

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AUTHORIZING THE DIRECTOR OF PUBLIC UTILITIES TO EXECUTE A SALES AGREEMENT FOR THE SALE OF UNRELEASED RESTORATION FLOWS WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, AND TO PURCHASE UNRELEASED RESTORATION FLOWS FROM MILLERTON LAKE THROUGH FEBRUARY 29, 2028, AT PRICES TO BE DETERMINED BY THE BUREAU OF RECLAMATION IN ACCORDANCE WITH THE SALES AGREEMENT

WHEREAS, the United States Department of the Interior, Bureau of Reclamation (Bureau), may offer the sale of Unreleased Restoration Flows (URFs) through February 29, 2028; and

WHEREAS, the Bureau may declare the availability of URFs from Millerton Lake for a Water Year depending upon rainfall, snowpack, and hydrologic conditions, at a price to be determined each year; and

WHEREAS, URFs represent surplus water not required for the San Joaquin Stream Restoration Program for the Water Year in which the Bureau makes URFs available; and

WHEREAS, the City of Fresno has requested delivery of URFs to its lands in prior Water Years and desires to do so moving forward once this agreement is approved; and

WHEREAS, the City has existing facilities through which it can take delivery of this water and has a need for any URFs made available to it; and

1 of 3

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Resolution No.

WHEREAS, each Water Year City staff will determine a need for any water available by purchasing URFs from the Bureau, and that delivery of such water would cause no apparent detriment to the City; and

WHEREAS, each year URFs are available the Bureau will present to the City the opportunity to purchase URFs, sometimes on short notice; and

WHEREAS, authorizing the Director of Public Utilities or designee to enter into a Sales Agreement for the Sale of URFs from Millerton Lake and authorizing the Director to purchase URFs annually until February 29, 2028, at prices to be determined by the Bureau in accordance with the Sales Agreement, will benefit the City by allowing it to maximize access to water.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Council authorizes the purchase of URFs for the current water year and authorizes the Director of Public Utilities or designee, to execute the Sales Agreement for the Sale of Unreleased Restoration Flows, attached as Exhibit A.
2. Council authorizes the Director of Public Utilities or designee to request and purchase URFs annually through February 29, 2028, at rates to be determined by the Bureau in accordance with the Sales Agreement.
3. This Resolution shall become effective upon its adoption.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, AMY K. ALLER, Interim City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2025  
Mayor Approval/No Return: \_\_\_\_\_, 2025  
Mayor Veto: \_\_\_\_\_, 2025  
Council Override Vote: \_\_\_\_\_, 2025

AMY K. ALLER  
Interim City Clerk

By: \_\_\_\_\_  
Deputy \_\_\_\_\_ Date

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

By: \_\_\_\_\_  
Jennifer M. Quintanilla Date  
Senior Deputy City Attorney

Attachments  
Exhibit A – Sales Agreement between the United States and City of Fresno for the Sale of  
Unreleased Restoration Flows

**Exhibit A**

Agreement No.24-WC-20-6209

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

**SALES AGREEMENT BETWEEN THE UNITED STATES  
AND  
CITY OF FRESNO  
FOR SALE OF UNRELEASED RESTORATION FLOWS**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2025, is entered into pursuant to the Act of June 17, 1902, (32 Stat. 388), and acts amendatory or supplementary thereto, including but not limited to Section 3406 (c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (PL 102-575; 106 Stat. 4721), Title X, Subtitle A, of the Act of March 30, 2009, (PL 111-11; 123 Stat. 1349), also referred to as the San Joaquin River Restoration Settlement Act, hereinafter referred to as SJRRSA, all collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the CITY OF FRESNO, hereinafter referred to as the Contractor, a Central Valley Project (Project), Friant Division long-term contractor.

WITNESSETH, That:

[1<sup>st</sup>] WHEREAS, pursuant to the Stipulation of Settlement in *Natural Resources Defense Council, et al., v. Kirk Rodgers, et al.*, hereinafter referred to as Settlement, and the SJRRSA, the Secretary of the Interior, acting through the Bureau of Reclamation, hereinafter referred to as Contracting Officer, is directed to implement a program that releases Restoration Flows from Friant Dam; and

[2<sup>nd</sup>] WHEREAS, consistent with Paragraph 13(i) of the Settlement, if, for any reason, full Restoration Flows are not released in any year beginning January 1, 2014, the Contracting

