

**REGULAR MEETING
MOHAVE VALLEY IRRIGATION AND DRAINAGE DISTRICT**

Request for Board Action
Item Number 8H Of:

Meeting Date: December 01, 2020

 Consent Agenda √ Regular Agenda

PROPOSED ACTION:

***2021 Participating Farm EC-ICS (SCIA) Contracts.** Discussion and possible action on 2021 Participating Farm EC-ICS (SCIA) Contracts.

STAFF RECOMMENDATION:

BOARD ACTION TAKEN:

 Approved as Requested Disapproved No Action Taken
 Tabled to Approved with following changes:

CHANGES:

T_____R_____S_____

**EC-ICS (SCIA) AGREEMENT
(CALENDAR YEAR 2021)**

DATE: _____

No. _____

PARTIES:

"MVIDD"

Mohave Valley Irrigation and Drainage District
1460 Commercial Street
Mohave Valley, Arizona 86440

"Water User"

Contact Person: _____
Phone No.: _____

FARM UNIT (AG CONTRACT NO.): _____

Fallowed Acres: _____

Participating Fields: See "MVIDD Plan of Creation"

TOTAL AG WATER ENTITLEMENT: _____ acre feet

Max Diversion: _____ acre feet

Reduced Diversion: _____ acre feet

Conservation Yield: _____ acre feet

EFFECTIVE DATE: January 01, 2021

TERMINATION DATE: December 31, 2021

RECITALS:

WHEREAS, MVIDD entered into a contract entitled "Contract With Mohave Valley Irrigation and Drainage District for Delivery of Water," Contract No. 14-06-W-204 dated November 14, 1968 with the United States of America for storage and delivery of Colorado River water by the United States to District each calendar year for irrigation and domestic use within the District; and

WHEREAS, The Lower Basin Drought Contingency Plan Agreement, signed by the Secretary of the Interior through the United States Bureau of Reclamation pursuant to the Colorado River Drought Contingency Plan Authorization Act, P.L. 116-14 (April 16, 2019) authorized MVIDD's Exhibit U to be included within the Intentionally Created Surplus Exhibits under Section IV.E.2 of the Lower Basin Drought Contingency Operations; and

WHEREAS, MVIDD has submitted an EC-ICS Plan of Creation for the calendar year 2021 and the United States Bureau of Reclamation, upon approval of the Seven Basin States of the Colorado River, has approved that Plan of Creation and authorized implementation of the Plan of Creation by MVIDD in calendar year 2021; and

WHEREAS, MVIDD has adopted an EC-ICS Program document wherein MVIDD has set forth the rules, obligations and benefits of participation in the MVIDD EC-ICS Program as detailed in the Plan of Creation; and

WHEREAS, MVIDD has entered into that certain System Conservation Implementation Agreement with the United States Bureau of Reclamation wherein MVIDD has agreed to convert any EC-ICS accrued to MVIDD in calendar years 2020 and 2021 to System Conservation Water to be acquired by Reclamation in exchange for compensation to MVIDD; and

WHEREAS, the System Conservation Implementation Agreement adopts the same standards, obligations and benefits for creation of Conservation Yield as stated in the MVIDD EC-ICS Plan of Creation for calendar years 2020 and 2021 and therefore imposes the same obligations and benefits on Participating Farm Units as expressed in this Agreement;

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

1. **DEFINITIONS.**

(a) "ADWR" shall mean the Arizona Department of Water Resources and its staff, and shall include all duly appointed successors and authorized representatives.

(b) "EC-ICS" as used in this Agreement is "Extraordinary Conservation – Intentionally Created Surplus" as that term is defined in the 2007 Colorado River Interim Guidelines adopted by the Secretary of the Interior for operations of the Colorado River System, and as that EC-ICS (SCIA) may be converted to System Conservation Water.

(c) "EC-ICS (SCIA) or EC-ICS (SCIA) Program" shall mean the program adopted by MVIDD to create EC-ICS (SCIA) Conservation Yield which shall be converted to System Conservation Water pursuant to the System Conservation Implementation Agreement.

(d) "Farm Unit" shall mean the land and amount of water allocated to Water User under a duly executed agricultural water subcontract between the Water User and MVIDD;

(e) "Fallow or Fallowed" shall mean the intentional avoidance of crops, application of water and the accompanying maintenance of fields such that weeds, dust and water use are strictly eliminated during the year in which the fallowing occurs.

(f) "MVIDD ICS Program" shall refer to the policy document adopted by MVIDD in December, 2019 as the same may be amended by the MVIDD Board from time to time and the program to be administered thereunder.

