

USBR CVP-Wide WIIN Act: Exhibit #7

Contract No. **Insert contract number**
R.O. 05.29.2019
R.O. 08.06.2019

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Insert Division/Unit, Central Valley Project, California

AMENDMENT TO THE EXISTING CONTRACT BETWEEN THE UNITED STATES **AND**

Insert name of Contractor
PROVIDING FOR
PROJECT WATER SERVICE AND FACILITIES REPAYMENT
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The Article titles are intended to be the same for all Contracts in the CVP-wide form of Contract; however, the numbering may change to accommodate the Existing Contract.

Contract No. **Insert contract number**

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Insert Division/Unit, Central Valley Project, California

AMENDMENT TO THE EXISTING CONTRACT BETWEEN THE UNITED STATES
AND

Insert name of Contractor
PROVIDING FOR WATER SERVICE AND FACILITIES REPAYMENT

THIS AMENDMENT ("Amendment") to [Contractor-Specific, specifically
named contract] ("Existing Contract") (collectively, "Contract"), is made and effective this
____ day of _____, 20____, in pursuance generally of the Act of June 17, 1902, (32 Stat.
388), and acts amendatory thereof or supplementary thereto, including but not limited to, the
Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat.
1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),
October 12, 1982 (96 Stat. 1263), October 27, 1982 (100 Stat. 3050), as amended, Title XXXIV
of the Act of October 30, 1992 (106 Stat. 4706), as amended, and the Water Infrastructure
Improvements for the Nation Act (Public Law 114-322, 130 Stat. 1628), Section 4011 (a-d) and
(f) (WIIN Act), all collectively hereinafter referred to as Federal Reclamation law, between the
UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by
the officer executing this Amendment, hereinafter referred to as the Contracting Officer, and
Insert name of Contractor, hereinafter referred to as the Contractor.

WITNESSETH, That:

EXPLANATORY RECITALS

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[1st] WHEREAS, the United States and the Contractor entered into **(DIVISION LEVEL)** Contract Number **XXXXXXX**, which established terms for the delivery of Project Water to the Contractor from the **XXXXX** Division, as in effect the date the WIIN Act was enacted, and as may have been amended, hereinafter referred to as the “Existing Contract”; and

[1.1] [DIVISIONAL LEVEL] Address long-form IRC and last IRC for consistency with need identified in Article 2(c) of this Amendment.

[1.2] [CONTRACTOR SPECIFIC] Address Distribution System Loans, if applicable, and Existing Repayment Contracts.

[2nd] WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the WIIN Act; and

[3rd] WHEREAS, the ~~definition of “water users’ association” as provided in section 4011(f) of the WIIN Act includes the Contractor.~~

~~[x] WHEREAS, the~~ Contracting Officer and the Contractor agree to amend the Existing Contract with the execution of this Amendment; and

Commented [A1]: Reclamation rejects.

[4th] 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

Commented [A2]: Reclamation rejects deletion.

[5th] 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

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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).”

[6th] 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.”

Commented [A3]: Reclamation rejects deletion.

Commented [A4]: Reclamation rejects deletion.

[7th] 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 reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Public Law 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”

[8th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert **(IRRIGATION CONTRACTOR SPECIFIC)** irrigation and **(M&I CONTRACTOR SPECIFIC)** 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.

[9th] **[Divisional Level]** WHEREAS, [ensure Division or Contractor – specific terms are not replaced or overridden by this Amendment].

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

1. Article 1 of the Existing Contract, entitled DEFINITIONS, is amended as follows:

a. [DIVISIONAL] Upon complete payment of the Repayment Obligation, Subdivision (b) of Article 1 of the Existing Contract is amended to delete the reference to Tiered Pricing:

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

b. Subdivisions (m) and (o) of Article 1 of the Existing Contract are amended and replaced in their entirety with the following new subdivisions (m) and (o)

[DIVISIONAL/CONTRACTOR SPECIFIC for limited purpose of considering contractor-specific issues]:

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

(o) “Municipal and Industrial Water” shall mean the use of Project Water for municipal, industrial, and miscellaneous other purposes not falling under the definition of “irrigation use” or within another category of water use under an applicable Federal authority.

c. Subdivisions (xx) through (xx) are added at the end of Article 1 of the Existing Contract as follows:

(xx) “Additional Capital Obligation” shall mean construction costs or other capitalized costs incurred after _____ or not reflected in the Existing Capital Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B)

Commented [A5]: Contractors propose allowing for double spaced additions after the single space to allow for double spaced lingo addition to preserve existing contract. Existing contracts have double spaced definitions, one party even has a n Exhibit clarifying.

Commented [A6]: Reclamation rejects.

Commented [A7R6]: We may unreject if we accept proposal above.

