

Irrigation and M&I
Contract No. 14-06-200-8292A-IR5-P

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

CONTRACT BETWEEN THE UNITED STATES
AND
THE COUNTY OF FRESNO
PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT

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1 THIS CONTRACT, made this **23** day of **November**, 2021, in pursuance
2 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 COUNTY OF
12 FRESNO, hereinafter referred to as the Contractor, a public agency of the State of California,
13 duly organized, existing, and acting pursuant to the laws thereof with its principal place of
14 business in California;

WITNESSETH, That:

EXPLANATORY RECITALS

[1st] 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

[2nd] WHEREAS, the United States constructed the Project facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3rd] WHEREAS, as provided herein, Project Water may be made available for the Contractor in the Sacramento-San Joaquin Delta and/or from the Friant Division and delivered to the Contractor through appropriate federal, state, joint-use and/or local facilities; and

[4th] WHEREAS, the Department of Water Resources of the State of California (DWR) is engaged in the operation of the State Water Project (SWP) pursuant to the laws of the State of California involving the development, transportation, and delivery of water supplies to public agencies throughout the State of California; and

[5th] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost to the United States; and

[6th] WHEREAS, the Contractor has the right to use the Cross Valley Canal for conveyance of the Project Water furnished hereunder; and

[7th] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[8th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-8292A, as amended, which established terms for the delivery to the Contractor of Project Water via the Cross Valley Canal from November 10, 1975, through February 29, 1996; and

[9th] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No(s). 14-06-200-8292A-IR1 through IR18 the current of which is hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor from March 1, 2020 through February 28, 2022; and

[10th] WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the WIIN Act; and

[11th] 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

[12th] 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

[13th] 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

[14th] 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

[15th] 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

[16th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[17th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use and/or has demonstrated projected future demand for water use

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

[18th] WHEREAS, water obtained from the Project has been relied upon by urban and agricultural areas within California for more than 50 years, and is considered by the Contractor as an essential portion of its water supply; and

[19th] 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

[20th] 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

[21st] 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

[22nd] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship in order to achieve their mutual goals; and

[23rd] WHEREAS, the Contractor has utilized or may utilize transfers, exchanges, 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 (Contractors included); and

[24th] WHEREAS, the United States and the Contractor are willing to enter into a separate contract with DWR for conveyance of Project Water through the facilities of the SWP wherein the United States is willing to furnish the necessary power for pumping such water through Harvey O. Banks Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-existing CVP Project use power policy and the terms and conditions specified in such separate contract; and

[25th] WHEREAS, the United States and the Contractor understand that DWR is willing to convey such water through State Facilities; and

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

[27th] 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

130 Stat. 1628) (“WIIN Act”);

131 (b) “Calendar Year” shall mean the period from January 1 through December
132 31, both dates inclusive;

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

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

139 (e) “Contracting Officer” shall mean the Secretary of the Interior’s duly
140 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
141 or regulation;

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

144 (g) “Contractor's Service Area” shall mean the area to which the Contractor is
145 permitted to provide Project Water under this Contract as described in Exhibit “A” attached
146 hereto, which may be modified from time to time in accordance with Article 34 of this Contract
147 without amendment of this Contract;

148 (h) “Cross Valley Canal” shall mean the water conveyance and related works
149 in Kern County constructed by the Contractor and others, which canal is currently operated by
150 Kern County Water Agency, to deliver water from the California Aqueduct;

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

(j) “Eligible Lands” shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended;

(k) “Excess Lands” shall mean all lands in excess of the limitations contained in Section 204 of the Reclamation Reform Act of 1982, other than those lands exempt from acreage limitation under Federal Reclamation law;

(l) “Existing Capital Obligation” shall mean the remaining amount of construction costs or other capitalized costs allocable to the Contractor as described in Section 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, the Final 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;

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

(n) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be delivered in accordance with Section 204 of the Reclamation Reform Act of 1982;

(o) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

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

(q) "Landholder" shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;

(r) "Municipal and Industrial (M&I) Water" shall mean the use of Project Water for municipal, industrial, and miscellaneous other purposes not falling under the definition of "Irrigation Water" or within another category of water use under an applicable Federal authority or water delivered to land holdings operated in units of less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use described in subdivision (p) of this Article;

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

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

(u) "Operating Non-Federal Entity" shall mean either the San Luis & Delta Mendota Water Authority or the Friant Water Authority, their successors or assigns, non-Federal entities which have the obligation to operate and maintain all or a portion of the Project facilities pursuant to written agreements with the United States, and which may have funding obligations with respect thereto;

(v) “Operations Manual” shall mean the manual developed by DWR and Reclamation setting forth procedures, which shall be consistent with this Contract, for working level communications including scheduling and accounting for power and water services.;

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

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

(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-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 ½ 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) "State Facilities" shall mean that portion of the SWP (including DWR's portion of the San Luis Unit joint-use facilities), necessary to convey Project Water from the Sacramento-San Joaquin Delta (Delta) to points of delivery as scheduled pursuant to Article 5 of this Contract;

(ee) "State Water Project" or "SWP" shall mean the California State Water Project;

(ff) "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";

(gg) "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;

(hh) "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;

(ii) "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

(jj) "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 December 1, 2021 hereinafter known as the “Effective Date”, and shall continue so long as the Contractor pays applicable Rates and Charges under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law;

(1) Provided, That the Contracting Officer shall not seek to terminate this Contract for failure to fully or timely pay applicable Rates and Charges by the 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 to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

(3) Provided, further, That this Contract may be terminated at any

time by mutual consent of the parties hereto.

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage limitations, reporting, and Full Cost pricing provisions of the Reclamation Reform Act of 1982, and subdivisions (j) Eligible Lands, (k) Excess Lands, and (n) Ineligible Lands, of Article 1 of this Contract shall no longer be applicable.

(c) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483), to the extent allowed by law.

