

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF TULARE
AND
FRIANT WATER AUTHORITY**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into between the County of Tulare Resource Management Agency (COUNTY) and the Friant Water Authority (FWA) for “short-term” preventative repairs (as specified in Exhibit A) and monitoring of five County-maintained bridges located along the Friant-Kern Canal.

WHEREAS, the COUNTY through its Resource Management Agency, is committed to maintaining the COUNTY’S roadways; and

WHEREAS, the FWA is a public agency formed by its members under California law to operate and maintain the Friant-Kern Canal; and

WHEREAS, the COUNTY and FWA agree there are five bridges crossing the Friant-Kern Canal within the COUNTY that have experienced significant ground subsidence; and

WHEREAS, this subsidence, along with other environmental factors, has limited the canal’s water delivery rate around these five bridges; and

WHEREAS, around these five bridges, the canal’s delivery rate of water has dropped from approximately 4,000 cubic feet per second to only 1,900 cubic feet per second; and

WHEREAS, to establish a delivery rate of at least 1,900 cubic feet per second, FWA must place the five bridges under pressure-flow, which would bring the water surface elevation above the bottom surface (soffit) of the superstructure of the five bridges; and

WHEREAS, each of the five subject bridges would need to be placed under this pressure-flow condition for up to six months each year; and

WHEREAS, FWA is willing to engage in short-term preventative repairs, as specified in Exhibit A, to be performed prior to exposure of the bridges to the first “pressure flow” period and commit to regular monitoring and maintenance (directly arising from pressure flow conditions or submergence) of these five bridges;

WHEREAS, COUNTY will continue to provide bi-annual in-service inspections provided through the National Bridge Inspection Standards (NBIS) and Law, which is administered through the Caltrans bridge inspection program; and

WHEREAS, COUNTY and FWA are willing to enter into this Memorandum of Understanding to memorialize the repairs and monitoring necessary to protect these five bridges.

ACCORDINGLY, IT IS AGREED:

- I. **PURPOSE:** The purpose of this MOU is to establish the repairs and monitoring FWA will perform on the five bridges when subject to pressure-flow conditions.
- II. **COUNTY** will allow the five bridges specified in Exhibit B to be subject to “pressure-flow” conditions. **COUNTY** acknowledges that for these five bridges, the water level in the Friant-Kern canal will be a maximum of 23.4-inches (1.95-feet) above the bottom surface (soffit) of bridge superstructure.
- III. In exchange for **COUNTY** allowing five of its bridges to be subject to a “pressure-flow” condition, FWA agrees to be solely responsible for all repairs directly arising from this condition and the monitoring and maintenance of the bridges as further described in the attached Exhibit A.
- IV. This MOU, and all attached exhibits constitute a complete statement of the responsibilities and commitment of both parties.
- V. **TERM:** This MOU will commence upon signature and will remain in effect until December 31, 2028 or until termination by either party. However, the **COUNTY** reserves the right to limit submergence of their bridges for any reason. Thus, if the **COUNTY** requires FWA to limit flows so that a pressure-flow condition does not exist, FWA shall limit flows accordingly upon a minimum of seven days’ advance written notice from **COUNTY**. However, FWA shall take all reasonable steps to limit flows when requested by **COUNTY** due to emergency or immediate threat to public health.
- VI. **AMENDMENTS:** Amendments or modifications to the terms of this MOU must be made in writing and approved by all parties hereto, in order to maintain compliance with changes pursuant to federal or state laws, regulations, or policies affecting MOUs, rulings, pertinent regulations, or funding.
- VII. **INDEMNIFICATION:** FWA shall hold harmless, defend and indemnify **COUNTY**, its agents, officers and employees from and against liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including **COUNTY** property, arising from, or in connection with, the acts or omissions of FWA or its agents, officers and employees under this Agreement. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring during the term of this Agreement or any extension of this Agreement.
- VIII. **LIABILITY:** FWA shall be responsible for any and all injuries and damages suffered or caused by the bridges designated in Exhibit B to the extent these injuries or damages are caused by a correlated condition resulting from these bridges being under a pressure-flow condition.
- IX. **COUNTY RIGHT TO MAINTAIN AND REPAIR:** **COUNTY** does not surrender its right to perform its own “short term” preventative repairs to the bridges designated in Exhibit B. In the event that FWA fails to perform the preventative repairs in a timely fashion as required by Exhibit A, then the

COUNTY shall provide FWA written notice of COUNTY'S intent to perform these preventative repairs to the bridges. If FWA does not perform the preventative repairs, or does not respond within 10 working days, then COUNTY shall perform these repairs, and FWA will be liable to COUNTY for the reasonable costs incurred by COUNTY.

