

**KERN-TULARE WATER DISTRICT  
RESOLUTION NO. 2021-08**

**A Resolution of the Board of Directors of Kern-Tulare Water District  
Adopting Findings and Authorizing the Execution of a Contract between the United States  
Department of Interior Bureau of Reclamation and Kern-Tulare Water District  
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 February 4, 1976, the Bureau of Reclamation, Department of Water Resources of the State of California (“DWR”), and the Rag Gulch Water District (“Rag Gulch”) entered into a contract providing for water service via the Cross Valley Canal to the District, Contract No. 14-06-200-8637A (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 Rag Gulch entered into interim renewal contracts identified as Contract Nos. 14-06-200-8637A-IR1 through IR12;

**WHEREAS**, Rag Gulch and the Bureau of Reclamation executed an agreement entitled “Agreement For Assignment Of Rag Gulch Water District ‘s Water Service Contract To Kern-Tulare Water District”, effective January 1, 2009, pursuant to which Kern-Tulare Water District (“District”) accepted all obligations, terms, and conditions with respect to Rag Gulch’s contract and ;

**WHEREAS**, District and the Bureau of Reclamation have, pursuant to subsection 3404(c)(1) of the CVPIA, subsequently entered into interim renewal contracts identified and Contract Nos. 14-06-200-8637A-IR13 through IR18, the current of which is referred to as the “Existing Contract”, and provides for continued water service to District 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 dated February 1, 2018, District requested 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;

**WHEREAS**, the District and the Bureau of Reclamation agreed 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 Kern-Tulare Water District Providing for Project Water Service and Facilities Repayment”, Contract No. 14-06-200-8637A-IR5-P (the “Repayment Contract”), a final form of which is attached hereto as Exhibit “A” and incorporated herein;

**WHEREAS**, the Repayment Contract continues water service from the CVP to District and provides, among other things, that the District 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 District;

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

**WHEREAS**, the District will continue to distribute Project Water received pursuant to the Repayment Contract through the same District 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 District and no additional lands within the District will be irrigated as a result of the conversion to the Repayment Contract;

**WHEREAS**, the Repayment Contract requires that the District 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**, Lower Tule River Irrigation District is the lead agency for, by each Cross Valley Contractor: (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 the California Environmental Quality Act (“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 District with the Bureau of Reclamation and DWR as provided in the Conveyance Contract;

**WHEREAS**, pursuant to CEQA Guideline 15906, as a responsible agency, the District 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 District Board of Directors 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 District’s Board of Directors 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 the Board of Directors of **KERN-TULARE WATER DISTRICT** as follows:

1. The foregoing recitals are true and correct.
2. 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” will be finalized and adjusted to reflect a discount of ½ 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 District 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 District's President and Secretary are authorized to execute the Repayment Contract attached hereto as Exhibit "A" and incorporated herein, subject only to the changes noted in Item 2 above.
4. District staff 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. District staff and legal 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 District 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 District 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 District 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 District 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 District's power and authority as a responsible agency under CEQA, the District Board 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 District 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.

**[This Space Left Intentionally Blank]**

9. The General Manager and other District staff 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.

**PASSED, APPROVED AND ADOPTED** by the Board of Directors of **KERN-TULARE WATER DISTRICT** this 24<sup>th</sup> day of September, 2021 by the following vote:

AYES:            Kent H. Stephens  
                     Andrew Pandol  
                     Curt Holmes  
                     Joshua Nugent  
                     Andrew Hart

NOES:            None

ABSENT:        None

ABSTAIN:       None

## CERTIFICATE OF RESOLUTION

We, the undersigned, hereby certify as follows:

1. That we are the President and Secretary of the KERN-TULARE WATER DISTRICT; and
2. That the foregoing resolution, consisting of 6 pages, including this page, exclusive of exhibits, is a true and correct copy of a resolution of the Board of Directors of the Kern-Tulare Water District passed at the meeting of the Board of Directors held on September 24, 2021, at the conference room of Pandol and Sons, Inc., 33150 Pond Road, Delano California.

IN WITNESS WHEREOF, we have signed this certificate this 24<sup>th</sup> day of September, 2021, at Delano, California.