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

WATER TO BE MADE AVAILABLE AND DELIVERED FOR THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available in the Delta for delivery for the Contractor 3,000 acre-feet of Project Water for irrigation and M&I purposes. The quantity of Water Delivered for the Contractor in accordance with this subdivision shall be scheduled, conveyed, 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 full 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 of the Contract Total set forth in this Contract will not be available for the Contractor in many years. During the most recent five years prior to execution of the Existing Contract, the Recent Historic Average of Water Made Available for the Contractor was 450 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 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 44 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 for the Contractor in addition to the Contract Total under this Article 3 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 for 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 for the Contractor in accordance with applicable statutes, regulations, guidelines, and policies. If the Contracting Officer determines that there is an unusually large water supply not otherwise storable for Project purposes or infrequent and otherwise unmanaged flood flows of short duration from the Friant Division, then Friant Division Project Water may be made available for the Contractor as Section 215 Water under Section 215 of the Reclamation Reform Act of 1982 if the Contractor enters into a temporary contract, not to exceed one (1) year, with the United States for the delivery of such water or, as otherwise provided for in Federal Reclamation law and associated regulations: Provided, That such water shall be first made available to the Friant Division long-term water service and repayment contractors.

(g) The Contractor may request permission to reschedule for use during the subsequent Year some or all of the Water Made Available for 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 for 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 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 for the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (p) and (r) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

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

(k) Conveyance and/or storage of Project Water for the Contractors may be provided subject to terms and conditions of a separate conveyance contract among a Contractor, the United States, and DWR.

(l) If in any Year after the Contracting Officer has approved a schedule or any revision thereof submitted in accordance within subdivision (a) and (b) of Article 4 of this Contract, and if the Contracting Officer is unable to make water available in the quantities and at the times requested in the schedule and the Contractor does not elect to receive and does not

receive such water at other times during such Year, then the Contractor shall be entitled to adjustment(s) for overpayment as provided in subdivision (c) of Article 7 and Article 10 of this Contract.

TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's 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. The declaration of Project operations will be expressed in terms of both Water Made Available and the 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 and to DWR a written schedule, satisfactory to the Contracting Officer. The written schedule shall show the monthly quantities of Project Water to be delivered by the United States for 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, pursuant to Article 3 or to sell, transfer or exchange pursuant to Article 5 and 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 for 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.

(e) Scheduling and delivery of Project Water for the Contractor shall be in accordance with guidelines set forth in the Operations Manual as it may be amended from time to time. The total amount of Project Water made available to DWR for the Contractor by the Contracting Officer shall include water by the Contracting Officer to compensate DWR for water conveyance losses incurred in conveyance of Project Water for the Contractor.

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 for the Contractor at a point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor. The parties acknowledge that Project Water to be furnished for the Contractor pursuant to this Contract shall be delivered to the Contractor by direct delivery via the Cross Valley Canal and/or by exchange arrangements involving Arvin-Edison Water Storage District or others. The parties further acknowledge that such exchange arrangements are not transfers subject to Section 3405(a) of CVPIA. Such exchange arrangements, other than the previously approved exchange arrangements with Arvin-Edison Water Storage District approved

by Assistant Regional Director, J. Robert Hammond, on December 4, 1974, shall be submitted to the Contracting Officer for approval prior to the implementation of the proposed exchange.

(b) Omitted.

(1) To the extent that Friant Division Project Water exceeds Friant Division Contract demand and other Project purposes, as determined by the Contracting Officer and after consultation with the Contractor, if the Contractor so requests, the Contracting Officer, subject to subdivision (d) of Article 3 of this Contract, shall make Project Water provided for in subdivision (a) of Article 3 of this Contract available from such Friant Division supplies.

(2) As determined solely by the Contracting Officer, and after consultation with the Contractor, Project Water may be provided to the Contractor, at the Contractor's request and subject to the terms and conditions of this Contract, through Federal Delta diversion and conveyance facilities and/or re-regulated in the Federal share of storage at San Luis Reservoir for later delivery to the Contractor.

(c) The Contractor shall deliver Irrigation Water in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. 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/Entities, 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/Entities, 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/Entities, if any, prior to making a final determination of the quantity delivered for that period of time.

(e) Neither the Contracting Officer nor any Operating Non-Federal Entity/Entities shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including the Operating Non-Federal Entity/Entities, with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns, including the Operating Non-Federal Entity/Entities; (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including the Operating Non-Federal Entity/Entities; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity/Entities; 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 irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and such 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, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper 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 agricultural turnouts and 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 sixty (60) days as to the adequacy of, 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 sixty (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/Entities on or before the 20th calendar day of each month of the quantity of Irrigation Water and 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

546 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth
547 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual
548 installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as
549 set forth in Exhibit "C". The Repayment Obligation is due in lump sum by January 31, 2022 as
550 provided by the WIIN Act. The Contractor must provide appropriate notice to the Contracting
551 Officer in writing no later than thirty (30) days prior to the Effective Date, if electing to repay the
552 amount due using the lump sum alternative. If such notice is not provided by such date, the
553 Contractor shall be deemed to have elected the installment payment alternative, in which case,
554 the first such payment shall be made no later than January 31, 2022. The second payment shall
555 be made no later than the first anniversary of the first payment date. The third payment shall be
556 made no later than the second anniversary of the first payment date. The final payment shall be
557 made no later than December 1, 2024. If the installment payment option is elected by the
558 Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by
559 giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting
560 Officer shall re-compute the remaining amount due to reflect the pre-payment using the same
561 methodology as was used to compute the initial annual installment payment amount, which is
562 illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be
563 established, receipt of the Contractor's payment of the Repayment Obligation to the United
564 States shall fully and permanently satisfy the Existing Capital Obligation.