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and (a)(3)(B) of the ~~Water Infrastructure Improvements for the Nation Act (Public Law 114-~~
322,130 Stat. 1628) (“~~WIIN Act~~”).

Commented [A8]: Reclamation accepts.

(xx) “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,
dated Month/Day/Year **[specify ratebook year for all contractors.] [contractor specific to
address the intertie]**, 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.

(xx) “Repayment Obligation” **[Irrigation Contractors]** shall mean the
Existing Capital Obligation discounted by ½ of the Treasury rate, which shall be the amount due
and payable to the United States, pursuant to section 4011(a)(2)(A) of the WIIN Act.

(xx) “Repayment Obligation” **[Municipal Contractors]** shall mean the
amount due and payable to the United States, pursuant to the section 4011(a)(3)(A) of the WIIN
Act.

**2. Article 2 of the Existing Contract, entitled TERM OF CONTRACT, is
amended and replaced in its entirety with the following new Article 2:**

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2. (a) 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;

Commented [A9]: Reclamation accepts

Commented [A10]: Reclamation accepts.

(1) Provided, That the Contracting Officer shall not seek to terminate this Contract for failure to fully or timely pay applicable 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 Contractor has failed to cure such failure to pay, or to diligently commence and maintain full curative payments actions satisfactory to the Contracting Officer within the sixty (60) calendar days' notice period;

Commented [A11]: Reclamation accepts and proposes edits.

(2) Provided further, The Contracting Officer shall not seek to suspend making water available pursuant to this Contract for non-compliance with 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 noncompliance satisfactory to the Contracting Officer, the Contracting Officer shall resume making water available pursuant to this Contract;

Commented [A12]: Reclamation accepts deletion of first sentence (not shown). Reclamation accepts change to suspend and rejects change to service, negotiation resulted in change to "making water available"

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

(b) **[DIVISION LEVEL]** Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may

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later be established, the Tiered Pricing Component as that term is utilized in this Contract, the acreage limitations, reporting, and Full Cost pricing provisions of Federal Reclamation law, and subdivisions **[Enter number of subdivisions/articles that would no longer be applicable]** of this Contract shall no longer be applicable to the Contractor.

(c) If the Amendment is terminated or determined to be invalid or unenforceable by a court of competent jurisdiction for any reason other than a material uncured breach of this Contract by the Contractor, the Existing Contract shall not be amended but shall be in full force and effect for the remainder of its term, as if this Contract had never been amended.

(1) In the event that a court does so act to terminate or invalidate this Amendment and that the term for the Existing Contract has expired or the remaining term is insufficient to avoid a lapse in water service to the Contractor, the Contracting Officer and the Contractor shall cooperate to develop a short term contract under mutually agreeable terms and conditions that will provide water service to the Contractor until such time that a contract authorized by the WIIN Act is successfully executed.

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

(e) ~~[Municipal & Industrial Contractor Specific]~~ 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.

3. (IRRIGATION CONTRACTOR SPECIFIC) and (MUNICIPAL CONTRACTOR SPECIFIC) Article 3, of the Existing Contract, entitled WATER TO BE

Commented [A13]: Reclamation accepts with edit.

Commented [A14]: Reclamation accepts with edit. Contractor edits left in track changes on line 140, Reclamation willing to accept these.

Commented [A15]: Retain "that will provide" and reject following text, that is in strikethrough.

Commented [A16]: For discussion

Commented [A17R16]: Contractors discussing desire to retain or delete in 8/7 afternoon caucus.

Commented [A18]: Contractors agree on 8/7 5 pm – to propose deletion of these two articles.

Commented [A19R18]: MJ accepts.

Commented [A20]: During negotiations, final contractor proposal is to withdraw "applicable" and move "to the extent allowed by law" at the end of the sentence.

Commented [A21]: Reclamation rejects deleting "to the extent otherwise allowed by law" and accepts Contractor proposal of "applicable".

Commented [A22]: Similar to (d) above.

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MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR, is amended as follows:

a. Subdivision (h) of Article 3 of the Existing Contract is amended and replaced in its entirety with the following new subdivision (h):

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

Commented [A23]: Reclamation accepts. Prefers "Rates and Charges"

4. Article 7 of the Existing Contract, entitled RATES AND METHOD OF PAYMENT FOR WATER, is amended as follows:

(a) The heading of the Existing Contract is amended and replaced in its entirety with RATES, METHOD OF PAYMENT FOR WATER AND ACCELERATED REPAYMENT OF FACILITIES.

(b) Subdivision (a) of Article 7 of the Existing Contract is amended and replaced in its entirety with the following new subdivision (a):

(a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to section 4011, subsection (a)(2)(A) of the WIIN Act, as set forth in Exhibit

Commented [A24]: Reclamation accepts.