Kent H. Stephens  
President of the Board of Directors



Curt Holmes  
Secretary

**Exhibit “A”  
Repayment Contract**

**Exhibit “B”**  
**CEQA Findings of Fact**



## **CEQA Findings of Fact**

### **Cross Valley Contractors Conversion of Water Supply Contracts and Renewal of Conveyance Contracts**

*State Clearinghouse No. 2020100075*

#### **Introduction**

Lower Tule River Irrigation District (the “District”) is the lead agency for, by each Cross Valley Contractor: (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 CV Contractor's existing contract for Project Water from the Central Valley Project (“CVP”) to a repayment contract authorizing prepayment of outstanding CVP construction costs; and (2) the approval and execution of a contract with Reclamation and the State of California, Department of Water Resources (“DWR”) that renews and updates the terms of an existing contract for the conveyance of the CV Contractor's CVP water until 2035 (the “Project”).

All other agencies with jurisdiction over aspects of a project are considered to be responsible agencies for purposes of CEQA.

The Project will allow the CV Contractors to continue receiving CVP Project Water in the manner consistent with current and historical practices.

CV Contractors have three-party contracts with Reclamation and DWR to receive water from the CVP. Under the current three-party water service contracts, Reclamation delivers CVP Project Water to the Sacramento/San Joaquin Delta (“Delta”), where it is pumped from the Delta and conveyed south. Because of capacity limitations in CVP facilities in the Delta and conveyance limitations, the water has historically been pumped and conveyed from the Delta by DWR in State Water Project (“SWP”) facilities.

The Cross-Valley Canal (“CVC”) is a water conveyance facility in the southern San Joaquin Valley that extends from the California Aqueduct near Tupman, east to the Kern River. It can convey water in either direction depending on the operation of the canal. The CVC is used to convey irrigation water to the seven CV Contractors, which are located along the east side of the San Joaquin Valley within Fresno, Kings, Tulare, and Kern counties.

Each of the seven CV Contractors is a CVP water contractor. That is, each CV Contractor is currently a party to its own separate three party contract with both Reclamation and DWR to receive CVP Project Water and then convey this water. Under the current three-party contracts, Reclamation delivers the CVP water to the Sacramento/San Joaquin Delta (Delta), where it is pumped from the Delta and conveyed south. Because of capacity limitations in the CVP facilities in the Delta, the water has historically been pumped and conveyed from the Delta by DWR in State Water Project (SWP) facilities.

The CV Contractors are located physically along the Friant-Kern Canal (FKC) and not directly connected with the CVC. Because the CV Contractors are not directly connected to the CVC,

their CVP water is delivered predominately through transfers and exchanges of water with other water districts or agencies. Delivery of the CV Contractors' CVP water may be, and has been, also made directly to CV Contractors by delivery through the CVC and then into the FKC, where it is pumped from south to north over a series of check structures (Shafter Check, Poso Check & Woollomes Check).

### **Environmental Review of the Project**

The District as lead agency prepared a Final Environmental Impact Report for the Cross Valley Contractors' Conversion of Water Supply Contracts and Renewal of Conveyance Contracts ("Final EIR") in accordance with the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA") to evaluate the potential environmental impacts associated the Project.

### **Objectives of the Proposed Action**

The objectives of the CV Contractors' current water supply and conveyance contracts are:

- Avoid long-term overdraft by achieving a balanced groundwater budget;
- Maintain a diversified water supply, sufficient to supply water for all uses, even during supply shortages;
- Integrate groundwater management with use of CVP and other surface water supplies as available;
- Make use of current conveyance and distribution systems and facilities to fully utilize all water supplies;
- Avoid or correct groundwater levels that are too low to support existing wells;
- Maximize cropland preservation; and
- Maximize the efficiency of delivery, conveyance, and use of CVP water through direct delivery and exchanges of CVP water.

The primary objective of the proposed Project is to continue each of these objectives, by allowing the CV Contractors to continue receiving CVP water in the manner consistent with current and historical practices.

### **General Findings**

The Final EIR identifies no significant effects for the proposed Project. Adverse but less-than-significant effects do not require mitigation, nor do they require findings be made. Because there are no significant effects for the proposed Project, no Mitigation Monitoring and Reporting Program (MMRP) is required to mitigate significant environmental impacts, nor is a statement of overriding considerations required for the proposed Project.