565 (B) Additional Capital Obligations that are not reflected in, the
566 schedules referenced in Exhibit "C" and properly assignable to the Contractor, shall be repaid as
567 prescribed by the WIIN Act without interest except as required by law. Consistent with Federal
568 Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital

546 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth
547 as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual
548 installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as
549 set forth in Exhibit "C". The Repayment Obligation is due in lump sum by December 30, 2021
550 as provided by the WIIN Act. The Contractor must provide appropriate notice to the Contracting
551 Officer in writing no later than thirty (30) days prior to the Effective Date, if electing to repay the
552 amount due using the lump sum alternative. If such notice is not provided by such date, the
553 Contractor shall be deemed to have elected the installment payment alternative, in which case,
554 the first such payment shall be made no later than December 30, 2021. The second payment
555 shall be made no later than the first anniversary of the first payment date. The third payment
556 shall be made no later than the second anniversary of the first payment date. The final payment
557 shall be made no later than November 1, 2024. If the installment payment option is elected by
558 the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation
559 by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting
560 Officer shall re-compute the remaining amount due to reflect the pre-payment using the same
561 methodology as was used to compute the initial annual installment payment amount, which is
562 illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be
563 established, receipt of the Contractor's payment of the Repayment Obligation to the United
564 States shall fully and permanently satisfy the Existing Capital Obligation.

565 (B) Additional Capital Obligations that are not reflected in, the
566 schedules referenced in Exhibit "C" and properly assignable to the Contractor, shall be repaid as
567 prescribed by the WIIN Act without interest except as required by law. Consistent with Federal
568 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 Contractor's initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, 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 for the Contractor in advance of such payment. In any month in which the quantity of Water Delivered for 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 for the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by

the last day of February.

(e) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (d) of this Article 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 Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity/Entities or, if there is no Operating Non-Federal Entity, by the Contracting Officer. 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 Irrigation Water or 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 disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

(k) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of eighty (80) percent of the Contract Total, but less than or equal to ninety

(90) percent of the Contract Total, shall equal the one-half of the difference between the Rate established under subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which exceeds ninety (90) percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of eighty (80) percent of the Contract Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

(2) Subject to the Contracting Officer's written approval, the Contractor may request and receive an exemption from such Tiered Pricing Component for Project Water delivered to produce a crop which the Contracting Officer determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply only if such habitat values can be assured consistent with the purposes of the CVPIA through binding agreements executed with or approved by the Contracting Officer prior to use of such water.

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

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

(m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the changed costs if any incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in accordance with the then-current Project ratesetting policy. In addition, if the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges and will not be adjusted to reflect the Contractor's inability to pay.

(n) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five years.

(o) With respect to the Rates for M&I Water the Contractor asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this

Contract, the Contractor does not waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or imposition of any deficit charges accruing during the term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, Provided, That the basis for such ruling is applicable to the Contractor.

NON-INTEREST BEARING O&M DEFICITS

8. The Contractor and the Contracting Officer concur that, as of the Effective Date, the Contractor has no non-interest-bearing O&M deficits and shall have no further liability therefore.

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 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 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, 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 thirty (30) days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 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; and (iii) the terms and conditions of this Contract; the Contracting Officer shall make all reasonable efforts to optimize Project Water deliveries for the Contractor as provided in this Contract.

(b) The Contracting Officer or Operating Non-Federal Entity/Entities may temporarily discontinue or reduce the quantity of Water Delivered for 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 for the Contractor, but so far as feasible the Contracting Officer, or Operating Non-Federal Entity/Entities will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for

the United States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

(c) In any Year in which there may occur a Condition of Shortage for any of the reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion the available Project Water supply among the Contractors and others entitled, under existing contracts and future contracts (to the extent such future contracts are permitted under subsections (a) and (b) of Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the contractual obligations of the United States.

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

(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 then-current Project M&I Water Shortage Policy; (ii) the

substance of such a policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may then have to assert in such a proceeding.

UNAVOIDABLE GROUNDWATER PERCOLATION

13. (a) To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

(b) Upon complete payment of the Repayment Obligation by the Contractor, this Article 13 shall no longer be applicable.

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 shall 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 the its Service Area.

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

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

16. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); and (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands. The Contractor and the Contracting Officer concur that the Contractor's distribution system was constructed without funds made available pursuant to Federal Reclamation law. The use of this distribution system is not subject to the provisions of this subdivision of this Article.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States or adverse to the Project or its contractors (i.e. non-project water), may be stored, conveyed, and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting

Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the Reclamation Reform Act of 1982, and the Project use power policy, if such Project use power policy is applicable, each as amended, modified, or superseded from time to time.

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

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

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

(5) After Project purposes are met, as determined by the Contracting Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors.

(c) Upon complete payment of the Repayment Obligation by the Contractor, subdivision (a) of this Article 16 shall no longer be applicable.

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. The 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 subdivision (a) of this Article 17 is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the

laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

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. All parties shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.

(b) Within one-hundred twenty (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

999 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
1000 collection services associated with a delinquent payment.

1001 (b) The interest rate charged shall be the greater of either the rate prescribed
1002 quarterly in the Federal Register by the Department of the Treasury for application to overdue
1003 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
1004 determined as of the due date and remain fixed for the duration of the delinquent period.

1005 (c) When a partial payment on a delinquent account is received, the amount
1006 received shall be applied first to the penalty charges, second to the administrative charges, third
1007 to the accrued interest, and finally to the overdue payment.

1008 EQUAL EMPLOYMENT OPPORTUNITY

1009 20. During the performance of this Contract, the Contractor agrees as follows:

1010 (a) The Contractor will not discriminate against any employee or applicant for
1011 employment because of race, color, religion, sex, sexual orientation, gender identity, or national
1012 origin. The Contractor will take affirmative action to ensure that applicants are employed, and
1013 that employees are treated during employment, without regard to their race, color, religion, sex,
1014 sexual orientation, gender identity, or national origin. Such action shall include, but not be
1015 limited to the following: employment, upgrading, demotion, or transfer; recruitment or
1016 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
1017 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
1018 places, available to employees and applicants for employment, notices to be provided by the
1019 Contracting Officer setting forth the provisions of this nondiscrimination clause.