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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 cost 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 and Charges 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 and Charges 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 & 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.

Commented [A25]: Reclamation accepts.

(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

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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 of this Contract as set forth in Exhibit D. **There could be one or two exhibits in most cases due to more than one service area [For Irrigation contractors and M&I contractors]** The Repayment Obligation is due in lump sum by **[Month Day, Year]** as provided by the WIIN Act. The Irrigation Contractor must provide appropriate notice to the Contracting Officer in writing no later than thirty (30) days prior to **[Month Day, Year]** **[Division Level: consider the effective date of the contract being converted]** 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 **[Month Day, Year]** **[Division Level: consider the effective date of the contract being converted]**. 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 **[Month Day, Year]** **[no later than the third anniversary of the effective date of the contract]**. 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 D. Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the

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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 D 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.

Commented [A26]: Reclamation accepts.

(2) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under section 4011 of the WIIN Act

Commented [A27]: Reclamation accepts.

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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.

(c) Article 7 of the Existing Contract is amended to add a new subdivision (b):

(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 Public Law 102-575.

Commented [A28]: Reclamation accepts.

(d) Subdivision (b) of Article 7 of the Existing Contract is amended and redesignated subdivision (c); [DIVISIONAL] Upon complete payment of the Repayment Obligation, is amended to delete the reference to the Tiered Pricing Component, as follows:

Commented [A29]: Reclamation accepts.

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

(e) **[DIVISIONAL] Upon complete payment of the Repayment Obligation, Redesignated subdivision (c)(2) of Article 7 of the Existing Contract is amended to delete the reference to the Tiered Pricing Component, as follows:**

(c)(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make available to the Contractor an estimate of the Rates 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 to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

(f) **Subdivision (j) of Article 7 of the Existing Contract is deleted in its entirety.**

(g) **[DIVISIONAL] Upon complete payment of the Repayment Obligation, Subdivision (d) of Article 7 of the Existing Contract is amended to delete the reference to Tiered Pricing Component:**

(d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. 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(ies) or, if there is no Operating Non-Federal Entity(ies), by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due

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to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges shall be computed pursuant to Article 20 of this Contract.

(h) [DIVISIONAL] Upon complete payment of the Repayment Obligation, Subdivision (i) of Article 7 of the Existing Contract is amended to delete the reference to the Tiered Pricing Component:

(i) 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 and Charges, 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.

5. Article X of the Existing Contract, entitled CONSTRAINTS ON THE AVAILABILITY OF WATER, is amended as follows:

(a) Subdivisions (a) and (b) of Article X of the Existing Contract are amended and replaced in their entirety with the following new subdivisions (a) and (b) [Reclamation will consider additional non-conflicting language at [DIVISIONAL/CONTRACTOR (e.g., reference to M&I Shortage Policy)]:

(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.

[PENDING APPROVAL: revised (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

Commented [A30]: Add as track change, our proposal

Commented [A31]: Reclamation negotiators support pending Approval.

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Contracting Officer to meet current and future legal obligations, then, *except as provided in subdivision (a) of Article 18 [Opinions & Determinations]* no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

6. Article X of the Existing Contract, entitled COMPLIANCE WITH FEDERAL RECLAMATION LAWS, is amended and replaced in its entirety with the following new Article X:

Version A. [Irrigation Specific]
COMPLIANCE WITH FEDERAL RECLAMATION LAWS

Commented [A32]: Reclamation accepts.

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.

Version B. [M&I Specific]
RULES, REGULATIONS, AND DETERMINATIONS

Commented [A33]: Reclamation accepts.

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

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

7. Article 15 of the Existing Contract, entitled WATER AND AIR POLLUTION CONTROL and Article 16 of the Existing Contract, entitled QUALITY OF WATER, are amended and replaced in their entirety with a new Article 15 as follows
[DIVISIONAL/CONTRACTOR SPECIFIC (e.g. reference to water quality provisions of Settlement Contracts)]:

Commented [A34]: Reclamation accepts.

PROTECTION OF WATER AND AIR QUALITY

15. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: Provided, That 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.

(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States **[and the State of _____]**; 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 Contractor's Project Water Service Area.

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

Commented [A35]: Reclamation accepts.

8. The Article numbers for Articles 17 through 38 of the Existing Contract are amended and redesignated as Articles 16 through 37.

9. Article 20, redesignated Article 19, of the Existing Contract, entitled CHARGES FOR DELINQUENT PAYMENTS, is amended and replaced in its entirety with the following new Article 19:

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.