### **Procedural Findings**

The District finds as follows:

1. Based on the nature and scope of the proposed Project, the Board of Directors of the District determined, based on substantial evidence, that the proposed Project may have a significant effect on the environment and prepared an EIR for the proposed Project. The Draft EIR for the Cross Valley Contractors' Conversion of Water Supply Contracts and Renewal of Conveyance Contracts ("Draft EIR") was prepared, noticed, published, circulated, reviewed, and completed in full compliance with CEQA and the CEQA Guidelines (14 Cal. Code Regs., §§ 15000 et seq.) as follows:
  - a) A Notice of Preparation (NOP) for the Draft EIR for review and comment by the public, responsible, and reviewing agencies, was made available by the District to interested entities and the State Clearinghouse (State Clearinghouse No. 2020100075.) on October 5, 2020. A public scoping meeting was held on October 26, 2020, and the public comment period closed on November 4, 2020.
  - b) A Notice of Availability (NOA) and copies of the Draft EIR were made available for review and comment on April 6, 2021 to those public agencies that have jurisdiction by law with respect to the Project, or which exercise authority over resources that may be affected by the Project, and to other interested parties and agencies as required by law. The comments of such persons and agencies and the general public were sought on the Draft EIR for a 45-day review period from April 6, 2021 to May 21, 2021.
  - c) The NOA stated that the District had completed the Draft EIR and that copies were available at the District offices at 357 E. Olive Avenue, Tipton, CA 93272, and on the District website at [www.ltrid.org](http://www.ltrid.org), or by requesting an electronic copy from the District at the email address [elimas@ltrid.org](mailto:elimas@ltrid.org).
2. Following closure of the public comment period, all comments received on the Draft EIR during the comment period, the District's written responses to those comments, and additional information added by the District were added to the Draft EIR to produce the Final EIR.
3. The Final EIR was published on September 9, 2021. The Final EIR consists of the following documents:
  - DEIR (text and associated appendices, dated April 6, 2021);
  - Comments, Responses to Comments on the Draft EIR, and revisions to the Draft EIR.
4. As required by Section 15088(b) of the CEQA Guidelines, public agencies that commented on the Draft EIR were provided at least 10 days to review the proposed responses prior to the date for consideration of the Final EIR for certification.

### **Changes to the Draft EIR**

The Draft EIR has been the subject of review and comment by the public and responsible agencies prior to the adoption of these Findings. In the course of responding to comments received during the public review and comment period on for the Draft EIR, certain portions of the Draft EIR have been modified and some new information obtained after the Draft EIR was released for public review has been added. The Draft EIR has been the subject of review and comment by the public and responsible agencies prior to the adoption of these Findings. None of this information has revealed the existence of: (1) a significant new environmental impact that would result from the Project or an adopted mitigation measure; (2) a substantial increase in the severity of an environmental impact; (3) a feasible project alternative or mitigation measure not adopted that is considerably different from others analyzed in the Draft EIR that would clearly lessen the significant environmental impacts of the Project; or (4) information that indicates that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. The District finds that the changes and modifications made to the Draft EIR after the Draft EIR was circulated for public review and comment do not collectively or individually constitute significant new information within the meaning of Public Resources Code §21092.1 and CEQA Guidelines §15088.5.

### **Evidentiary Basis for Findings**

These Findings are based upon substantial evidence in the entire record before the Board of Directors of the District. The references to the Draft EIR and Final EIR set forth in the Findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these Findings.

### **Location and Custodian of Records.**

Pursuant to Public Resource Code §15091, the District is the custodian of the documents and other material that constitute the record of proceedings upon which the decision is based, and such documents and other materials are located at the District's offices at 357 E. Olive Avenue, Tipton, CA. A copy of the Final EIR is also available for review at the District's website ([www.ltrid.org](http://www.ltrid.org)).

### **Findings on Environmental Impacts**

For resources with potentially significant impacts, the District reviewed and considered the information contained in the Final EIR, which does not identify one or more significant environmental effects of the Project. Because there are no significant effects for the proposed Project, no Mitigation Monitoring and Reporting Program is required to mitigate significant environmental impacts, nor is a statement of overriding considerations required for the proposed Project.