1020 (b) The Contractor will, in all solicitations or advertisements for employees
1021 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1022 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1023 gender identity, or national origin.

1024 (c) The Contractor will not discharge or in any other manner discriminate
1025 against any employee or applicant for employment because such employee or applicant has
1026 inquired about, discussed, or disclosed the compensation of the employee or applicant or
1027 another employee or applicant. This provision shall not apply to instances in which an
1028 employee who has access to the compensation information of other employees or applicants as
1029 part of such employee's essential job functions discloses the compensation of such other
1030 employees or applicants to individuals who do not otherwise have access to such information,
1031 unless such disclosure is in response to a formal complaint or charge, in furtherance of an
1032 investigation, proceeding, hearing, or action, including an investigation conducted by the
1033 employer, or is consistent with the Contractor's legal duty to furnish information.

1034 (d) The Contractor will send to each labor union or representative of workers
1035 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1036 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 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

1076 Contractor.

1077 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1078 obligation to require advance payment for water rates which it levies.

1079 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1080 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1081 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1082 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
1083 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
1084 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
1085 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
1086 Interior and/or Bureau of Reclamation.

1087 (b) These statutes prohibit any person in the United States from being
1088 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1089 discrimination under any program or activity receiving financial assistance from the Bureau of
1090 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
1091 Contract, the Contractor agrees to immediately take any measures necessary to implement this
1092 obligation, including permitting officials of the United States to inspect premises, programs, and
1093 documents.

1094 (c) The Contractor makes this Contract in consideration of and for the
1095 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1096 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1097 Reclamation, including installment payments after such date on account of arrangements for
1098 Federal financial assistance which were approved before such date. The Contractor recognizes
1099 and agrees that such Federal assistance will be extended in reliance on the representations and
1100 agreements made in this Article and that the United States reserves the right to seek judicial
1101 enforcement thereof.

1102 (d) Complaints of discrimination against the Contractor shall be investigated
1103 by the Contracting Officer's Office of Civil Rights.

1104 PRIVACY ACT COMPLIANCE

1105 23. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act)
1106 (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act
1107 (43 C.F.R. § 2.45, et seq.) in maintaining Landholder certification and reporting records required
1108 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the
1109 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43
1110 C.F.R. § 426.18.

1111 (b) With respect to the application and administration of the criminal penalty

1112 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's
1113 employees who are responsible for maintaining the certification and reporting records referenced
1114 in paragraph (a) above are considered to be employees of the Department of the Interior. See 5
1115 U.S.C. § 552a(m).

1116 (c) The Contracting Officer or a designated representative shall provide the
1117 Contractor with current copies of the Department of the Interior Privacy Act regulations and the
1118 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-
1119 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of
1120 information contained in the Landholders' certification and reporting records.

1121 (d) The Contracting Officer shall designate a full-time employee of the
1122 Bureau of Reclamation to be the System Manager responsible for making decisions on denials
1123 pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72.
1124 The Contractor is authorized to grant requests by individuals for access to their own records.

1125 (e) The Contractor shall forward promptly to the System Manager each
1126 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records
1127 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the
1128 System Manager with information and records necessary to prepare an appropriate response to
1129 the requester. These requirements do not apply to individuals seeking access to their own
1130 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless
1131 the requester elects to cite the Privacy Act as authority for the request.

1132 (f) Upon complete payment of the Repayment Obligation by the
1133 Contractor, this Article 23 will no longer be applicable.

1134 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1135 24. In addition to all other payments to be made by the Contractor pursuant to this
1136 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a
1137 bill and detailed statement submitted by the Contracting Officer to the Contractor for such
1138 specific items of direct cost incurred by the United States for work requested by the Contractor
1139 associated with this Contract plus indirect costs in accordance with applicable Bureau of
1140 Reclamation policies and procedures. All such amounts referred to in this Article shall not
1141 exceed the amount agreed to in writing in advance by the Contractor. This Article shall not

1142 apply to costs for routine contract administration.

1143 WATER CONSERVATION

1144 25. (a) Prior to the delivery of water provided from or conveyed through
1145 Federally constructed or Federally financed facilities pursuant to this Contract, the
1146 Contractor shall develop a water conservation plan, as required by subsection 210(b) of the
1147 Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and
1148 Regulations).

1149 Additionally, an effective water conservation and efficiency program shall be based on the
1150 Contractor's water conservation plan that has been determined by the Contracting Officer to
1151 meet the conservation and efficiency criteria for evaluating water conservation plans
1152 established under Federal law. The water conservation and efficiency program shall contain
1153 definite water conservation objectives, appropriate economically feasible water conservation
1154 measures, and time schedules for meeting those objectives. Continued Project Water delivery
1155 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of
1156 such water conservation program. In the event the Contractor's water conservation plan or any
1157 revised water conservation plan completed pursuant to subdivision (d) of this Article 25 have not
1158 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1159 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
1160 shall be made under this Contract so long as the Contractor diligently works with the Contracting
1161 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
1162 immediately begins implementing its water conservation and efficiency program in accordance
1163 with the time schedules therein.

1164 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1165 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1166 Contractor shall implement the Best Management Practices identified by the time frames issued

1167 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such
1168 M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate
1169 for the Contractor.

1170 (c) The Contractor shall submit to the Contracting Officer a report on the
1171 status of its implementation of the water conservation plan on the reporting dates specified in the
1172 then existing conservation and efficiency criteria established under Federal law.

1173 (d) At five (5)-year intervals, the Contractor shall revise its water
1174 conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating
1175 water conservation plans established under Federal law and submit such revised water
1176 management plan to the Contracting Officer for review and evaluation. The Contracting Officer
1177 will then determine if the water conservation plan meets Reclamation's then-existing
1178 conservation and efficiency criteria for evaluating water conservation plans established under
1179 Federal law.

1180 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1181 shall be described in the Contractor's water conservation plan.