10. Article 21, redesignated Article 20, of the Existing Contract, entitled EQUAL OPPORTUNITY, is amended and replaced in its entirety with the following new Article 20:

(NOT APPLICABLE IF WITH STATE OR LOCAL GOVERNMENT CONTRACTORS)

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, disability, 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, disability, 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, disability, or national origin.

(c) 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 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his 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.

(f) 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 EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) 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 EO 11246, 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.

11. Article 22, redesignated Article 21, of the Existing Contract, entitled GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT, is amended as follows:

(a) Subdivisions (a) and (b) of Article 21 of the Existing Contract are amended and replaced in their entirety with the following new subdivisions (a) and (b):

(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] [any operation and maintenance charges]** due the United States **[or in arrears for more than 12 months in the payment of any construction charges 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] [operation and maintenance charges] [or in arrears more than 12 months in the payment of construction charges]** as levied or established by the Contractor.

12. Article 23, redesignated Article 22, of the Existing Contract, entitled

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS, is amended and replaced in its entirety with the following new Article 22:

(ONLY IF CONTRACTOR IS THE WATER USER)

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.), [If Contractor is a State or local government entity] [Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.)] [If Contractor is a non-government entity] [Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, 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.

13. Article 24 of the Existing Contract, entitled PRIVACY ACT

COMPLIANCE, is amended and replaced in its entirety with the following new Article 23

[IRRIGATION SPECIFIC, Omit for M&I]:

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 X will no longer be applicable.

14. [DIVISIONAL] Article 26 of the Existing Contract, entitled WATER

CONSERVATION, is amended as follows:

(a) The first sentence of subdivision (a) of Article 26 of the Existing

Contract is amended and replaced with the following:

(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).

[DIVISIONAL/CONTRACTOR, to reflect transition to actual language in contract]

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.

(b) Subdivision (b) of Article 26 of the Existing Contract is

amended to strike California Urban Water Conservation Council and insert Mid-Pacific Region's then-existing conservation and efficiency criteria:

(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) Subdivision (d) of Article 26 of the Existing Contract is amended to strike then-current and insert then-existing:

(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

Commented [A36]: Reclamation rejects.

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.

15. Article 28 of the Existing Contract, entitled OPERATION AND MAINTENANCE OF TRANSFERRED WORKS, is amended and replaced in its entirety with the following new Article 27:

(APPLIES TO DIVISION LEVEL, IF NOT DELETE)

27. (a) Upon substantial completion of the project works, or as otherwise determined by the Contracting Officer, and following written notification, the care, operation, and maintenance of any or all of the project works may be transferred to the Contractor. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.

(b) The Contractor, without expense to the United States, shall care for, operate, and maintain the transferred works in full compliance with the terms of this Contract and in such a manner that the transferred works remain in good and efficient condition.

(c) Necessary repairs of the transferred works shall be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary repairs. Except in the case of an emergency, the Contractor will be given 60 days to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Contractor fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs shall be paid by the Contractor as directed by the Contracting Officer.

(d) The Contractor shall not make any substantial changes in the transferred works without first obtaining written consent of the Contracting Officer. The Contractor shall ensure that no unauthorized encroachment occurs on project land and rights-of-way.

(e) The Contractor agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property

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arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or the United States on transferred works required under this Contract, regardless of who performs those duties. The Contractor does not agree to indemnify the United States for any damages arising from intentional torts or malicious actions committed by employees of the United States.

(f) The Contractor shall cooperate with the Contracting Officer in implementing an effective dam safety program. The United States agrees to provide the Contractor and the appropriate agency of the State or States in which the project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities consistent with the current memorandum of understanding between the United States and the State(s) of [redacted] relating to the coordination of planning, design, construction, operation, and maintenance processes for dams and related facilities.

(g) In the event the Contractor is found to be operating the transferred works or any part thereof in violation of this Contract or the Contractor is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this Contract, then upon the election of the Contracting Officer, the United States may take over from the Contractor the care, operation, and maintenance of the transferred works by giving written notice to the Contractor of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer the Contractor shall pay to the United States, annually in advance, the cost of operation and maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, operation, and maintenance of the works may be transferred back to the Contractor.

(h) In addition to all other payments to be made by the Contractor under this Contract, the Contractor shall reimburse to the United States, following the receipt of a statement from the Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this contract.

16. [DIVISION LEVEL] Upon complete payment of the Repayment Obligation, Subdivisions (b) and (d) of Article 28 of the Existing Contract, entitled Operation and Maintenance by a Non-Federal Entity, is amended to delete the reference to Tiered Pricing:

(b) The Contracting Officer has previously notified the Contractor in writing that the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved

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by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets, or establishes for the Operation and Maintenance 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 and Charges 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.