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
KERN-TULARE WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT

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Exhibit A – Map of Contractor’s Service Area

Exhibit B – Rates and Charges

Exhibit C – Repayment Obligation

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
KERN-TULARE WATER DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE AND FACILITIES REPAYMENT

1        THIS CONTRACT, made this 14 day of October, 2021, in  
2        pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or  
3        supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
4        as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
5        July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
6        October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992  
7        (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act  
8        (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all  
9        collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES  
10       OF AMERICA, hereinafter referred to as the United States, represented by the officer executing  
11       this Contract, hereinafter referred to as the Contracting Officer, and KERN-TULARE WATER  
12       DISTRICT, 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;

15       WITNESSETH, That:

EXPLANATORY RECITALS

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

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

[3<sup>rd</sup>] WHEREAS, 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

[4<sup>th</sup>] 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

[5<sup>th</sup>] 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

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

[7<sup>th</sup>] WHEREAS, the rights to Project Water were acquired by the United States



pursuant to California law for operation of the Project; and

[8<sup>th</sup>] WHEREAS, the Rag Gulch Water District and the United States entered into Contract No. 14-06-200-8367A, as amended, which established terms for the delivery to the Contractor of Project Water via the Cross Valley Canal from February 4, 1976, through February 29, 1996; and

[9<sup>th</sup>] WHEREAS, the Rag Gulch Water District 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). 14-06-200-8367A-IR1 through IR12; and

[10<sup>th</sup>] WHEREAS, Rag Gulch Water District and the United States executed an agreement entitled “Agreement For Assignment Of Rag Gulch Water District ‘s Water Service Contract To Kern-Tulare Water District”, effective January 1, 2009. Kern-Tulare accepted all obligations, terms, and conditions with respect to Rag Gulch’s Existing Contract ; and

[11<sup>th</sup>] 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). 14-06-200-8367A-IR13 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

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

[13<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users’ association

[Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.”; and

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

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

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

[17<sup>th</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water service contracts into repayment contracts, amend existing repayment contracts, and allow

contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

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

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

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

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

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

[23<sup>rd</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a reasonable balance among competing demands for use of Project Water;

and to comply with all applicable environmental statutes, all consistent with the legal obligations of the United States relative to the Project; and

[24<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship in order to achieve their mutual goals; and

[25<sup>th</sup>] 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

[26<sup>th</sup>] 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

[27<sup>th</sup>] WHEREAS, the United States and the Contractor understand that DWR is willing to convey such water through State Facilities; and

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

(g) “Contractor's Service Area” shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit “A” attached

hereto, which may be modified from time to time in accordance with Article 34 of this Contract without amendment of this Contract;

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

(i) "CVPIA" shall mean the Central Valley Project Improvement Act, Title 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, in the Final 2021 Ratebooks, as adjusted to reflect payments not reflected in such schedule. The Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit "C", which is incorporated herein by reference;

(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



226 preceding contract(s);

227 (bb) "Repayment Obligation" for Water Delivered as Irrigation Water shall  
228 mean the Existing Capital Obligation discounted by  $\frac{1}{2}$  of the Treasury rate, which shall be the  
229 amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN  
230 Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the  
231 United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act;

232 (cc) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
233 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
234 through any agency of the Department of the Interior;

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

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

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

244 (gg) "Water Delivered" or "Delivered Water" shall mean Project  
245 Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting  
246 Officer;

247 (hh) "Water Made Available" shall mean the estimated amount of Project  
248 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 November 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 13,300 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 2,862 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, and Kern-Tulare Water District approved by Acting Regional Director Neil Schild, on September 9, 1984, 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 computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal annual installments (Irrigation Only) to be repaid no later than three (3) years after the Effective Date as set forth in Exhibit “C”. The Repayment Obligation is due in lump sum by December 30, 2021 as provided by the WIIN Act. The Contractor must provide appropriate notice to the Contracting Officer in writing no later than thirty (30) days prior to the Effective Date, if electing to repay the amount due using the lump sum alternative. If such notice is not provided by such date, the Contractor shall be deemed to have elected the installment payment alternative, in which case, the first such payment shall be made no later than December 30, 2021. The second payment shall be made no later than the first anniversary of the first payment date. The third payment shall be made no later than the second anniversary of the first payment date. The final payment

shall be made no later than November 1, 2024. If the installment payment option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in which case, the Contracting Officer shall re-compute the remaining amount due to reflect the pre-payment using the same methodology as was used to compute the initial annual installment payment amount, which is illustrated in Exhibit "C". Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

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

(1) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable



to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer notifies the Contractor of the Additional Capital Obligation; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

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

(b) In the event that the final cost allocation referenced in Section 4011(b) of the WIIN Act determines that the costs properly assignable to the Contractor are greater than what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be not less than one (1) year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the Contractor and Contracting Officer. In the event that the final cost allocation indicates that the costs properly assignable to the Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such overpayment as an offset against any outstanding or future obligations of the Contractor, with the exception of Restoration Fund charges pursuant to Section 3407(d) of Pub. L. 102-575.