1182 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1183 26. Except as specifically provided in Article 16 of this Contract, the provisions of
1184 this Contract shall not be applicable to or affect non-project water or water rights now owned or
1185 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1186 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1187 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1188 any water user within the Contractor's Service Area acquires or has available under any other
1189 contract pursuant to Federal Reclamation law.

1190 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY(IES)

1191 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1192 and responsibility for funding a portion of the costs of such O&M, have been transferred to two
1193 Operating Non-Federal Entities by separate agreement between the United States and the
1194 Operating Non-Federal Entities. Those separate agreements shall not interfere with or affect the
1195 rights or obligations of the Contractor or the United States hereunder. Specifically, portions of
1196 the Delta-Mendota Canal, the San Luis Canal and other related facilities are operated by the San
1197 Luis & Delta Mendota Water Authority and the Friant-Kern Canal and related facilities are
1198 operated by the Friant Water Authority.

1199 (b) The Contracting Officer has previously notified the Contractor in writing
1200 that the O&M of a portion of the Project facilities which serve the Contractor has been
1201 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1202 to the applicable Operating Non-Federal Entity(ies), or to any successor(s) approved by the
1203 Contracting Officer under the terms and conditions of the separate agreement(s) between the
1204 United States and the Operating Non-Federal Entity(ies) described in subdivision (a) of this
1205 Article, all rates, charges, or assessments of any kind, including any assessment for reserve
1206 funds, which the Operating Non-Federal Entity(ies) or such successor(s) determines, sets, or
1207 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1208 Operating Non-Federal Entity or such successor. Such direct payments to the Operating Non-
1209 Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly
1210 to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
1211 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf
1212 of the United States in accordance with the separate agreement identified in subdivision (a) of

1213 this Article.

1214 (c) For so long as the O&M of any portion of the Project facilities serving the
1215 Contractor is performed by the Operating Non-Federal Entity(ies), or any successor(s) thereto,
1216 the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1217 this Contract representing the cost associated with the activity being performed by the Operating
1218 Non-Federal Entity(ies) or its (their) successor(s).

1219 (d) In the event the O&M of the Project facilities operated and maintained by
1220 the Operating Non-Federal Entity(ies) is re-assumed by the United States during the term of this
1221 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1222 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1223 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1224 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1225 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1226 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the
1227 United States in compliance with Article 7 of this Contract.

1228 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1229 28. The expenditure or advance of any money or the performance of any obligation of
1230 the United States under this Contract shall be contingent upon appropriation or allotment of
1231 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1232 obligations under this Contract. No liability shall accrue to the United States in case funds are
1233 not appropriated or allotted.

1234 BOOKS, RECORDS, AND REPORTS

1235 29. (a) The Contractor shall establish and maintain accounts and other books and
1236 records pertaining to administration of the terms and conditions of this Contract, including the
1237 Contractor's financial transactions; water supply data; project operations, maintenance, and
1238 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1239 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1240 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.

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

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

SEVERABILITY

31. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or

enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

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 thirty (30) days written notice of the intent to take such action; *Provided, That* such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30) day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as

1288 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the
1289 Contractor or the United States may have.

1290 OFFICIALS NOT TO BENEFIT

1291 33. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1292 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1293 same manner as other water users or landowners.

1294 CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1295 34. (a) While this Contract is in effect, no change may be made in the
1296 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1297 changes which may affect the respective rights, obligations, privileges, and duties of either the
1298 United States or the Contractor under this Contract including, but not limited to, dissolution,
1299 consolidation, or merger, except upon the Contracting Officer's written consent.

1300 (b) Within thirty (30) days of receipt of a request for such a change, the
1301 Contracting Officer will notify the Contractor of any additional information required by the
1302 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1303 agreeable schedule for timely completion of the process. Such process will analyze whether the
1304 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1305 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1306 Contract or to pay for any Federally-constructed facilities for which the Contractor is
1307 responsible; and (iii) have an impact on any Project Water rights applications, permits, or
1308 licenses. In addition, the Contracting Officer shall comply with NEPA and ESA. The
1309 Contractor will be responsible for all costs incurred by the Contracting Officer in this process,
1310 and such costs will be paid in accordance with Article 24 of this Contract.

1311 FEDERAL LAWS

1312 35. By entering into this Contract, the Contractor does not waive its rights to contest
1313 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.

RECLAMATION REFORM ACT OF 1982

36. (a) Upon a Contractor's compliance with and discharge of the Repayment Obligation pursuant to this Contract, subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

(b) The obligation of a Contractor to pay the Additional Capital Obligation shall not affect the Contractor's status as having repaid all of the construction costs assignable to the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

CERTIFICATION OF NONSEGREGATED FACILITIES

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

1346 have submitted identical certifications for specific time periods):

1347 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
1348 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1349 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
1350 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
1351 Opportunity clause. The certification may be submitted either for each subcontract or for all
1352 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
1353 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1354 NOTICES

1355 38. Any notice, demand, or request authorized or required by this Contract shall be
1356 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1357 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1358 California 93721 and on behalf of the United States, when mailed, postage prepaid, or delivered
1359 to the Director of Public Works and Planning of the County of Fresno, 2220 Tulare Street 6th
1360 Floor, Fresno, CA 93721. The designation of the addressee or the address may be changed by
1361 notice given in the same manner as provided in this article for other notices.

1362 MEDIUM FOR TRANSMITTING PAYMENT

1363 39. (a) All payments from the Contractor to the United States under this Contract
1364 shall be by the medium requested by the United States on or before the date payment is due. The
1365 required method of payment may include checks, wire transfers, or other types of payment
1366 specified by the United States.

1367 (b) Upon execution of the Contract, the Contractor shall furnish the
1368 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1369 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1370 out of the Contractor's relationship with the United States.


1371 CONTRACT DRAFTING CONSIDERATIONS

1372 40. This amended Contract has been negotiated and reviewed by the parties hereto,
1373 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1374 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1375 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1376 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.