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

17. Article 30, redesignated Article 29, of the Existing Contract, entitled BOOKS, RECORDS, AND REPORTS, is amended as follows:

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(a) Subdivisions (a) of Article 29 of the Existing Contract are amended and replaced in their entirety with the following new subdivisions (a):

(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 operation, 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.

Commented [A37]: Reclamation accepts.

18. Subdivision (a) of Article 31, redesignated Article 30, of the Existing Contract, entitled ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED, is amended and replaced in its entirety with the following new subdivision (a):

(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.

19. Article 34, redesignated Article 33, of the Existing Contract, entitled OFFICIALS NOT TO BENEFIT, is amended and replaced in its entirety with the following new Article 33:

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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.

20. Subdivision (a) of Article 35, redesignated Article 34, of the Existing Contract, entitled CHANGES IN CONTRACTOR'S ORGANIZATION, is amended and replaced in its entirety with the following new subdivision (a)

[DIVISIONAL/CONTRACTOR SPECIFIC]:

Commented [A38]: Reclamation accepts.

(a) While this Contract is in effect, no change may be made in the Contractor's [Contractor Specific] 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.

Commented [A39]: Reclamation accepts.

21. Article 37, redesignated Article 36, of the Existing Contract, entitled NOTICES, is amended and replaced in its entirety with the following new Article 36:

36. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, [DIVISION LEVEL insert appropriate Area Office], Bureau of Reclamation, _____, and on behalf of the United States, when mailed, postage prepaid, or delivered to the _____ of the Contractor, _____. 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.

22. Article 38, redesignated Article 37, of the Existing Contract, entitled CONFIRMATION OF CONTRACT, is amended and replaced in its entirety with the following new Article 37:

Version A: Court Confirmation.

(IRRIGATION ONLY) CONFIRMATION OF CONTRACT

37. Promptly after the execution of the Amendment, 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 Amendment. The Amendment shall not be binding on the United States until such final decree has been secured.

Version B: Confirmation by Contractor.

(M&I ONLY) CONFIRMATION OF CONTRACT

Promptly after the execution of the Amendment, Contractor shall provide evidence to the Contracting Officer that, pursuant to the laws of the State of California, the Contractor is a legally constituted entity and the Amendment is lawful, valid, and binding on the Contractor. The Amendment shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction.

23. Article X of the Existing Contract, entitled EMERGENCY RESERVE

FUND, is amended and replaced in its entirety with the following new Article X:

(DIVISION LEVEL)

**Either retain this revised Standard Article as applicable
or the Existing double-spaced Contract Article Remains Unchanged.
If the latter, DELETE this Article. See the Friant Division Model**

X. (a) Commencing on [execution of this Contract] [date], the Contractor shall accumulate and maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are available for use as an emergency reserve fund. The Contractor shall establish and maintain that emergency reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service.

Commented [A40]: Reclamation accepts.

(b) The Contractor shall accumulate the reserve fund with annual deposits or investments of not less than \$ _____ to a Federally insured, interest- or dividend-bearing account or in securities guaranteed by the Federal Government: Provided, That money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of \$ _____ is accumulated. Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the previous balance is restored. After the initial amount is accumulated or after the previous balance is restored, the annual deposits may be discontinued, and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

(c) Upon mutual written agreement between the Contractor and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project; the size of the annual operation and maintenance budget; additions to, deletions from, or changes in project works; and operation and maintenance costs not contemplated when this Contract was executed.

(d) The Contractor may make expenditures from the reserve fund only for meeting routine or recurring operation and maintenance costs incurred during periods of special stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary operation and maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or for meeting betterment costs (in situations where recurrence of severe problems can be eliminated) during periods of special stress. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, the Contractor shall restore that balance by the accumulation of annual deposits as specified in paragraph (b) herein.

(e) During any period in which any of the project works are operated and maintained by the United States, the Contractor agrees the reserve fund shall be available for like use by the United States.

(f) On or before of each year, the Contractor shall provide a current statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

24. Article X of the Existing Contract, entitled EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE, is amended and replaced in its entirety with the following new Article X:

(DIVISION LEVEL, IF NOT DELETE)

X. (a) The Contracting Officer may, from time to time, examine the following: the Contractor's books, records, and reports; the project works being operated by the Contractor; the adequacy of the operation and maintenance [and safety of dams] program[s]; the reserve fund; and the water conservation program including the water conservation fund, if applicable. Notwithstanding title ownership, where the United States retains a financial, physical, or liability interest in facilities either constructed by the United States or with funds provided by the United States, the Contracting Officer may examine any or all of the project works providing such interest to the United States.