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

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the

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

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

(d) At the time the Contractor submits the 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

920 Project use power policy is applicable, each as amended, modified, or superseded from time to  
921 time.

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

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

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

939 (5) After Project purposes are met, as determined by the Contracting  
940 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
941 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 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

(d) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(f) The Contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain

compliance with such rules, regulations, and orders.

(g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.

101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

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

#### PRIVACY ACT COMPLIANCE

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

(b) With respect to the application and administration of the criminal penalty provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's employees who are responsible for maintaining the certification and reporting records referenced in paragraph (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. § 552a(m).

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

(d) The Contracting Officer shall designate a full-time employee of the

Bureau of Reclamation to be the System Manager responsible for making decisions on denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

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

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

#### CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

#### WATER CONSERVATION

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

Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to

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

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

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

(d) At five (5)-year intervals, the Contractor shall revise its water

conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets Reclamation's then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

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

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



Luis & Delta Mendota Water Authority and the Friant-Kern Canal and related facilities are operated by the Friant Water Authority.

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

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

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

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

BOOKS, RECORDS, AND REPORTS

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

(b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or other information shall be requested from the Contractor by the Contracting Officer unless such books, records, or information are reasonably related to the administration or

performance of this Contract. Any such request shall allow the Contractor a reasonable period of time within which to provide the requested books, records, or information.

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

#### OFFICIALS NOT TO BENEFIT

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

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

34. (a) While this Contract is in effect, no change may be made in the

Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

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

#### FEDERAL LAWS

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

#### 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

1331 Reform Act of 1982 (96 Stat. 1269) shall apply to affected lands.

1332 (b) The obligation of a Contractor to pay the Additional Capital Obligation  
1333 shall not affect the Contractor's status as having repaid all of the construction costs assignable to  
1334 the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation  
1335 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1336 CERTIFICATION OF NONSEGREGATED FACILITIES

1337 37. The Contractor hereby certifies that it does not maintain or provide for its  
1338 employees any segregated facilities at any of its establishments and that it does not permit its  
1339 employees to perform their services at any location under its control where segregated facilities  
1340 are maintained. It certifies further that it will not maintain or provide for its employees any  
1341 segregated facilities at any of its establishments and that it will not permit its employees to  
1342 perform their services at any location under its control where segregated facilities are  
1343 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
1344 Employment Opportunity clause in this Contract. As used in this certification, the term  
1345 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
1346 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
1347 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
1348 facilities provided for employees which are segregated by explicit directive or are in fact  
1349 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
1350 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
1351 identical certifications from proposed subcontractors for specific time periods) it will obtain  
1352 identical certifications from proposed subcontractors prior to the award of subcontracts  
1353 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
1354 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
1355 following notice to such proposed subcontractors (except where the proposed subcontractors  
1356 have submitted identical certifications for specific time periods):

1357 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
1358 CERTIFICATIONS OF NONSEGREGATED FACILITIES

1359 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract  
1360 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment  
1361 Opportunity clause. The certification may be submitted either for each subcontract or for all  
1362 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
1363 making false statements in offers is prescribed in 18 U.S.C. § 1001.

1364 NOTICES

1365 38. Any notice, demand, or request authorized or required by this Contract shall be  
1366 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or

delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors, Kern-Tulare Water District, 5001 California Avenue, Suite 102, Bakersfield, CA 93321. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

MEDIUM FOR TRANSMITTING PAYMENT

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

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

CONTRACT DRAFTING CONSIDERATIONS


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

CONFIRMATION OF CONTRACT

41. Promptly after the execution of this amended Contract, the Contractor shall provide to the Contracting Officer a certified copy of a final decree of a court of competent jurisdiction in the State of California, confirming the proceedings on the part of the Contractor for the authorization of the execution of this amended Contract. This amended Contract shall not be binding on the United States until the Contractor secures a final decree.

1393 IN WITNESS WHEREOF, the parties hereto have executed this amended Contract as of  
1394 the day and year first above written.


1395 THE UNITED STATES OF AMERICA

1396 By:   
1397 Regional Director  
1398 Interior Region 10: California-Great Basin  
1399 Bureau of Reclamation

1400 (SEAL) KERN-TULARE WATER DISTRICT

1401 By:   
1402 President of the Board of Directors

1403 Attest:

1404 By:   
1405 Secretary of the Board of Directors



1393 IN WITNESS WHEREOF, the parties hereto have executed this amended Contract as of  
1394 the day and year first above written.