1377 CONFIRMATION OF CONTRACT


1378 41. Promptly after the execution of this amended Contract, the Contractor shall
1379 provide to the Contracting Officer a certified copy of a final decree of a court of competent

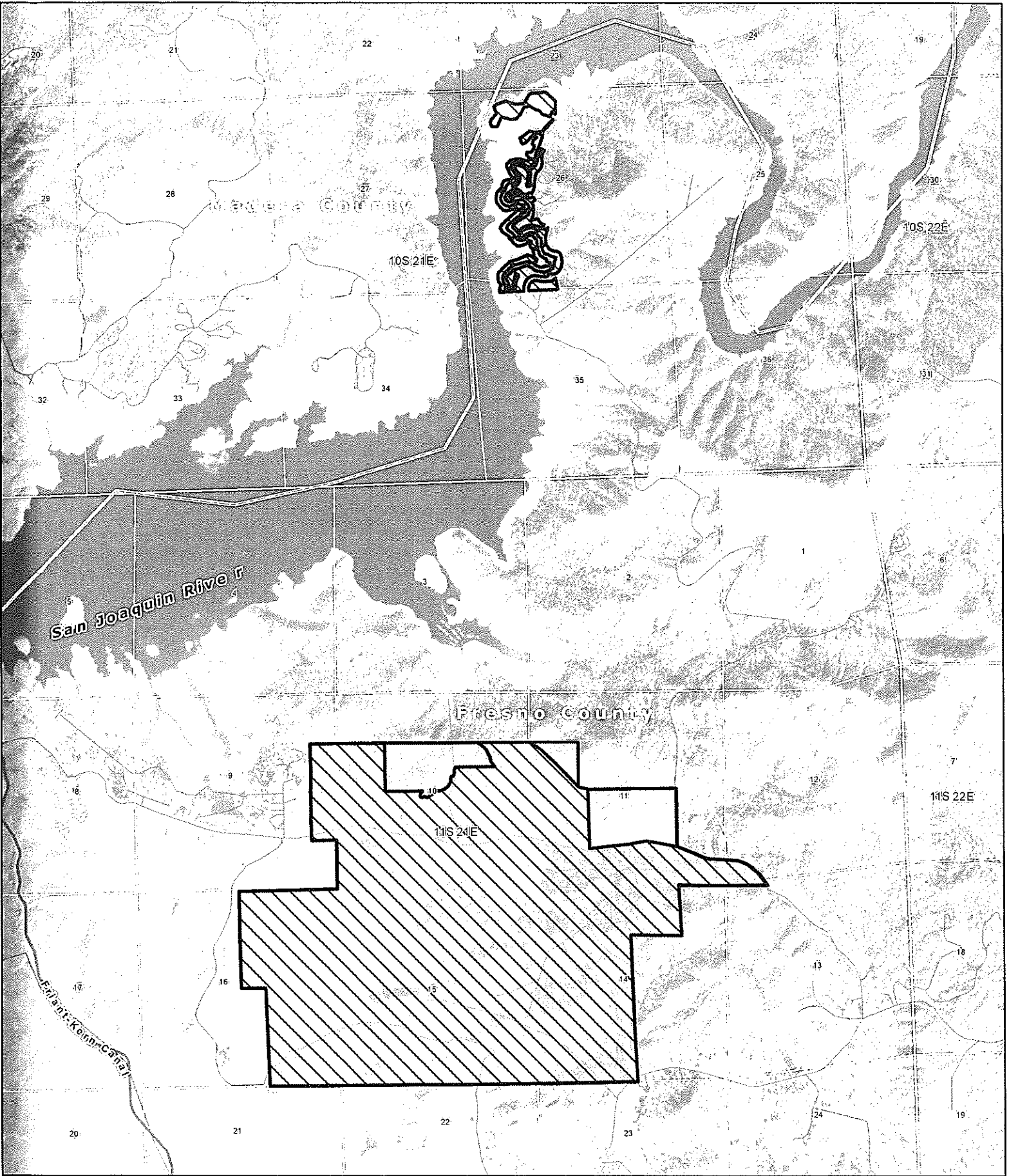
1380 jurisdiction in the State of California, confirming the proceedings on the part of the Contractor
1381 for the authorization of the execution of this amended Contract. This amended Contract shall not
1382 be binding on the United States until the Contractor secures a final decree.



1386 By: 
1387 Regional Director
1388 Interior Region 10: California-Great Basin
1389 Bureau of Reclamation

1391
1392
1393

By: 
Chairman of the Board of Supervisors
County of Fresno, State of California

1395 By: 
1396 Clerk of the Board of Supervisors



-  District Boundary
-  Contractor's Service Area

County of Fresno
Contract No. 14-06-200-8292A-IR5-P
Exhibit A



BUREAU OF
RECLAMATION

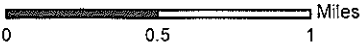


EXHIBIT B
COUNTY OF FRESNO
2021 Rates and Charges
(Per Acre-Foot)

Description	Water (Through Banks PP)	M&I Water (Through Banks PP)
COST-OF-SERVICE (COS) RATES		
Construction Cost	0	0
O&M Components		
Water Marketing	\$ 11.68	\$ 8.97
Storage	\$ 16.70	\$ 24.62
Direct Pumping	\$ 12.91	\$ 12.91
Deficit Cost	0	\$ 119.16
TOTAL COS RATE	\$ 41.29	\$ 165.66
IRRIGATION FULL COST RATE		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	TBD	0
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	TBD	0
M&I FULL COST RATE		TBD
CHARGES AND ASSESSMENTS (Payment in addition to COS rates)		
P.L. 102-575 Surcharges		
Restoration Fund Payment [Section 3407(d)(2)(A)]	\$ 11.11	\$ 22.23
P.L. 106-377 Assessments		
Trinity Public Utilities District [Appendix B, Section 203]	\$ 0.15	\$ 0.15

EXPLANATORY NOTES

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

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

Unpaid Construction Cost from the 2021 Water Rate Books*

Contractor: County of Fresno
Facility: Cross Valley Canal
Contract: 14-06-200-8292A-IR5-P