(b) The Contracting Officer may, or the Contractor may ask the Contracting Officer to, conduct special inspections of any project works being operated by the Contractor and special audits of the Contractor's books and records to ascertain the extent of any operation and maintenance deficiencies to determine the remedial measures required for their correction and to assist the Contractor in solving specific problems. Except in an emergency,

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any special inspection or audit shall be made only after written notice thereof has been delivered to the Contractor by the Contracting Officer.

(c) The Contractor shall provide access to the project works, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection, or audit.

(d) The Contracting Officer shall prepare reports based on the examinations, inspections, or audits and furnish copies of such reports and any recommendations to the Contractor.

(e) The costs incurred by the United States in conducting operation and maintenance examinations, inspections, and audits and preparing associated reports and recommendations related to high- and significant-hazard dams and associated facilities shall be nonreimbursable. Associated facilities include carriage, distribution, and drainage systems; pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low-hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road; regulating reservoirs (low-hazard); fish passage and protective facilities, including hatcheries; river channelization features; rural/municipal water systems; desalting and other water treatment plants; maintenance buildings and service yards; facilities constructed under Federal loan programs (until paid out); and recreation facilities (reserved works only); and any other facilities as determined by the Contracting Officer.

(f) Expenses incurred by the Contractor, as applicable, in participating in the operation and maintenance site examination will be borne by the Contractor.

(g) Requests by the Contractor for consultations, design services, or modification reviews, and the completion of any operation and maintenance activities identified in the formal recommendations resulting from the examination (unless otherwise noted) are to be funded as project operation and maintenance and are reimbursable by the Contractor to the extent of current project operation and maintenance allocations.

(h) Site visit special inspections that are beyond the regularly scheduled operation and maintenance examinations conducted to evaluate particular concerns or problems and provide assistance relative to any corrective action (either as a follow up to an operation and maintenance examination or when requested by the Contractor) shall be nonreimbursable.

(i) The Contracting Officer may provide the State(s) an opportunity to observe and participate in, at its (their) own expense, the examinations and inspections. The State(s) may be provided copies of reports and any recommendations relating to such examinations and inspections.

780 **25. The Existing Contract is amended to add Article X, entitled**

781 **ADMINISTRATION OF FEDERAL PROJECT LANDS, as follows:**

782 **(DIVISION LEVEL, IF NOT DELETE)**

783 X. The lands and interests in lands acquired, withdrawn, or reserved and
784 needed by the United States for the purposes of care, operation, and maintenance of **(identify**
785 **Federal project or project division, unit, or works, as appropriate)** project works may be
786 used by the Contractor for such purposes. The Contractor shall ensure that no unauthorized
787 encroachment occurs on Federal project lands and rights-of-way. The Contractor does not have
788 the authority to issue any land-use agreement or grant that conveys an interest in Federal real
789 property, nor to lease or dispose of any interest of the United States.

790 **26. The Existing Contract is amended to add Article X, entitled**

791 **CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY, as follows:**

792 **(APPLIES TO DIVISION LEVEL, IF NOT DELETE)**

793 **CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY**

794 X. (a) The Contractor shall not allow contamination or pollution of
795 Federal project lands, project waters, or project works of the United States or administered by the
796 United States and for which the Contractor has the responsibility for care, operation, and
797 maintenance by its employees or agents. The Contractor shall also take reasonable precautions
798 to prevent such contamination or pollution by third parties.

799 (b) The Contractor shall comply with all applicable Federal [, State,
800 and local laws and regulations] and Reclamation policies and instructions existing, or hereafter
801 enacted or promulgated, concerning any hazardous material that will be used, produced,
802 transported, stored, released, or disposed of on or in Federal project lands, project waters, or
803 project works.

804 (c) “Hazardous material” means (1) any substance falling within the
805 definition of “hazardous substance,” “pollutant or contaminant,” or “hazardous waste” under the
806 Comprehensive Environmental Response, Compensation and Liability Act
807 (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act
808 (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution,
809 refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides,
810 and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal
811 [, State, local] or Tribal law.

812 (d) Upon discovery of any event which may or does result in
813 contamination or pollution of Federal project lands, project water, or project works, the
814 Contractor shall immediately undertake all measures necessary to protect public health and the

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environment, including measures necessary to contain or abate any such contamination or pollution, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

(e) If violation of the provisions of this Article occurs and the Contractor does not take immediate corrective action, as determined by the Contracting Officer, the Contractor may be subject to remedies imposed by the Contracting Officer, which may include termination of this Contract.

(f) The Contractor shall be liable for any response action or corrective measure necessary to protect public health and the environment or to restore Federal project lands, project waters, or project works that are adversely affected as a result of such violation, and for all costs, penalties or other sanctions that are imposed for violation of any Federal [, State, local] or Tribal laws and regulations concerning hazardous material. At the discretion of the Contracting Officer, the United States may also terminate this Amendment, as a result of such violation.