1395 **APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY - REVIEWED BY:**  
  
Digitally signed by BRIAN  
HUGHES  
Date: 2021.10.13 16:16:59  
-07'00'  
**OFFICE OF THE REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR**

THE UNITED STATES OF AMERICA

1396 By: \_\_\_\_\_  
1397 Regional Director  
1398 Interior Region 10: California-Great Basin  
1399 Bureau of Reclamation

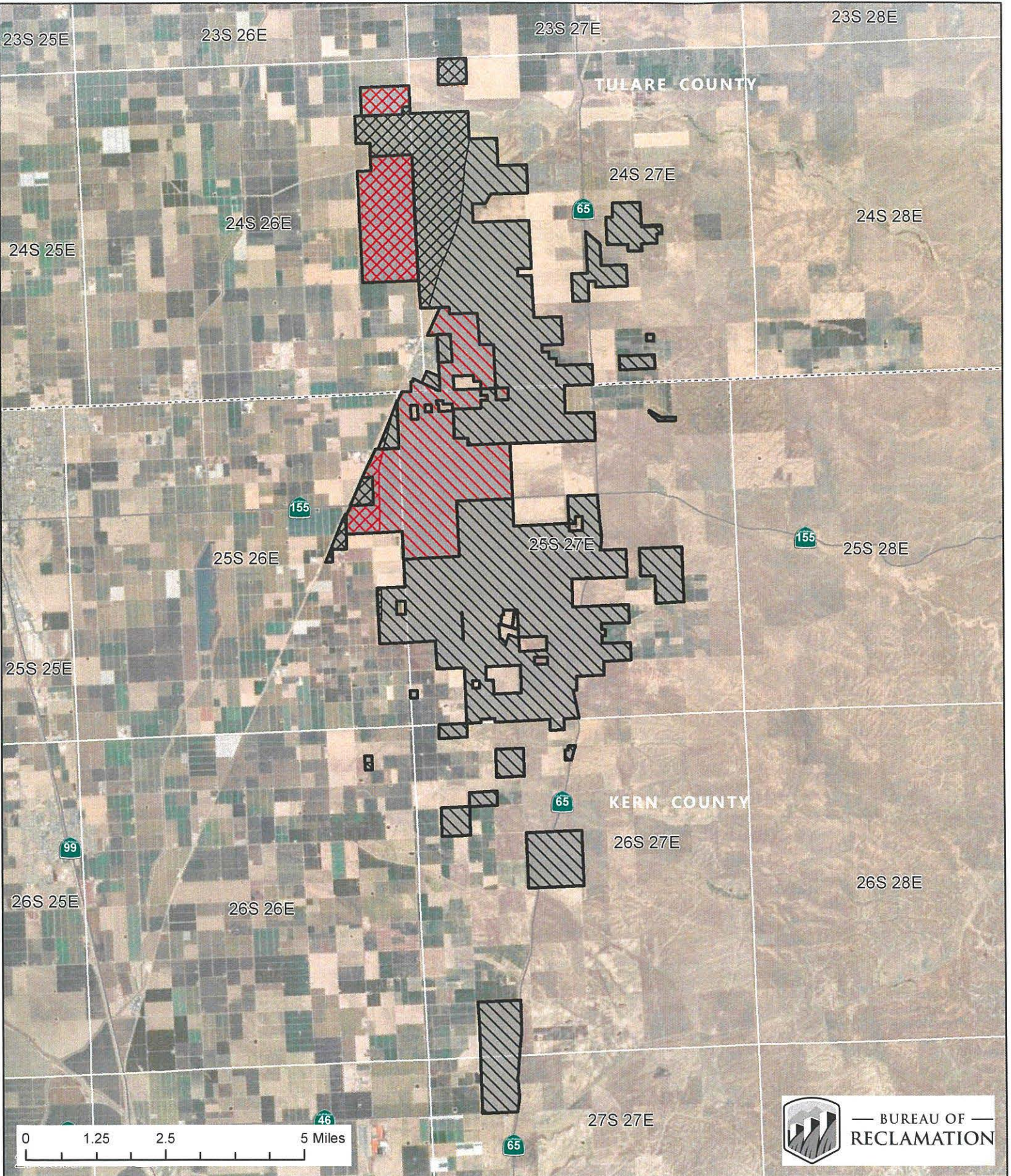
1400 (SEAL) KERN-TULARE WATER DISTRICT

1401 By:   
1402 President of the Board of Directors

1403 Attest:

1404 By:   
1405 Secretary of the Board of Directors





## Kern-Tulare W.D.

Contract No. 14-06-200-8367A-IR5-P  
Contract Assignment from Rag Gulch W.D.  
EXHIBIT A