Officer shall release as much of the Restoration Flows as possible, in consultation with the Restoration Administrator, in light of then-existing channel capacity and without delaying completion of the Phase 1 improvements; and

[3<sup>rd</sup>] WHEREAS, the Contracting Officer, in consultation with the Restoration Administrator, shall use the amount of the Restoration Flows not released in any such year, hereinafter referred to as Unreleased Restoration Flows or URFs, by taking one or more of the steps prescribed in Paragraph 13(i) of the Settlement to best achieve the Restoration Goal, as determined by the Contracting Officer; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States have entered into Contract No. 14-06-200-8901D, hereinafter referred to as Contract, for the delivery of Project Water; and

[5<sup>th</sup>] WHEREAS, Article 3(f) of the Contract provides for, following the declaration of Water Made Available under Article 4 of the Contract, the Contracting officer to make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contractor Total provided in Article 3(a) of the Contract during the Year without adversely impacting the Project or other Project Contractors and consistent with the Secretary of the Interior's legal obligations.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties mutually agree as follows:

#### DEFINITIONS

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

(a) “Operating Non-Federal Entity” shall mean the Friant Water Authority, its successors or assigns, which has the obligation to operate and maintain Project facilities in the Friant Division pursuant to a separate agreement with the United States and which may have funding obligations with respect thereto, and the San Luis & Delta-Mendota Water Authority, its successors or assigns, which has the obligation to operate and maintain Project facilities in the Delta Division pursuant to a separate agreement with the United States and which may have funding obligations with respect thereto;

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

(c) “Project Contractors” shall mean all parties who have a long-term water service or repayment contract for Project Water from the Project with the United States pursuant to Federal Reclamation law;

(d) “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;

(e) “Restoration Flows” shall mean releases from Friant Dam in accordance with Exhibit B of the Settlement or modified by the Restoration Administrator;

(f) “Restoration Goal” shall mean to restore and maintain fish populations in “good condition” in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally-producing and self-sustaining populations of salmon

and other fish;

(g) “Water Management Goal” shall mean to reduce or avoid adverse water supply impacts to all of the Friant Division long-term water contractors or repayment contractors that may result from the Interim Flows and Restoration Flows provided for in the SJRRSA;

(h) “Unreleased Restoration Flows” shall mean those Restoration Flows which cannot be released from Friant Dam in accordance with the Restoration Administrator’s schedule.

#### TERMS OF AGREEMENT

1. This Agreement shall become effective on the date first hereinabove written and shall remain in effect through February 29, 2028 and shall supersede any previous URF agreements with the Contractor: Provided, that any performance of the obligations provided in Articles 4, 7, and 9 of this Agreement shall survive the termination date of this Agreement and shall continue until all such obligations are complete.

2. Pursuant to Article 3(f) of the Contract and consistent with all applicable State water rights, permits and licenses, Federal law, and the Settlement including SJRRSA, the Contracting Officer shall make available for delivery to the Contractor an agreed upon amount of URF water to be made available during this water year up to 12,113 acre-feet. This URF water is to be delivered within the Contractor’s Service Area for reasonable and beneficial uses in accordance with the terms of the Contract and or to other areas upon Contracting Officer approval pursuant to Article 7 herein; provided, that the Parties understand and agree that the availability of URFs are subject to Paragraph 13(i) of the Settlement and will be furnished if, as, and when it can be made available, as solely and conclusively determined by the Contracting

Officer.

3. URF water will be made available under this agreement to Friant Division contractors first, per the allocation on Exhibit A of this Agreement. Exhibit A will be updated for acre-feet of water made available by block, and for price, when new tiers or blocks of water are approved for delivery. Each block of URF water will be allocated to each Friant Division Contractor based on their Class 1, and/or their Class 2, contract water supply, as a percent (%) to the total Class 1 and/or Class 2 water supply for all Friant Division Contractors on a pro rata basis. Should any Contractor choose not to take its full pro rata share of a URF water block, that unused water will be redistributed for sale to the other Friant Division Contractors. Should there be any remaining URF water not claimed by either Class 1 or Class 2 Friant Division Contractors that water will then be made available to non-Friant Division Contractors.