(g) The Contractor shall defend, indemnify, protect and save the United States harmless from and against any costs, expenses, claims, damages, demands, or other liability arising from or relating to Contractor's violation of this article.

(h) Reclamation agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provisions of this Article.

27. The Existing Contract is amended to add Article X, entitled
RECLAMATION REFORM ACT OF 1982, to be consistent with the WIIN Act, as follows:

(IRRIGATION ONLY)

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

(b) The obligation of a Contractor to pay the Additional Capital Obligation shall not affect the Contractor's status as having repaid all of the construction costs

Contract No. Insert Contract number here

assignable to the Contractor or the applicability of subsections (a) and (b) of section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

28. The Existing Contract is amended to add Article X, entitled

CERTIFICATION OF NONSEGREGATED FACILITIES, as follows:

(DOES NOT APPLY TO LOCAL GOVERNMENTS)

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

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES**

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

29. Article **X** of the Existing Contract, entitled **PEST MANAGEMENT**, is

amended and replaced in its entirety with the following new Article **X**:

(DIVISION LEVEL, IF NOT DELETE)

X. (a) The Contractor is responsible for complying with applicable Federal, State, and local laws, rules, and regulations related to pest management in performing its responsibilities under this Contract.

(b) The Contractor is responsible for effectively avoiding the introduction and spread of, and for otherwise controlling, undesirable plants and animals, as defined by the Contracting Officer, on or in Federal project lands, Federal project waters, and Federal project works for which and to the extent that the Contractor has operation and maintenance responsibility. The Contractor is responsible for exercising the level of precaution necessary in meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for reproductive and vegetative parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and other pests, and removing such materials before moving its vehicles, watercraft, and equipment onto any Federal land, into any Federal project facility waters, or out of any area on Federal project land where work is performed.

(c) Where decontamination of the Contractor's vehicles, watercraft, or equipment is required prior to entering Federal project land or waters, the decontamination shall be performed by the Contractor at the point of prior use, or at an approved offsite facility able to process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the completion of work, the Contractor will perform any required decontamination within the work area before moving the vehicles, watercraft, and equipment from Federal project lands and waters.

(d) Programs for the control of undesirable plants and animals on Federal project lands, and in Federal project waters and Federal project works for which the Contractor has operation and maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Contractor will adhere to applicable Federal and State laws and regulations and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals, including but not limited to, the Department of the Interior Manual, Part 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3, 1999.

30. The Existing Contract is amended to add Article **X**, entitled **MEDIUM FOR**

TRANSMITTING PAYMENTS, as follows:

Contract No. **Insert Contract number here**

X. (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) 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.

31. Exhibit C is attached hereto and incorporated herein by reference.

[DIVISION LEVEL]

32. The Existing Contract is amended to add Article X, entitled
CONTRACT DRAFTING CONSIDERATIONS, as follows:

X. The Amendment to this Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Amendment pertains. The double-spaced Articles of the Amendment have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles. The single-spaced articles are standard articles and are not negotiated.

Commented [A41]: Reclamation rejects changes.

33. Except as specifically provided herein, the provisions of the Existing Contract shall continue in full force and effect as originally written and executed.

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

UNITED STATES OF AMERICA

By: _____
Regional Director
Mid-Pacific Region
Bureau of Reclamation

Insert Contractor name

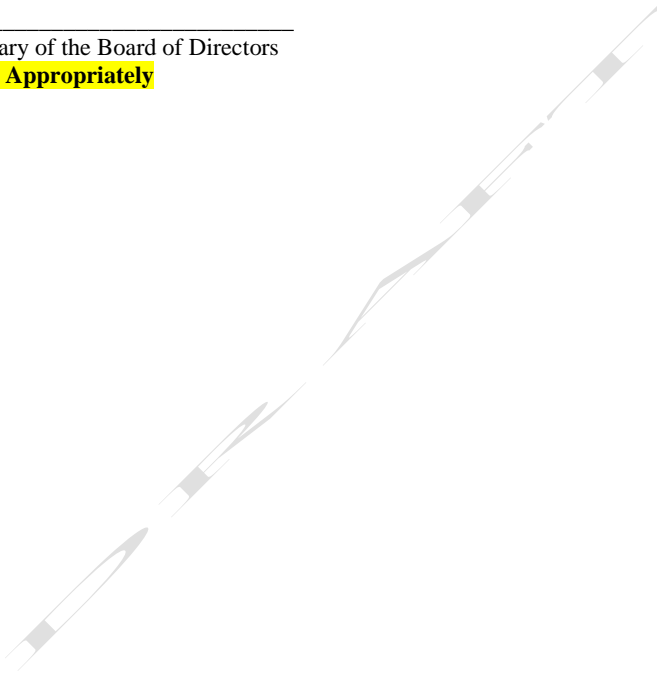
Contract No. **Insert Contract number here**

