

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

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
FRESNO, CALIFORNIA, AUTHORIZING THE EXECUTION  
OF A CONTRACT FOR TEMPORARY WATER SERVICE  
BETWEEN THE UNITED STATES AND CITY OF FRESNO

WHEREAS, the United States Department of the Interior, Bureau of Reclamation, hereinafter called the USBR, has declared that temporary supply of water may exist that is not storable for Central Valley Project purposes; and, pursuant to Section 215 of the Reclamation Reform Act of 1982 (Public Law 97-293), this temporary supply of water is exempt from the ownership limitations of Federal Reclamation Law; and;

WHEREAS, the City of Fresno, hereinafter called City, has requested delivery of this temporary water to their lands; and

WHEREAS, the City has existing facilities through which it can take delivery of this water; and

WHEREAS, City staff has determined a need for such a temporary water supply from the USBR, and that delivery of such temporary water would cause no apparent detriment to the City.

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

SECTION 1. The Council hereby adopts the attached Exhibit "A" Contract for Temporary Water Service between the United States and the City of Fresno.

SECTION 2. This resolution shall become effective upon its adoption.

\* \* \* \* \*

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: ASE

Resolution No.

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

I, YVONNE SPENCE, 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 \_\_\_\_\_, 2018.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2018  
Mayor Approval/No Return: \_\_\_\_\_, 2018  
Mayor Veto: \_\_\_\_\_, 2018  
Council Override Vote: \_\_\_\_\_, 2018

YVONNE SPENCE, MMC  
City Clerk

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

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Amanda B. Freeman Date  
Deputy City Attorney

Attachment: Exhibit A

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

CONTRACT FOR TEMPORARY WATER SERVICE  
BETWEEN THE UNITED STATES  
AND  
CITY OF FRESNO  
(A FRIANT REPAYMENT CONTRACTOR)

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Friant Division, Central Valley Project, California

5 CONTRACT FOR TEMPORARY WATER SERVICE  
6 BETWEEN THE UNITED STATES  
7 AND  
8 CITY OF FRESNO

9 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
10 pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or  
11 supplementary thereto including the Acts of August 26, 1937 (50 Stat. 844), as amended  
12 and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
13 October 12, 1982 (96 Stat. 1263), and October 30, 1992 (106 Stat. 4600), all collectively  
14 hereinafter referred to as the Federal Reclamation law, between the UNITED STATES OF  
15 AMERICA, hereinafter referred to as the United States, and CITY OF FRESNO, hereinafter  
16 referred to as the Contractor;

17 WITNESSETH, That:

18 EXPLANATORY RECITALS

19 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central  
20 Valley Project, California (Project) for the purposes, among others, of furnishing water for  
21 irrigation, municipal, domestic, mitigation, protection, and restoration of fish and wildlife, and  
22 other beneficial uses; and

23 [2<sup>nd</sup>] WHEREAS, if the Contracting Officer determines that Temporary Water is  
24 available at Friant Dam, such Temporary Water will be made available to the Contractor  
25 pursuant to this Contract; and

[3<sup>rd</sup>] WHEREAS, pursuant to Section 215 of the Act of October 12, 1982 (96 Stat. 1263), neither the ownership limitations of this Act nor the ownership limitations of any other provision of Federal Reclamation law shall apply to lands which receive Temporary Water pursuant to this Contract; and

[4<sup>th</sup>] WHEREAS, the Contractor is willing to contract with the United States pursuant to terms and conditions of this Contract to obtain a supply of Temporary Water from said Project facilities; and

[5<sup>th</sup>] WHEREAS, a Categorical Exclusion Checklist for this Contract was signed on December 14, 2016, in accordance with the National Environmental Policy Act;

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 hereof, the term:

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

(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;

(c) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized representative acting pursuant to this Contract or applicable Reclamation law or regulation;

(d) “Contractor’s Service Area” shall mean the area to which the Contractor is permitted to provide Temporary Water under this Contract as depicted in Exhibit A attached hereto, which may be modified upon the mutual written agreement of the parties hereto without amendment of this Contract;

(e) “Irrigation Water” shall mean Temporary Water used to irrigate land primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto. It does not include uses such as watering golf courses; lawns and ornamental shrubbery used in residential and commercial landscaping, household gardens, parks and other recreational facilities; pasture for animals raised for personal purposes or for nonagricultural commercial purposes; cemeteries; and similar uses (except to the extent that some of these uses may be incidental to uses that are primarily agricultural). It also does not include commercial agricultural uses that do not require irrigation, such as fish farms and livestock production in confined feeding or brooding operations;