4. The Contractor's share of, and price per acre-foot, for each block of URF water is shown on Exhibit A of this Agreement and subsequent revisions thereof. The formula to determine URF pricing is shown in Exhibit C of this Agreement. Prior to a block of water being released for sale, contractors may reduce their committed share of a given block upon request or may commit to a larger share of a given block, should any unused water be available. Changes to a Contractor's commitment of a block cannot be made after the URF block is released for delivery. Payment is due immediately upon the release of the URF block. Upon release of a URF block, the Contractor shall also submit to the Contracting Officer a written schedule that is satisfactory to the Contracting Officer, providing for the total volume of URF water made available, and for delivery of this water within the specified time period it is made available, under the then current block of URF water made available as shown on Exhibit A of this



Agreement. Subsequent blocks of URF water shall be distributed in a similar manner.

5. Upon submission of the schedule by the Contractor, as provided in Article 4 herein, the Contractor shall ensure payment has been made to the United States equal to the total volume of URF water made available by block and at the sales price for that block of URF water. URFs shall not be delivered to the Contractor prior to receipt of full payment. The Contractor is responsible for the payment of any and all blocks of water that they agree to purchase, whether or not they take delivery of this water within the specified time period it is made available.

6. Any discrepancy in location, delivery, or measurement between this Agreement and the Contract shall be reconciled by the Contracting Officer, after consultation with the Contractor.

7. URF waters made available to the Contractor pursuant to this Agreement may be sold, transferred, exchanged, or banked in accordance with Articles 3(d) and 10(a) of the Contract, and as otherwise authorized in the Contract.

8. In compliance with the Water Management Goals of the Settlement, the Contracting Officer shall not undertake any action pursuant to this Agreement that results in further water delivery reductions to any Friant Division long-term contractor beyond what would have been caused by releases in accordance with Exhibit B of the Settlement. In the event that capacity is no longer available in Millerton Reservoir for URF water that has accrued pursuant to this Agreement, as solely and conclusively determined by the Contracting Officer, the URFs determined by the Contracting Officer to have previously accrued in Millerton Reservoir, and not yet delivered to Contractor, shall be among the first water spilled in accordance with the Friant Operational Guidelines for Millerton Reservoir and Restoration Flow Guidelines; provided, that

the Contracting Officer will, to the extent practicable, inform the Contractor by written notice, or otherwise, of any impending spill of URFs from Millerton Reservoir. Guidance on the determination of URF spill is available in Exhibit B of this agreement.

9. In the event the quantity of URFs diverted by the Contractor exceeds the quantity of URFs available pursuant to this Agreement, the Contractor shall immediately take all reasonable actions to adjust their schedules or make available a like amount of water, from the Contractor's current year Class 1 and/or Class 2 water made available supply, in the Project Facilities for use by the United States for Project purposes. If the Contractor has taken delivery of all water made available in the current water year, then water delivered in excess of URF water made available to the Contractors shall be accounted for as "pre-use" water per Article 3(g) of the Contract and will be deducted from Class 1 and/or Class 2 water made available to the Contractor in subsequent water years.

10. All payments received by the United States from the Contractor pursuant to this Agreement shall be deposited into the San Joaquin River Restoration Settlement Fund.

11. The Contractor shall be solely responsible for making any and all payments to the Operating Non-Federal Entity for any operation and maintenance or additional costs associated with the delivery of URFs pursuant to this Agreement. The Contracting Officer will not impose additional Surcharge payments for this water.

12. The San Joaquin River Restoration Program shall determine whether URFs delivered to the Contractor pursuant to this Agreement be considered an offset to the Contractor's Recovered Water Account pursuant to Paragraph 16(b) of the Settlement. Guidance on this topic is found in Exhibit C of this Agreement.

13. The San Joaquin River Restoration Program may offer additional URF water in exchange for the Contractor's Project Water supplies based on review and acceptance of the Contractor's exchange proposal. If the Contractor's exchange proposal is accepted, the Contractor need only supply additional exhibit(s) detailing the exchange process and ratio of exchange. Those exhibits will be attached to the Agreement once approved by the Contractor and Contracting Officer. A separate Memorandum of Understanding will not be issued.

14. By signing this Agreement, the Contractor agrees to pay for all URF water committed to under the Agreement for its own use or transfer. Failure to respond to an offer of URF water prior to release of a block will result in the Contractor being excluded from the offering. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, Bureau of Reclamation, South-Central California Area Office, 1243 'N' Street, Fresno, CA 93721-1813, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors, City of Fresno, 2600 Fresno Street Room 4019, Fresno, California 93721. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article of this Agreement for other notices. The Contractor may also respond to any such notice, demand, or request by contacting the Area Manager by electronic mail. Those designees in the San Joaquin River Restoration Program and the South-Central California Area Office who assist in the administration of the Agreement may also be contacted in the same manner. All electronic mail responses received will be confirmed by electronic mail receipt.