(g) The term "MVIDD Plan of Creation" shall mean the plan submitted to ADWR and Reclamation for approval under the 2007 Interim Guidelines and approved by Reclamation for implementation in calendar year 2021.

(h) "Reclamation" as used in this Agreement shall mean the United States Bureau of Reclamation including the Regional Director's staff, Lower Colorado Region, Bureau of Reclamation, and shall include all duly appointed successors and authorized representatives.

(i) "Water User" shall mean a user of agricultural subcontract water within District's exterior boundaries who diverts water directly from the surface flow of the river or who pumps water from wells within or outside the District for use exclusively within District.

2. **ENROLLMENT OF PARTICIPATING FARM UNITS.** The Farm Units to be enrolled in the MVIDD EC-ICS (SCIA) Program for calendar year 2021 are identified in the MVIDD Plan of Creation.

3. **MVIDD ADMINISTRATION.** MVIDD agrees to administer the MVIDD EC-ICS (SCIA) Program and the MVIDD Plan of Creation in accordance with their terms for the benefit of the Farm Units enrolled.

4. **OBLIGATIONS OF PARTICIPATING FARM UNITS.** By entering into this EC-ICS (SCIA) Agreement, Water User agrees that the lands so enrolled within each Farm Unit shall be included within the MVIDD EC-ICS (SCIA) Program and shall be subject to the terms of the MVIDD EC-ICS (SCIA) Program during calendar year 2021.

(a) Water User agrees that the fields selected for fallowing in the MVIDD Plan of Creation shall be Fallowed, and Water User agrees to adopt all reasonable means to be, and remain, in compliance with the MVIDD EC-ICS (SCIA) Program and MVIDD Plan of Creation commencing as of the date of this EC-ICS (SCIA) Agreement and continuing through December 31, 2021.

(b) Water User agrees that Water User shall limit the planted acres within the enrolled Farm Unit to the maximum number determined by MVIDD to allow MVIDD to remain within the Acreage Limitation expressed in the MVIDD Plan of Creation.

(c) Water User agrees to limit diversion of Colorado River water on the Farm Unit by the amount of identified in the MVIDD Plan of Creation for calendar year 2021 and to not exceed the maximum diversion allowed to that Farm Unit as identified in the MVIDD Plan of Creation.

(d) Water User agrees to allow inspection of all enrolled lands by MVIDD, ADWR and Reclamation throughout calendar year 2021 as may be required to assure compliance with the terms of the MVIDD EC-ICS (SCIA) Program and MVIDD Plan of Creation, including reference to the Secretary of the Interior's right to inspect and verify compliance as set forth in the MVIDD Plan of Creation.

(e) Water User agrees that it shall install new flow meters on all points of diversion for the enrolled Farm Unit in compliance with MVIDD's Resolution 2019-01 (April 2, 2019).

(f) Water User agrees that it shall (i) install berms, gate locks and other similar means to insure that water is not diverted onto the Fallowed fields; (ii) use proactive measures to prevent and use diligent measures to control, the growth

of any weeds on the Fallowed fields; and (iii) use proactive measures to prevent, and use diligent measures to control any blowing dust arising from the Fallowed fields.

(g) Water User agrees that it shall abide by the terms of any EC-ICS (SCIA) Delivery Agreement entered into between MVIDD and Reclamation for delivery of EC-ICS (SCIA).

(h) Water User agrees that MVIDD is in no way obligated, liable or responsible for the creation of EC-ICS (SCIA) or the recognition of EC-ICS (SCIA) by Reclamation or ADWR. MVIDD shall use its best efforts to fulfill its obligations to accrue EC-ICS (SCIA) in accordance with the MVIDD Plan of Creation and shall account for and hold EC-ICS (SCIA) for the benefit of the participating Farm Unit in accordance with the MVIDD EC-ICS (SCIA) Program. In addition, Water User acknowledges that EC-ICS (SCIA) is subject to reduction by Reclamation for losses as specified in the Colorado River Drought Contingency Plan and for limitation on delivery of EC-ICS (SCIA) as set forth in that Colorado River Drought Contingency Plan. District does not warrant the quantity or usability of any ICS created pursuant to this EC-ICS (SCIA) Agreement.

5. **ADMINISTRATIVE FEES.** Water User agrees to pay MVIDD an administrative fee of \$ 1.00 per acre-foot of the amount of water identified for that Farm Unit's "conservation yield" as calculated in the MVIDD Plan of Creation. The administrative fee shall be due in full on July 30, 2021 and shall be delinquent on August 1, 2021. Any delinquent amount shall accrue interest at the rate of 0.5% per month, or partial month, of delinquency. Failure to pay the administrative fee shall result in a hold on the EC-ICS (SCIA) otherwise attributable to that Farm Unit and no delivery of that EC-ICS (SCIA) to that Farm Unit shall occur until the administrative fee, plus interest if applicable, is paid in full.