(f) “Municipal and Industrial Water” or “M&I Water” shall mean Temporary Water, other than Irrigation Water, used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in units of less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use described in subdivision (e) of this Article;

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

(h) “Operating Non-Federal Entity” shall mean the Friant Water Authority, its

71 successors or assigns, which has the obligation to operate and maintain Project  
72 facilities in the Friant Division pursuant to a separate agreement with the United States and  
73 which may have funding obligations with respect thereto;

74 (i) "Project" shall mean the Central Valley Project owned by the  
75 United States and managed by the Department of the Interior, Bureau of Reclamation;

76 (j) "Rates" shall mean the payments determined annually by the Contracting  
77 Officer in accordance with the then-current applicable water ratesetting policies for the Project;

78 (k) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
79 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
80 through any agency of the United States Department of the Interior;

81 (l) "Temporary Water" shall mean a supply of water made, not to exceed one  
82 year, possible during the Year as a result of an unusually large water supply not otherwise  
83 storable for Project purposes, or infrequent and otherwise unmanaged flood flows of short  
84 duration;

85 (m) "Temporary Water Delivered" shall mean Temporary Water made  
86 available for use by the Contractor at the point(s) of delivery approved by the Contracting  
87 Officer, shown on Exhibit A, which may be changed by mutual agreement of the parties hereto  
88 without requiring amendment to this Contract;

89 (n) "Temporary Water Scheduled" shall mean Temporary Water to be made  
90 available to the Contractor for which times and quantities for delivery have been established  
91 by the Contractor and Contracting Officer pursuant to Article 4 of this Contract; and

92 (o) "Year" shall mean the period from and including March 1 of the  
93 Calendar Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT

2. This Contract shall become effective on the date first hereinabove written and shall remain in effect through February 28, 2019. This Contract shall not be extended or renewed and no provision of this Contract shall be construed in any way as a basis for the Contractor to establish any priority or right to a Project water supply or to obligate the United States to enter into any other contract. Moreover, nothing in this Contract shall be construed to modify, amend, or supersede any term or provision of Contractor's water service or water repayment contract with the United States.

WATER TO BE MADE AVAILABLE TO THE CONTRACTOR

3. (a) It is understood and agreed that because of its uncertainty as to availability and time of occurrence, Temporary Water will be furnished only if, as, and when it can be made available, as determined by the Contracting Officer. The Contracting Officer shall notify the Contractor of the time period(s) during which Temporary Water can be made available under this Contract. Following such notice by the Contracting Officer, consistent with all applicable State water rights, permits, and licenses; Federal law; and subject to the terms and conditions hereinafter stated, the United States shall make available for delivery to the Contractor a maximum of 10,000 acre-feet of Temporary Water for Irrigation and Municipal and Industrial (M&I) purposes; Provided, that the maximum quantity of Temporary Water provided herein may be increased upon the written mutual agreement of the Parties and without requiring amendment to this Contract. Temporary Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Deliveries of Temporary Water shall be terminated when the Contracting



Officer determines that Temporary Water is no longer available.

(c) The Contracting Officers notification of the availability and subsequent non-availability of Temporary Water may be made either orally or in writing on 24 hours' or less notice.

(d) Delivery and use of the Temporary Water shall be in accordance with all applicable Federal, state and local laws, rules and regulations and Reclamation policy.

(e) The Contractor shall make reasonable and beneficial use of all Temporary Water furnished pursuant to this Contract.

#### TIME FOR DELIVERY OF WATER

4. The Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantity and the time for delivery of the Temporary Water to be made available pursuant to subdivision (a) of Article 3 of this Contract: *Provided*, That the Contractor shall not schedule Temporary Water in excess of the quantity that the Contractor intends to put to beneficial use within the Contractor's Service Area, unless approved pursuant to subdivision (b) of Article 5 of this Contract. Said delivery schedule and any revisions thereof shall be submitted at such times as determined by the Contracting Officer and shall be subject to the approval of the Contracting Officer.

#### POINTS OF DELIVERY – RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) All Temporary Water Delivered to the Contractor pursuant to this Contract shall be delivered at a point or points on the Friant-Kern Canal and any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor. In addition, all Temporary Water Delivered shall be measured and recorded with equipment furnished, installed, operated, and

maintained by the Contracting Officer either directly or indirectly through its written agreement(s) with the Operating Non-Federal Entity, unless undertaken by the Contractor with the consent of the Contracting Officer. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity, the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall make a final determination of the quantity delivered for that period of time. The Contracting Officer shall consult with Contractor and the Operating Non-Federal Entity prior to making said determination.