15. Except as expressly stated in this Agreement, this Agreement shall be consistent with and subject to the terms and conditions of the Contract.

16. In the event the San Joaquin River Restoration Program operating procedures are changed by Reclamation's administration of the Restoration Flow Guidelines, by legislation or the courts, and this Agreement no longer complies with current statutes, court orders, regulations, etc., the Contracting Officer will then void the current Agreement and issue a new Agreement, or amend the current Agreement with language that brings it into compliance with Reclamation's administration of the Restoration Flow Guidelines, current statutes, court orders, regulations, etc.

17. This Agreement has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains and no one party shall be considered to have drafted the stated articles.

189 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first  
190 above written.

191 UNITED STATES OF AMERICA

192 By: \_\_\_\_\_  
193 Area Manager  
194 South-Central California Area Office  
195 Bureau of Reclamation

196 CITY OF FRESNO

197 By: \_\_\_\_\_  
198  
199 Director of Public Utilities

200 (SEAL)

201 Attest:

202 By: \_\_\_\_\_  
203 Secretary, Board of Directors



## **EXHIBIT B**

### **GUIDANCE FOR DETERMINING WHETHER URF WATER IS LOST TO SPILL**

As per Paragraph 13(i) of the San Joaquin River Stipulation of Settlement, the Secretary shall not undertake any action pursuant to Paragraphs 13(i)(1) through 13(i)(3) that increases the water delivery reductions to any Friant Division long-term contractor beyond what would have been caused by releases in accordance with the hydrographs (Exhibit B of the Settlement). After consultation with Settling Parties, Implementing Agencies, and the Restoration Administrator, Reclamation has developed guidance for determining whether URF water allocated to Friant Contractors yet not delivered is lost during flood management actions (or more commonly referred to as “spill”).

When Millerton is in Flood Management Actions, there is a possibility that the management of URFs by the Secretary or the Restoration Administrator may increase water delivery reductions to one or more Friant Contractors. Because the Settlement precludes this impact from occurring, a “Water Supply Test” is applied to these actions. In managing the distribution of URFs for sale or exchange, actions are avoided if they are likely to cause an impact (i.e. fail a Water Supply Test).

URFs that are made available during or before the Uncontrolled Season period should generally be delivered by the end of Uncontrolled Season such that the cumulative volume of Restoration Flows released to the San Joaquin River and delivered at turnouts as URFs, equals or exceeds the cumulative volume at that point in the Restoration Year as depicted in Exhibit B of the Settlement (as if all the Restoration Flows had been released to the San Joaquin River). During the spring and fall flexible flow periods, there are additional allowances that provide flexibility to the Restoration Administrator and Secretary, so in some cases URFs can be delivered beyond the end of Uncontrolled Season.

Reclamation will provide clear instructions for each block of water made available and what date it must be delivered. Should this date pass without water being scheduled by the Friant Contractor and delivered, Reclamation may be required to conduct a Water Supply Test. Any undelivered URF water that fails the Water Supply Test would be determined to have been spilled and no longer available for delivery. This spilled volume will then be removed from pending deliveries proportional to each contractor’s pending deliveries of committed quantity of the URF block. Contractors who have delivered their committed quantities will not be affected; only those contractors who have not completed their committed deliveries are at risk of losing the undelivered portion of their URFs. The current Restoration Flow Guideline revision (version 2.1) provide further guidance on URFs that may be lost during Flood Management Actions.

**EXHIBIT C**  
**PRICING FOR TIER 1 AND TIER 2 URF WATER**  
**RWA OFFSETS**

**Pricing**

Two price structures will be used for the sale of URFs to Friant Contractors. Sales to third parties may be at a different price but will not be lower than as offered to Friant Contractors, including consideration of RWA offsets. Two “tiers” will be used. Tier 1 URF water is water that is delivered before or during Uncontrolled Season or when a flood management action is likely for Millerton Lake Reservoir within the next 30 days. Tier 2 URF water is water that is likely to have flexibility in how it is scheduled and flood management actions are unlikely within the next 30 days. There is no guarantee that Tier 2 water can be scheduled for delivery during the entirety of the Contract Year as hydrology may change unexpectedly. Tier 1 and 2 water may both be offered within a contract year.