941 (SEAL)

942 By: _____
943 **Insert Appropriately [President of the**
944 **Board of Directors or Provision for Mayor,**
945 **etc.]**

946 Attest:

947 By: _____
948 Secretary of the Board of Directors
949 **Insert Appropriately**



Contract No. Insert contract number

CONTRACTOR’S BOUNDARY MAP



Contract No. **Insert contract number**

EXHIBIT B

Insert Contractors name **Choose a year**

YEAR **Choose a year** **RATES**

(Per Acre-Foot)

Cost Component	Irrigation Cost of Service	Placeholder	Placeholder	Placeholder	M&I Cost of Service
Water Marketing					
Conveyance O&M*					
Conveyance O&M Sub-Total:					
Other Costs					
Conveyance Construction					
Sub-Total Conveyance:					
Water Marketing and Conveyance Total:					
Conveyance Pumping Construction Sub-Total:					
Storage O&M					
Storage Construction					
Storage Sub-Total:					
Total Marketing, Conveyance and Storage:					

*Conveyance operation and maintenance costs were removed for ratesetting purposes and are billed directly by the Operating Non-Federal Entity.

NOTE: If the Non-Project Water is being conveyed through the Contractor's 9(d) distribution system, a separate rate will be developed for that system.

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

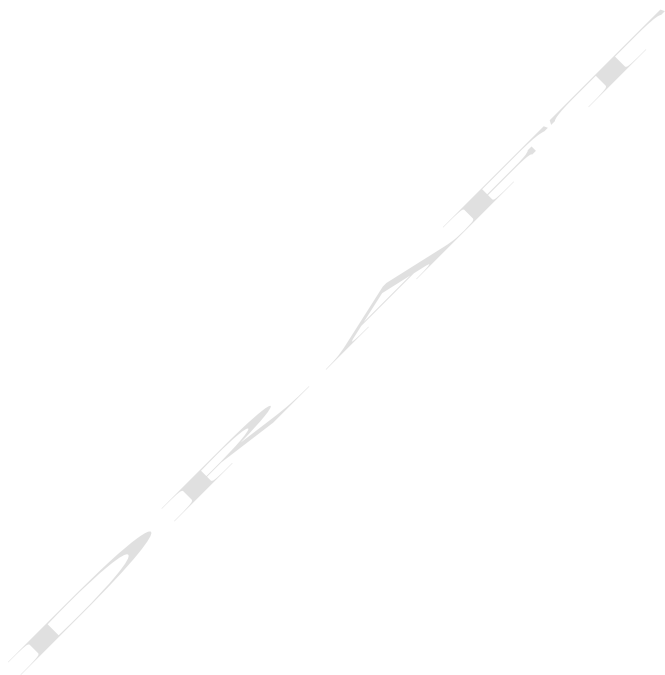
Contract No. Insert contract number

EXHIBIT C/D

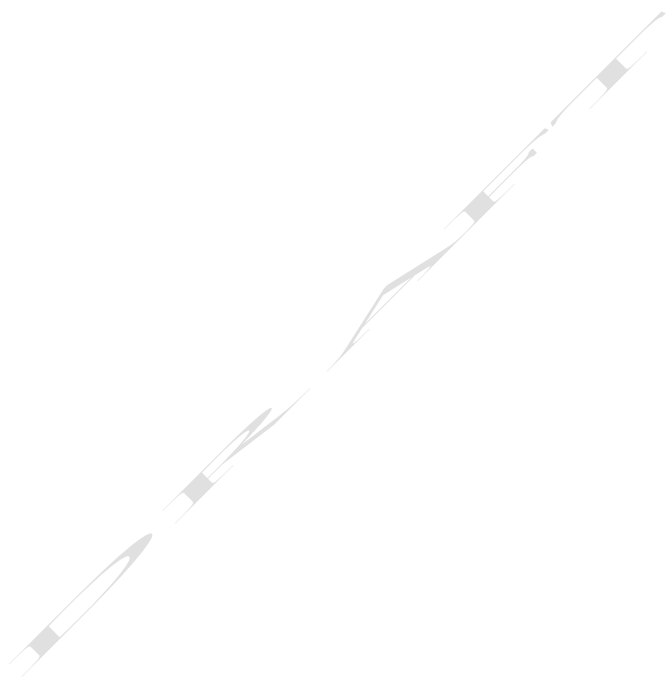


Contract No. Insert contract number

EXHIBIT D



Contract No. Insert contract number



Place holder for Reclamation