6. **MAINTENANCE AND REPAIR OF DELIVERY SYSTEM.** Water User shall be responsible for the installation and maintenance of its delivery system consistent with District's policies. Water User shall have an affirmative duty to keep said system in good repair and to prevent waste through leakage and breakage.

7. **POINT OF DIVERSION.** Water User has an affirmative duty to accurately and timely inform District of any change in any point of diversion within thirty (30) days of the change, and shall obtain in advance such approvals from the MVIDD required by Resolution 93-02 and comply with the metering obligations required by Resolution 2019-01. Water User shall obtain from ADWR and file with MVIDD evidence of authorization to drill wells for any new agricultural well constructed within the District.

8. **EVENT OF DEFAULT.**

(a) **Refusal to Deliver EC-ICS (SCIA) in Case of Default.** District reserves the right to refuse to deliver any EC-ICS (SCIA) created under the MVIDD EC-ICS (SCIA) Program to any Farm Unit that is in default under the terms of this EC-ICS (SCIA) Agreement.

(b) **Right of Direct Action Against Defaulting Farm Unit.** In the event that MVIDD identifies a default by a Farm Unit under the terms of this EC-ICS (SCIA) Agreement, MVIDD shall provide written notice of such default to Water User. Water User shall have 20 calendar days to cure such default. If not cured, MVIDD may withhold EC-ICS (SCIA) as provided above, or take any action, administrative or judicial, to enforce a cure of such default, including without limitation an action for specific performance of this EC-ICS (SCIA) Agreement.

(c) **Costs.** In the event that any judicial action is initiated to compel performance under the terms of this EC-ICS (SCIA) Agreement, the prevailing party in such action shall be entitled to recover its costs (including expert witness fees) and attorneys' fees incurred. Water User shall be liable for any cost of administrative action by MVIDD for dust or weed control as allowed by statute.

9. **RIGHT OF INSPECTION.** MVIDD representatives shall have at all times the right of ingress and egress to and from all fields within a participating Farm Unit and all works utilized by Water User or by any other person, firm or corporation for the diversion, processing, storage and distribution of water delivered to a participating Farm Unit for the purpose of inspection to determine compliance with this EC-ICS (SCIA) Agreement.

10. **RULES AND REGULATIONS.** MVIDD reserves the right to prescribe and enforce additional rules and regulations for the EC-ICS (SCIA) Program that are consistent with the intent of this Agreement (to comply with Exhibit U, the System Conservation Implementation Agreement, and to create recognized EC-ICS (SCIA) Conservation Yield) and with requirements imposed by ADWR or Reclamation in their roles of governing the creation and delivery of EC-ICS (SCIA). Such rules and regulations shall be promulgated, modified, revised or extended from time to time as may be deemed proper, necessary or desirable by MVIDD to carry out the true intent and meaning of Exhibit U, the MVIDD EC-ICS (SCIA) Program and the MVIDD Plan of Creation and/or to protect the interest of MVIDD. Water User hereby agrees that in the implementation of the MVIDD EC-ICS (SCIA) Program and in the maintenance of the Farm Unit and the works for the diversion of water by Water User, and all works appurtenant thereto or otherwise associated therewith, all such rules and regulations will be fully adhered to by Water User.

11. **WAIVER OF CLAIMS.** Water User hereby expressly releases the MVIDD, its officers, agents, employees and respective successors and assigns from

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every claim for economic loss and damages to persons or property, direct or indirect, and of whatever nature, arising by reason of the implementation of the EC-ICS (SCIA) Program.

12. **RIGHT OF TERMINATION.** MVIDD may terminate this Agreement upon written notice from Reclamation or ADWR that the MVIDD EC-ICS (SCIA) Program has been suspended or terminated. Water User may terminate this Agreement only upon the written approval of Reclamation.

13. **TERM.** This EC-ICS (SCIA) Agreement shall be effective upon execution by MVIDD after execution by Water User. It shall terminate December 31, 2021, subject to MVIDD's continuing obligations to Water User for EC-ICS (SCIA) under the MVIDD EC-ICS (SCIA) Program.

[Signatures on Following Page]

T_____R_____S_____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

MOHAVE VALLEY
IRRIGATION AND
DRAINAGE DISTRICT

By: _____
By: _____
Its: _____

ATTEST: _____

WATER USER:

_____(printed name)

or

_____, a/an _____

By: _____
By: _____
Its: _____