Pricing will change during the course of this contract period. Pricing for 2023-2024 contract years will keep the same pricing used in the 2020-2024 URF Sales and Exchange Agreement. Pricing is different for the period 2025-2027 contract years.

**Tier 1**

To be competitive with other types of water offered during flood management operations, and to optimize reservoir management, Tier 1 URF water will be priced at a competitive rate and discounted as to Tier 2 water. Payment is due upon acceptance of a quantity of URF water, regardless of whether delivery is made. If not delivered immediately, Tier 1 URF water has the risk of being spilled (it is unstorable and has very limited delivery window). Thus, the Tier 1 price includes the risk factor associated with managing this water.

The pricing for Tier 1 URF water is set for the duration of the contract. Tier 1 URF water price may be reduced temporarily at the sole discretion of the Contracting Officer but will not increase. Whether Tier 1 URFs are available or not is at the discretion of the Contracting Officer in consultation with the San Joaquin River Restoration Program.

**Table C-1**

Tier 1 URF water	<b>Contract Year</b>	<b>Price</b>
	2023-2024	\$23.00/acre-foot
	2025-2027	\$25.00/acre-foot



## Tier 2

Tier 2 URF water has a sliding scale pricing based on the forecasted hydrology. Wetter conditions as evidenced by the water year Unimpaired Inflow into Millerton (i.e. “Natural River”) result in a lower price, and vice versa. Tier 2 URF water is intended to be distributed when flood management actions are unlikely to occur in the remaining water year, or after flood management actions have brought Millerton Lake Reservoir back under control.

The pricing will be set by Reclamation based on the forecasted Unimpaired Inflow into Millerton (i.e. Natural River). This runoff forecast is dynamic and evolves throughout the water year. Pricing will be set for the entire year upon issuance of the first Restoration Flow Allocation made after March 21 and generally held at that price for the remainder of the Contract Year (though the Contracting Officer retains discretion to temporarily reduce, but not increase, the price).

The runoff forecast used to set the Tier 2 URF pricing will follow the same process as used to determine the Restoration Flow Allocation as prescribed in the Restoration Flow Guidelines. It may be based on the 90%, 75%, or 50% exceedance depending on the hydrology as dictated by current Restoration Flows Guidelines.

This forecasted unimpaired inflow value will then be used in the following formula to derive the Tier 2 price:

**Table C-2**

Tier 2 URF water	Contract Year	Price
	2023-2024	Tier 2 URF price per acre foot = $285,000 / (\text{unimpaired inflow in TAF} + 400)$
	2025-2027	Tier 2 URF price per acre foot = $325,000 / (\text{unimpaired inflow in TAF} + 550)$

An example of the above Tier 2 pricing formula applied to different runoff values is shown in Table C-3 below for a range of hydrology:

**Table C-3**

<b>Unimpaired Inflow into Millerton</b>	<b>Tier 2 Price per Acre-Foot</b>	
	<b>2023-2024</b>	<b>2025-2027</b>
4600	\$57.00	\$63.11
4400	\$59.38	\$65.66
4200	\$61.96	\$68.42
4000	\$64.77	\$71.43
3800	\$67.86	\$74.71
3600	\$71.25	\$78.31
3400	\$75.00	\$82.28
3200	\$79.17	\$86.67
3000	\$83.82	\$91.55
2800	\$89.06	\$97.01
2600	\$95.00	\$103.17
2400	\$101.79	\$110.17
2200	\$109.62	\$118.18
2000	\$118.75	\$127.45
1800	\$129.55	\$138.30
1600	\$142.50	\$151.16
1400	\$158.33	\$166.67
1200	\$178.13	\$185.71
1000	\$203.57	\$209.68
800	\$237.50	\$240.74
600	\$285.00	\$282.61

### **RWA Offsets**

Reclamation, through the San Joaquin River Restoration Program, will administer the determination of whether URFs received by a Friant long-term contractor will, or will not, offset an RWA impact credit. Administration will be consistent with the Restoration Flow Guidelines, or in the absence of such guidance be allocated as follows:

Tier 1 water will not offset an RWA credit, regardless of whether a URF sale or URF exchange. Tier 1 water exchanges will not offset a RWA credit.

Tier 2 water sales will offset an RWA credit on a 1:1 basis. Tier 2 water exchanges will offset a RWA credit for every acre-foot of leave behind water (unless otherwise by mutual agreement).