(b) Temporary Water Delivered pursuant to this Contract shall only be used by the Contractor on lands situated within the Contractor's Service Area depicted on Exhibit A, unless specifically authorized in writing by the Contracting Officer; *Provided*, That Temporary Water Delivered pursuant to this Contract shall not be transferred, exchanged, or banked for other water supplies without the written approval of the Contracting Officer prior to the transfer, exchange, or banking and no transfers, exchanges or banking shall be approved absent all appropriate environmental documentation, including but not limited to documents prepared pursuant to the National Environmental Policy Act and the Endangered Species Act.

(c) The Contractor shall be responsible for the control, carriage, handling, use, disposal, or distribution of Temporary Water Delivered to the Contractor pursuant to this Contract beyond the point(s) of delivery specified in subdivision (a) of this Article. 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 arising out of any act,

omission, neglect, or misconduct in the manner or method of performing any duties of the United States 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.

#### WATER MEASUREMENT WITHIN CONTRACTOR'S SERVICE AREA

6. (a) The Contractor shall ensure that all Temporary Water Delivered for Irrigation purposes within the Contractor's Service Area is measured at each agricultural turnout and that all Temporary Water Delivered for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the Temporary Water and to bill water users for deliveries of such water by the Contractor. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law.

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

#### PAYMENTS AND ADJUSTMENTS

7. (a) At the time the Contractor submits a delivery schedule, or any revision thereof, pursuant to Article 4 of this Contract, the Contractor shall make an advance

187 payment to the United States equal to the total amount payable pursuant to the applicable Rates  
188 set forth in Exhibit B, for the quantity of Temporary Water Scheduled. Temporary Water shall  
189 not be delivered to the Contractor prior to receipt of such advance payment. Temporary Water  
190 Delivered to the Contractor by the United States but subsequently not used by the Contractor  
191 shall be considered as having been accepted by the Contractor and no refund shall be made by  
192 the United States to the Contractor for such unused Temporary Water; *Provided*, That the  
193 Contractor is not required to initially schedule the maximum amount of water specified in  
194 subdivision (a) of Article 3 of this Contract.

195           (b) In addition to payment of the Rates in subdivision (b) of this Article, the  
196 Contractor shall pay all Charges for Temporary Water Delivered before the end of the month  
197 following the month of delivery at the charge set forth in Exhibit B. On or before September 15,  
198 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during  
199 the period October 1 of the current Calendar Year, through September 30, of the following  
200 Calendar Year, and such Charges shall override the Charges in Exhibit B. All Charges due shall  
201 be based on the quantities of Irrigation Water and M&I Water shown in the United States'  
202 Monthly Water Statement (MWS) for the subject month. The MWS shall be regarded by the  
203 Contractor as a bill for the payment of appropriate Charges. Any monthly adjustment for  
204 overpayment or underpayment of Charges shall be accomplished through the adjustment of  
205 Charges due to the United States in the next month.

206           (c) Within 60 days of the expiration of this Contract, any payment made by  
207 the Contractor in excess of the total amount due to the United States pursuant to this Contract  
208 shall, at the option of the Contractor, be refunded by the United States to the Contractor or  
209 credited against other obligations due to the United States by the Contractor. With respect to

overpayment, such refund or credit shall constitute the sole remedy of the Contractor or anyone having, or claiming to have by or through the Contractor, the right to the use of any of the Temporary Water supply provided for herein.

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

#### RETURN FLOWS

8. The United States reserves the right to all seepage and return flow water derived from Temporary Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area: *Provided*, That this shall not be construed as claiming for the United States any right to seepage or return flow of water being put to reasonable and beneficial use, including use for underground storage, pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor. For purposes of this Article, groundwater recharge, groundwater banking and all similar groundwater activities will be deemed to be underground storage.

#### OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

9. (a) The O&M of certain Project facilities which serve the Contractor, and responsibility for funding the costs of such O&M, have been transferred to the Operating Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal Entity.

(b) The Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer, 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 O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity. 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 or such successor collects payments on behalf of the United States.

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

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity, or any successor thereto, 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 the water under this Contract representing the O&M costs of the 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.

#### OPINIONS AND DETERMINATIONS

10. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of this Article is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and the State of California, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

#### PROTECTION OF WATER AND AIR QUALITY

11. (a) Project facilities used to make available and deliver Temporary Water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the Temporary Water at the highest level possible as determined by the Contracting Officer: *Provided:* That the United States does not warrant the quality of the Temporary Water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of Temporary 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 California and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of Temporary 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 Temporary Water provided by the Contractor within the Contractor's Service Area.