- X. **INSURANCE:** FWA shall add the County of Tulare as an additional insured on its general liability insurance policy with respect to its obligations under this MOU. Furthermore, FWA must file evidence of required insurance listed in Exhibit C.

Additional insured endorsements required as outlined in Exhibit C cannot be used to reduce limits available to COUNTY as an additional insured from FWA's full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this MOU or act in any way to reduce the policy coverage and limits available from the insurer(s). If FWA fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement.

- XI. **THIRD PARTY RIGHTS:** Unless specifically set forth in this MOU, the parties to this MOU do not intend to provide any third party with any benefit or enforceable legal or equitable right or remedy. Both FWA and COUNTY agree that this MOU is not intended to create a property interest in any increased flows.
- XII. **TERMINATION:** COUNTY may terminate this MOU without cause by giving thirty (30) days' prior written notice to FWA of its intention to terminate under this provision, specifying the date of termination.

Either party may terminate this MOU immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged as bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this MOU, or
- (5) Materially breach this MOU.

In addition, COUNTY may terminate this MOU based on:

- (6) Material misrepresentation, either by FWA or anyone acting on FWA's behalf, as to any matter related in any way to FWA's performance under this MOU, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of FWA to competently perform its obligations under this MOU, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If FWA fails to perform according to the terms and conditions of this MOU, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days' written notice to FWA.

Upon a material breach, the MOU may be terminated after the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 5 business days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting party may terminate this MOU on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5 business day period, then the defaulting party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting party may terminate this Agreement upon written notice specifying the date of termination.

Effects of Termination: Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

[Signatures on the following page.]

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____

BY _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

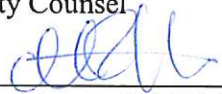
By _____
Deputy Clerk

FRIANT WATER AUTHORITY

Date: 12/19/18

By 
Douglas DeFlicht, Chief Operating Officer

Approved as to Form
County Counsel

By 
Deputy 20181156

Date 12/19/18

EXHIBIT A

FWA intends to place the five subject bridges under pressure flow conditions on an annual basis, for up to 6 months a year. Due to the existing condition of the bridges, FWA agrees to perform “short-term” preventative repairs and commit to regular monitoring (for 10 years) as outlined in the list of commitments between Tulare County and FWA below:

1. FWA shall apply EITHER two (2) coats of elastomeric coating OR a cementitious waterproof concrete coating. Either coating is provided as a crack-bridging, waterproofing membrane to the entire exposed surface of the concrete girders and deck soffit for all five bridges. FWA shall provide the COUNTY the specific manufacturer of the membrane to be used. Once a material is approved, FWA shall provide a detailed work plan for review and approval by COUNTY prior to installation. FWA shall be solely responsible for applying and maintaining the membrane in addition to performing any other associated work.
2. FWA shall seal all joints at the interface between the concrete canal lining and the concrete bridge abutments with a pourable elastomeric sealant. FWA shall provide a detailed work plan, including joint material type, for review and approval by COUNTY prior to installation. FWA shall be solely responsible for applying and maintaining the joint sealant in addition to performing any other associated work.
3. FWA shall perform initial survey of all five bridges and perform additional surveys on all five bridges every two years (2) as a monitoring method for differential settlement. FWA shall provide a survey plan for review and approval by COUNTY prior to performing any surveys. FWA shall be solely responsible for performing all initial and follow-up surveys.
4. FWA shall patch any delaminated or spalled areas on any elements of the five bridges with a high-strength, rapid hardening, cementitious structural repair mortar intended for use in vertical applications. FWA shall provide a submittal, including material type and installation method, for review and approval by COUNTY prior to installation. FWA shall be solely responsible for all patchwork (initial installation and maintenance) needed on these five bridges.
5. FWA shall manage the coordination with utility owners. COUNTY will provide a list of each utility and owner for each bridge covered by this MOU. FWA will be responsible for notification to the utility owners, particularly those with utility lines on the upstream face of Avenue 80 and Road 192 bridges, of the pending pressure flow conditions so that the owners may inspect, repair and/or strengthen all utility attachments and utility lines for said conditions. The COUNTY will not be responsible for the cost to prepare utility lines for pressure flow. FWA will obtain written approval from the utility owners prior to proceeding with pressure flow conditions.