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

Description	Unpaid Cost	Discount
Construction Cost	\$144,335	0
2020 Repayment (Estimate) **	\$ 31,282	0
Adjusted Construction Cost	\$ 113,053	\$ 106,955
Intertie Construction Cost (N/A):	0	0
Total	\$ 113,053	\$ 106,955
If Paid in Installments (Used 20 yr CMT)		
Payment 1, Due 12/1/2021****		\$ 27,414
Payment 2, Due 12/1/2022****		\$ 27,414
Payment 3, Due 12/1/2023****		\$ 27,414
Payment 4, Due 12/1/2024****		\$ 27,414
Total Installment Payments		\$ 109,656
20 yr CMT Rates - 10/01/2021 (to be adjusted to effective date of contract)@		2.010%
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))		1.005%

M&I Construction Cost (2021 M&I Ratebook, Sch A-2Ba)

Description	Unpaid Cost
Construction Cost	\$ (10,294)
2020 Repayment (Estimate) **	\$0
Adjusted Construction Cost***:	\$ (10,294)

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

12/1/2021
303

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	\$ 113,053	\$ 11,305	\$ 11,100	\$0	\$0	\$0	\$ 11,100
2022	\$ 117,549	\$ 11,305	\$ 11,081	\$0	\$0	\$0	\$ 11,081
2023	\$ 90,443	\$ 11,305	\$ 10,971	\$0	\$0	\$0	\$ 10,971
2024	\$ 79,137	\$ 11,305	\$ 10,862	\$0	\$0	\$0	\$ 10,862
2025	\$ 67,832	\$ 11,305	\$ 10,754	\$0	\$0	\$0	\$ 10,754
2026	\$ 56,527	\$ 11,305	\$ 10,647	\$0	\$0	\$0	\$ 10,647
2027	\$ 45,221	\$ 11,305	\$ 10,541	\$0	\$0	\$0	\$ 10,541
2028	\$ 33,916	\$ 11,305	\$ 10,436	\$0	\$0	\$0	\$ 10,436
2029	\$ 22,611	\$ 11,305	\$ 10,332	\$0	\$0	\$0	\$ 10,332
2030	\$ 11,305	\$ 11,305	\$ 10,229	\$0	\$0	\$0	\$ 10,229
2031-2063	-	-	-	-	-	-	-
Total Lump Sum Payment			\$ 106,995			\$0	\$ 106,955
Amount of Reduction, Lump Sum			\$ 6,098			\$0	\$ 6,098

*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 No. 21-301

**A Resolution of the Board of Supervisors of the County of Fresno
Adopting Findings and Authorizing the Execution of a Contract between the
United States Department of Interior Bureau of Reclamation and County of Fresno
Providing for Water Service and Facilities Repayment**

WHEREAS, the United States of America, Department of the Interior, Bureau of Reclamation ("Bureau of Reclamation"), has constructed and is operating the Central Valley Project ("CVP") in California, for diversion, storage carriage, distribution and beneficial use, for flood control, irrigation, municipal domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of the waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries ("Project Water");

WHEREAS, on November 10, 1975, the Bureau of Reclamation, Department of Water Resources of the State of California ("DWR"), and the County of Fresno ("County") entered into a contract providing for water service via the Cross Valley Canal to the County, Contract No. 14-06-200-8292A (the "Original Contract");

WHEREAS, subsequent to February 29, 1996, and pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act ("CVPIA"), the Bureau of Reclamation, DWR and the County entered into interim renewal contracts identified as Contract Nos. 14-06-200-8292A-IR1 through IR18, the current of which is referred to as the "Existing Contract", and provides for continued water service to County from March 1, 2020 through February 28, 2022;

WHEREAS, the Existing Contract provides for conversion to a repayment contract under subsection (d) of Section 9 of the Act of August 4, 1939, as supplemented by the Act of July 2, 1956, all as provided by law;

WHEREAS, on or about December 16, 2016, the 114th Congress of the United States of America enacted the Water Infrastructure Improvements for the Nation Act, (Public Law 114-322, 130 Stat. 1628) (the "WIIN Act");

WHEREAS, Section 4011(a)(1) of the WIIN Act 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 to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions";

WHEREAS, in a letter from the Director of the County's Department of Public Works and Planning ("Director") dated April 26, 2018, County gave notice of intent to request that the United States convert the Existing Contract, entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1195), to a repayment contract under Section 9(d) of that act pursuant to Section 4011(a)(1)(A) of the WIIN Act, which the United States received as a request for conversion;

WHEREAS, the County and the Bureau of Reclamation agree on the terms and conditions of a form of repayment contract consistent with the requirements of the WIIN Act, entitled "Contract Between the United States and the County of Fresno Providing for Project Water Service and Facilities Repayment", Contract No. 14-06-200-8292A-IR5-P in the form attached hereto as Exhibit "A" and incorporated herein (the "Repayment Contract");

WHEREAS, the Repayment Contract continues water service from the CVP to County and provides, among other things, that the County reserves and shall have all of the rights available to it under the Act of July 2, 1956 (70 Stat. 483), and that upon completing the repayment obligations as required therein, the acreage limitations, reporting, and full cost pricing provisions of the Reclamation Reform Act of 1982 (96 Stat. 1263) shall no longer be applicable to the County;

WHEREAS, Project Water available to the County under the Repayment Contract will be diverted through the same facilities as the water provided under the Existing Contract;

WHEREAS, the County will continue to distribute Project Water received pursuant to the Repayment Contract through the same County distribution facilities used in connection with water made available under the Existing Contract;

WHEREAS, the Repayment Contract does not increase the quantity of Project Water to be made available to the County and no additional lands within the County will be irrigated as a result of the conversion to the Repayment Contract;

WHEREAS, the Repayment Contract requires that the County provide the United States with a final decree of a court of competent jurisdiction of the State of California confirming the proceedings on the part of the Contractor for the authorization and execution of the Repayment Contract;

WHEREAS, for purposes of the California Environmental Quality Act ("CEQA"), Lower Tule River Irrigation District is the lead agency for, by each agency that contracts for delivery of water through the Cross Valley Canal ("Cross Valley Contractor"), including the County: (1) the approval and execution of a contract with the United States, Department of Interior, Bureau of Reclamation ("Reclamation") that converts, pursuant to Section 4011(a)(1) of the Water Infrastructure Improvement for the Nation Act, Public Law 114-322, 130 Stat. 1628 (the "WIIN Act"), the Cross Valley Contractor's existing contract for Project Water from the CVP to a repayment contract authorizing prepayment of outstanding CVP construction costs; and (2) the approval and execution of a contract with Reclamation and DWR that renews and updates the terms of an existing contract for the conveyance of the Cross Valley Contractor's CVP water until 2035 (the "Project").