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

#### CHARGES FOR DELINQUENT PAYMENTS

12. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent

beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

#### EQUAL EMPLOYMENT OPPORTUNITY

13. 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 its books, records, and accounts by the Bureau of Reclamation (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.

#### GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

14. (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 obligations 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 Temporary Water available to the Contractor through the Friant Division Project facilities during any period in which the Contractor is in arrears in the advance payment of the Rates or payment of the applicable Charges due the United States. The Contractor shall not deliver Temporary 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 the payment of construction charges as levied or established by the Contractor.

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

BOOKS, RECORDS, AND REPORTS

15. (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.

(b) Nothing in this Article 15 shall be construed to limit or constrain the ability of the Contracting Officer to conduct contract compliance reviews of this Contract in accordance with Reclamation Manual Directives and Standards PEC 05-08, last revised September 29, 2014, as may be further revised, amended, modified, or superseded.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

17. 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.

OFFICIALS NOT TO BENEFIT

18. 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.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

19. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title 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, as well as with their respective implementing regulations and 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 agreement 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.

#### NOTICES

20. (a) 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, Bureau of Reclamation, South Central California Area Office, Fresno, California 93721-1813, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Public Utilities Director, 2600 Fresno St., Room 4019, Fresno, California 93721-3624. 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.

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

MEDIUM FOR TRANSMITTING PAYMENTS

21. (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 the payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

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

CONTRACT DRAFTING CONSIDERATIONS

22. This Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. The double-spaced articles of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

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

443 UNITED STATES OF AMERICA

444 By: \_\_\_\_\_  
445 Area Manager  
446 South-Central California Area Office  
447 Bureau of Reclamation

448 CITY OF FRESNO

449  
450 By: \_\_\_\_\_  
451 Thomas C. Esqueda  
452 Director of Public Utilities

453 ATTEST:  
454 YVONNE SPENCE, MMC  
455 City Clerk

456 By: \_\_\_\_\_  
457 Deputy

458 APPROVED AS TO FORM:  
459 City Attorney's Office

460 By:  2.13.18  
461 Deputy City Attorney

**EXHIBIT A**

**[PLACEHOLDER PAGE FOR CONTRACTOR'S SERVICE AREA MAP]**

**NOTE: ALL CONTRACTS MUST INCLUDE A MAP DEPICTING THE  
CONTRACTOR'S SERVICE AREA.**

**EXHIBIT B**

**Contract Year 2018  
Section 215 Water  
CITY OF FRESNO  
Rates and Charges  
(Per Acre-Foot)**

	<b>Irrigation Water</b>	<b>M&amp;I/Other Water</b>
<b>COST-OF-SERVICE RATE</b>		
Capital Conveyance Component	\$13.85	\$0.17
O&M Component		
Water Marketing	\$11.17	\$6.70
Conveyance <sup>1</sup>	\$0.00	\$0.00
Conveyance Pumping <sup>1</sup>	\$0.00	\$0.00
<b>Total Cost of Service Rate</b>	<b>\$25.02</b>	<b>\$6.87</b>
<b>CHARGES (Payments in addition to Rates)</b>		
<b>P.L. 102-575 Surcharges<sup>2</sup></b>		
Friant Surcharge	\$7.00	\$7.00
Restoration Fund Surcharge	\$10.47	\$20.94
<b>P.L. 106-377 Assessment<sup>3</sup></b>		
Trinity Public Utilities District	\$0.30	\$0.30
<b>Total Charges and Assessments</b>	<b>\$17.77</b>	<b>\$28.24</b>
<b>Total Per Acre-Foot</b>	<b>\$42.79</b>	<b>\$35.11</b>

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

<sup>1</sup> Conveyance and Conveyance Pumping O&M costs have been removed for ratesetting purposes and the Contractor will be directly billed by the Operating Non-Federal Entity.

<sup>2</sup> The P.L. 102-575 Surcharges are required pursuant to Section 3407 of the *Central Valley Project Improvement Act*, Public Law 102-575, Title XXXIV, 106 Stat. 4706, and are determined annually on a fiscal year basis (October 1– September 30). The M&I Surcharge applies to Temporary Water purchased for M&I purposes by any State or local agency or other entity which has not previously been a Project customer prior to October 12, 1992. Entities which held only short-term or interim water service contracts prior to October 31, 1992, without right of renewal, are regarded as not having been a Project customer prior to October 31, 1992.

<sup>3</sup> The Trinity Public Utilities District Assessment is required pursuant to Section 203 of Public Law 106-377, and is determined annually for the period from and including March 1 of each Calendar Year through and including the last day of February of the following Calendar Year.