6. FWA shall monitor high flows at the bridge sites at regular intervals to ensure flows do not exceed the water level defined in Section II above. FWA shall install real-time water level sensors (such as the ToltHawk water level transmitter or approved equal) on the upstream side of the five bridges, giving the COUNTY independent ability to access and monitor flows at each bridge. FWA shall also ensure drift/debris accumulation on all substructure elements (upstream and downstream), including all utilities and their attachments, is minimized by removing excess drift/debris in advance of anticipated pressure flow conditions or near pressure flow conditions. FWA shall be solely responsible for monitoring the bridges and maintaining drift/debris accumulation.
7. FWA shall perform independent inspections at least every 6 months or prior to and following each cycle where the bridges are exposed to increased/pressure flows and subsequent drawdown, whichever occurs first. The COUNTY and Caltrans shall be invited to attend these independent inspections. The objective will be to examine the condition of the short term preventative repairs, determine if those repairs are performing as intended, and outline the maintenance, if any, necessary to restore intended performance. FWA shall prepare a post-inspection report and submit to the COUNTY for review and approval prior to release of the next cycle of increased flows. FWA will, at a minimum, perform monitoring every 6 months until the COUNTY agrees that all efforts to mitigate for exposure of the bridges to pressure flow conditions, is satisfactory. Upon COUNTY approval of the extended monitoring frequency, FWA will, at a minimum, perform monitoring every 12 months for the duration of the contract term. FWA shall be solely responsible for performing independent inspections, including preparation of monitoring reports.
8. FWA will assist COUNTY with load rating analysis if it is determined through the independent inspections performed by FWA, or through the NBIS inspections performed by Caltrans, that the preventative repairs are not performing as intended and there is sufficient reason to; in the judgment of FWA, COUNTY or Caltrans; that an updated load rating analysis is warranted. COUNTY shall be responsible for providing and placing weight restriction posting signs at the bridge(s).
9. FWA will coat (with zinc-based primer) all exposed steel surfaces at all substructure support locations. Prior to coating, FWA will inspect all bridge bearings to determine if they are functioning as intended and notify COUNTY of any functional deficiencies. In addition, FWA will perform these services to COUNTY specifications and approval. FWA shall be solely responsible for this work.
10. FWA agrees that submergence of the five (5) bridges is an undesirable condition and will actively pursue a permanent, "long-term" solution. Yearly submergence of up to 6 months of the bridges during periods of high water demand shall not exceed ten (10) years after the signing of this MOU.
11. However, the COUNTY reserves the right to limit submergence of their bridges for any reason. Thus, FWA agrees to limit flows, such that pressure flow conditions do

not exist, if requested by the COUNTY. COUNTY will provide a minimum 7-day advanced notification in writing to FWA of such limitation on flows. However, FWA shall take all reasonable steps to limit flows when requested by COUNTY due to emergency or immediate threat to public health.

EXHIBIT B

LIST OF BRIDGES SUBJECT TO PRESSURE-FLOW CONDITIONS

Bridge ID	Bridge Name	FKC Milepost	Location
46C0094	Ave 96 (Terra Bella) Friant-Kern Canal	103.66	0.05 Mi East of Road 208
46C0368	Road 208 Friant-Kern Canal	103.74	0.1 Mi South of Avenue 96
46C0367	Ave 88 Friant-Kern Canal	104.98	0.8 Mi West of Road 208
46C0366	Ave 80 Friant-Kern Canal	106.19	0.5 Mi East of Road 192
46C0138	Road 192 Friant-Kern Canal	107.34	1.0 Mi South of Ave 80