WHEREAS, Lower Tule River Irrigation District, as lead agency, at a duly noticed public meeting of its Board of Directors, by Resolution No. 2021-9-1, certified the Final EIR for the Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts (State Clearinghouse No. 2020100075) (the "Final EIR"), which Final EIR evaluates under CEQA (Public Resources Code Section 21000 et seq.) the conversion of the Existing Contract to the Repayment Contract, and the renewal of a long-term conveyance agreement by County with the Bureau of Reclamation and DWR as provided in the Conveyance Contract;

WHEREAS, pursuant to CEQA Guideline 15906, as a responsible agency, the County must consider the environmental effects as shown in the Final EIR prepared by Lower Tule River Irrigation District and reach its own conclusions on whether and how to approve the Project; and

WHEREAS, the County Board of Supervisors has independently reviewed and considered the information contained in the Final EIR, as well as Lower Tule River Irrigation District's certification of the Final EIR and approval of the Project, and Lower Tule River Irrigation District's Findings of Fact in Lower Tule River Irrigation District's Resolution No. 2021-9-1, and all oral and written evidence presented to this Board; and

WHEREAS, pursuant to CEQA and the CEQA Guidelines (14 Cal. Code Regs., Section 15000 et seq.) the County's Board of Supervisors must make and adopt written findings for each significant effect of the Project, accompanied by a brief explanation of the rationale for each finding. The Final EIR identifies no significant effects for the proposed Project, and the written findings, attached hereto as Exhibit "B", identify no significant effects for the proposed Project.

NOW, THEREFORE, BE IT RESOLVED BY THIS BOARD OF SUPERVISORS AS FOLLOWS:


1. The foregoing recitals are true and correct.
2. The form of the Repayment Contract attached hereto as Exhibit "A" and incorporated herein is hereby approved, and the Board acknowledges that:
 - a. Changes to the amount of the Repayment Obligation set forth in Exhibit C of the Repayment Contract will be finalized and adjusted to reflect a discount of $\frac{1}{2}$ the Treasury rate as it exists on the effective date of the Repayment Contract, as required by Section 4011(a)(2)(A) of the WIIN Act;
 - b. Some terms will be finalized based on the date that the County signs and the Bureau of Reclamation countersigns the Repayment Contract, specifically including the date on Line 1 of the Repayment Contract; and
 - c. Some non-substantive, conforming edits might be necessary to reconcile all of the terms of the Repayment Contract.
3. The Fresno County Board of Supervisors authorize the Director, subject to review and approval by County Counsel and the Auditor-Controller/Treasurer-Tax Collector, to sign the final Repayment Contract attached hereto as Exhibit "A" and incorporated herein, subject only to the changes noted in Item 2 above.
4. The Director or their designee is authorized to and directed to provide two (2) signed originals of the Repayment Contract and a certified copy of this Resolution to the Bureau of Reclamation.
5. The Director and County Counsel are authorized and directed to take all such additional actions as may be necessary or appropriate to facilitate the conversion of the Existing Contract to the Repayment Contract, to obtain a final decree confirming the proceedings on the part of the County for the authorization and execution of the Repayment Contract, to obtain and expend funding necessary to satisfy the Repayment Obligation and to ensure continued and uninterrupted water service to the County under the Repayment Contract.
6. Pursuant to CEQA section 21166 and State CEQA Guidelines sections 15096(a) and 15162, the Final EIR prepared by Lower Tule River Irrigation District is adequate for use by the County as a responsible agency and is incorporated herein by this reference, and no subsequent or supplemental EIR is necessary to address any changes to the Project, changes in circumstances, or new information generated since Lower Tule River Irrigation District certified the Project Final EIR under CEQA.
7. Pursuant to State CEQA Guidelines section 15096 and in its limited role as a responsible agency under CEQA, the County Board has reviewed and considered the Final EIR, as

well as Lower Tule River Irrigation District's certification of the Final EIR and approval of the Project, and Lower Tule River Irrigation District's CEQA Findings of Fact, and the Board incorporates those items herein by reference. As to those resources within the County's power and authority as a responsible agency under CEQA, the Fresno County Board of Supervisors exercises its independent judgment and finds that the Final EIR contains a complete, objective, and accurate reporting of the Project's impacts.

8. Exercising its independent judgment, the County Board concurs with the CEQA Findings of Fact approved by Lower Tule River Irrigation District and hereby adopts those CEQA Findings of Fact, attached hereto as Exhibit "B" and incorporated herein by this reference.
9. The Director or their designee are hereby authorized and directed to take all actions necessary to effectuate the intent of this Resolution, and to cause a Notice of Determination reflecting the foregoing actions to be executed and filed with the State Clearinghouse.

THE FOREGOING, was passed and adopted by the following vote of the Board of Supervisors of the County of Fresno this 19th day of October 2021, to-wit:

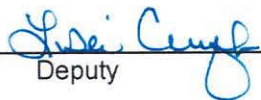
AYES: Supervisors Brandau, Magsig, Mendes, Pacheco, Quintero
NOES: None
ABSENT: None
ABSTAINED: None



Steve Brandau, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By



Deputy