$ 532,202
2020 Repayment (Estimate) **	\$ 15,295
Adjusted Construction Cost***:	\$ 516,907

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.

RESOLUTION 2021-169

**APPROVE THE DRAFT CONTRACT BETWEEN THE UNITED STATES  
DEPARTMENT OF INTERIOR BUREAU OF RECLAMATION AND THE CITY FOR  
PROVIDING FOR CENTRAL VALLEY PROJECT WATER SERVICE EFFECTIVE  
DECEMBER 1, 2021, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE  
FINAL CONTRACT**

WHEREAS, in 1974, the City entered into a long-term contract with the United States Department of Interior Bureau of Reclamation (USBR) for providing the Central Valley Project water service from the Delta-Mendota Canal, and

WHEREAS, this contract was for delivery of 10,000 acre-feet of water per year and expired on December 30, 2013, and

WHEREAS, In 2004, the USBR authorized contract assignments between the City and the Banta Carbona Irrigation District (BCID), and the City and the West Side Irrigation District (WSID), and

WHEREAS, the contract assignments provided for delivery of 7,500 acre-feet of water per year (5,000 acre-feet from the BCID contract and 2,500 acre-feet from the WSID contract) from the Delta-Mendota Canal, and

WHEREAS, in 2014, the City also exercised an option for additional delivery of 2,500-acre feet from WSID, and

WHEREAS, USBR and the City have also agreed to aggregate these supplies for a combined contract in the amount of 20,000 acre-feet of water, and

WHEREAS, since 2013, the City and USBR entered into several interim renewal contracts while working to finalize a long-term contract, and

WHEREAS, USBR has determined that the City has fulfilled all of its obligations under the existing contract and USBR intends to assure uninterrupted water service and continuity of the contract in accordance with the terms of the contract, and

WHEREAS, USBR has prepared a long-term contract per Water Infrastructure Improvement for the Nation (WIIN) Act for execution by the City, and

WHEREAS, USBR is presently considering incorporating Executive Order No. 14042 requirements to the attached draft contract, therefore a final contract has not yet been released, and

WHEREAS, the final contract may be updated prior to its execution as required to include any federally mandated COVID-19 related language, and

WHEREAS, the final contract shall not have any substantive changes regarding the provision of water to the City, and

NOW, THEREFORE, BE IT RESOLVED, That the City Council of the City of Tracy hereby approves the draft Contract No. 14-06-200-7858A-IR1P between the United States Department of Interior Bureau of Reclamation and the City of Tracy providing for Central Valley Project Water Service and authorizes the City Manager to execute the final contract,

which shall be in substantially the same form as the attached and approved by the City Attorney.

The foregoing Resolution 2021-169 was adopted by Tracy City Council on the 16<sup>th</sup> day of November 2021, by the following vote:

AYES:	COUNCIL MEMBERS: ARRIOLA, BEDOLLA, DAVIS, VARGAS, YOUNG
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: NONE
ABSTAIN:	COUNCIL MEMBERS: NONE

ATTEST:

CITY CLERK

MAYOR

A handwritten signature in blue ink, appearing to read "Mary D. Young", is written over a horizontal line.