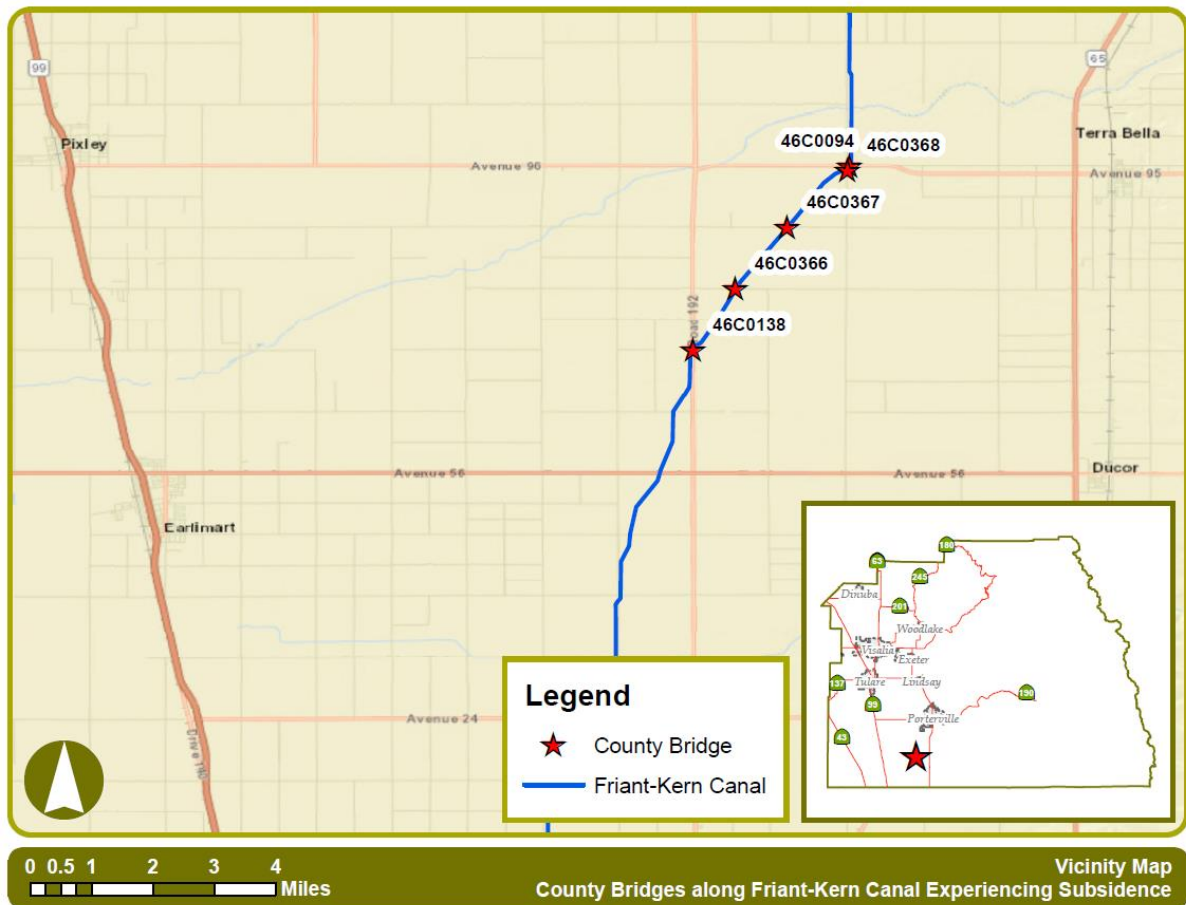


EXHIBIT C
INSURANCE REQUIREMENTS

MPW7/18/201820181156/1201269

FRIANT WATER AUTHORITY

INSURANCE REQUIREMENTS

FWA shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the FWA, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Commercial General Liability coverage of \$25,000,000 on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury (occurrence Form CG 00 01). If a general aggregate applies, the general aggregate limit shall apply separately to this project/locations (ISO CG 25 03 or 25 04) .
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of no less than \$1,000,000 per accident for bodily injury and property damage. If an annual aggregate applies it must be no less than 2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

B. Specific Provisions of the Certificate

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the MOU or the beginning of the work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
2. FWA must submit endorsements to the General Liability reflecting the following provisions:
 - a. The COUNTY OF TULARE, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the FWA including materials, parts, or equipment furnished in connection with such work or operation.
 - b. For any claims related to this project, the FWA's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or

volunteers shall be excess of the FWA's insurance and shall not contribute with it.

c. Each insurance policy required by this agreement shall provide that coverage shall not be canceled, except with written notice to the COUNTY.

d. *FWA hereby grants to COUNTY a waiver of any right to subrogation which any insurer of the FWA may acquire against the COUNTY by virtue of the payment of any loss under such insurance. FWA agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the FWA, its employees, agents and subcontractors. FWA waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

D. Acceptability of Insurance

FWA may provide coverage through a statewide joint powers agency such as Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA) or other similar program providing pooled coverage.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the FWA shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.