Date: Tuesday, March 30, 2021  
File Name: N:\440\Contracts\kern\_tulare\kern\_tulare\_20210331.mxd



-  Contract 14-06-200-8601A-IR5-P Service Area Boundary (Irrigation and M&I)
-  Contract 14-06-200-8367A-IR5-P Service Area Boundary (Irrigation and M&I)
-  Contract 14-06-200-8601A-IR5-P Service Area Boundary (Irrigation Only)
-  Contract 14-06-200-8367A-IR5-P Service Area Boundary (Irrigation Only)
-  Contract 11r-1460A Boundary Area
-  District Boundary

1785-202-228



**EXHIBIT B**  
**KERN-TULARE WATER DISTRICT – RAG GULCH WD ASSIGNMENT**  
**2021 Rates and Charges**  
**(Per Acre-Foot)**

Description	Water (Through Banks PP)	M&I Water (Through Banks PP)
<b>COST-OF-SERVICE (COS) RATES</b>		
Construction Cost	\$ 31.77	\$ 6.89
O&M Components		
Water Marketing	\$ 11.68	\$ 8.97
Storage	\$ 16.70	\$ 24.62
Direct Pumping	\$ 12.91	\$ 12.91
Deficit Cost	0	0
<b>TOTAL COS RATE</b>	<b>\$ 73.06</b>	<b>\$ 53.39</b>
<b>IRRIGATION FULL COST RATE</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$ 95.88	0
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$ 113.84	0
<b>M&amp;I FULL COST RATE</b>		<b>\$ 56.55</b>
<b>CHARGES AND ASSESSMENTS</b> (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: Kern-Tulare WD  
Facility: Cross Valley Canal  
Contract: 14-06-200-8601A; 14-06-200-8367A-IR5-P

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

Description	Unpaid Cost	Discount
Construction Cost	\$ 2,683,378	0
2020 Repayment (Estimate) **	\$ 249,977	0
Adjusted Construction Cost	\$ 2,433,401	\$ 2,300,058
Intertie Construction Cost (N/A):	0	0
Total	\$ 2,433,401	\$ 2,300,058
If Paid in Installments (Used 20 yr CMT)		
Payment 1, Due 11/1/2021****		\$ 589,752
Payment 2, Due 11/1/2022****		\$ 589,752
Payment 3, Due 11/1/2023****		\$ 589,752
Payment 4, Due 11/1/2024****		\$ 589,752
Total Installment Payments		\$ 2,359,007
20 yr. CMT Rates - 05/18/2021 (to be adjusted to effective date of contract)@		2.040%
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))		1.020%

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

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

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

11/1/2021  
333

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	\$ 2,433,401	\$ 243,340	\$ 238,663	\$0	\$0	\$0	\$ 238,663
2022	\$ 2,190,061	\$ 243,340	\$ 238,451	\$0	\$0	\$0	\$ 238,451
2023	\$ 1,946,721	\$ 243,340	\$ 236,043	\$0	\$0	\$0	\$ 236,043
2024	\$ 1,703,381	\$ 243,340	\$ 233,660	\$0	\$0	\$0	\$ 233,660
2025	\$1,460,041	\$ 243,340	\$ 231,301	\$0	\$0	\$0	\$ 231,301
2026	\$1,216,701	\$ 243,340	\$ 228,965	\$0	\$0	\$0	\$ 228,965
2027	\$ 973,360	\$ 243,340	\$ 226,653	\$0	\$0	\$0	\$ 226,653
2028	\$ 730,020	\$ 243,340	\$ 224,365	\$0	\$0	\$0	\$ 224,365
2029	\$ 486,680	\$ 243,340	\$ 222,099	\$0	\$0	\$0	\$ 222,099
2030	\$243,340	\$ 243,340	\$ 219,857	\$0	\$0	\$0	\$219,857
2031-2063	-	-	-	-	-	-	-
Total Lump Sum Payment			\$2,300,058			\$0	\$2,300,058
Amount of Reduction, Lump Sum			\$ 133,343			\$0	\$ 133,343

\*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.