

DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

SECOND AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES  
AND  
SANTA CLARA VALLEY WATER DISTRICT  
FOR WATER SERVICE AND OPERATION AND  
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble .....	1
	Explanatory Recitals .....	1-3
1	Modification to Existing Contract .....	3
2	Article 1, in the Existing Contract, "Definitions" is amended.....	3-5
3	Article 9(a), "Point of Delivery – Measurement – Responsibility for Distribution", First sentence is deleted in its entirety and replaced with new language .....	5
4	Article 7, in the Existing Contract, "Water Shortage and Apportionment" is replaced in its entirety .....	5-6
5	Article 8, in the Existing Contract, "Quality of Water" is deleted in its entirety and Article 21, "Water and Air Pollution Control" is retitled "Protection of Water and Air Quality" and is amended and replaced by the following Article 21 in its entirety .....	6-7
6	Article 10, in the Existing Contract "Limitation on Delivery" is deleted in its entirety .....	7
7	Article 14 in the Existing Contract, "Charges for Delinquent Payments", is amended and replaced in its entirety.....	7-8
8	Article 20 in the Existing Contract, "Reserve Fund" is retitled "Emergency Reserve Fund" and is amended and replaced in its entirety .....	8-9
9	Article 28 in the Existing Contract, "General Obligation – Benefits Conditioned Upon Payment" is amended and replaced by the following Article 28 in its entirety .....	9
10	Article 29 in the Existing Contract, "Changes in the Contractor's Organization" is retitled "Changes in the Contractor's Organization or Service Area" and is amended and replaced in its entirety.....	9-10
11	Article 30, "Books, Records, and Reports", replaces Article 30 in the Existing Contract in its entirety.....	10
12	Article 31, "Rules, Regulations and Determinations", replaces Article 31 in the Existing Contract in its entirety .....	10-11
13	Article 33 in the Existing Contract, "Title VI, Civil Rights Act of 1964" is retitled "Compliance With Civil Rights Laws and Regulations" is amended and replaced in its entirety .....	11-12

Table of Contents – continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
14	Article 34, "Equal Employment Opportunity", replaces Article 34 in the Existing Contract in its entirety.....	12-13
15	Article 38, "Contingent on Appropriation or Allotment of Funds", replaces Article 38 in the Existing Contract in its entirety .....	13
16	Article 39, "Officials Not to Benefit", replaces subdivision (a) of Article 39 in the Existing Contract in its entirety .....	13-14
17	Article 40, "Assignment Limited – Successors and Assigns Obligated", replaces Article 40 in the Existing Contract in its entirety .....	14
18	Article 41, "Notices", replaces Article 41 in the Existing Contract in its entirety	14
19	Article 42, "Confirmation of Contract", replaces Article 42 in the Existing Contract in its entirety.....	14-15
20	The first sentence of subdivision (a) of Article 43 of the Existing Contract, "Water Conservation" is amended and replaced .....	15
21	The following Articles 44 through 46 are added to the Existing Contract: Article 44, "Privacy Act Compliance" .....	15-16
	Article 45, "Medium for Transmitting Payments" .....	16
	Article 46, "Contract Drafting Considerations" .....	16
22	Article 12 in the First Amendment, "Preservation of Existing Contracts" is replaced by Article 47 in its entirety.....	16
	Effective Date .....	16
	Signature Page .....	17
	Exhibit E – Copy of 1977 Contract dated June 7, 1977.	
	Exhibit F – Copy of First Amendment and Attachments (Exhibit "A", Exhibit "B", Exhibit "C" and Exhibit "D") dated March 28, 2007	
	Exhibit G – Points of Delivery	



navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the Contractor and the United States entered into a contract titled "*Contract Between the United States and Santa Clara Valley Water District for Water Service and for Operation and Maintenance of Certain Works of the San Felipe Division*", Contract No. 7-07-20-W0023, dated June 7, 1977, which established terms and conditions for the delivery to the Contractor of Project water from January 1, 1988 through December 31, 2027, hereinafter referred to as the "1977 Contract"; and

[3<sup>rd</sup>] WHEREAS, the Contractor and the United States entered into an amendment to the 1977 Contract dated March 28, 2007, titled "*First Amendment to Contract between the United States and Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division*", Contract No. 7-07-20-W0023A, which among other things established the terms and conditions for the repayment of the San Felipe Division facilities and implementation of certain Central Valley Project Improvement Act activities, hereinafter referred to as "First Amendment"; and

[4<sup>th</sup>] WHEREAS, the 1977 Contract as amended by the First Amendment is hereinafter referred to as "Existing Contract"; and

[5<sup>th</sup>] WHEREAS, the "First Amendment" incorrectly identifies the Contract No. as 7-07-02-W0023A instead of 7-07-20-W0023A; and

[6<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend the Existing Contract, with the execution of this Second Amendment to the Existing Contract to update Article 9 to add CVP-wide form of contract language providing for the mutually agreed upon point or points of delivery pursuant to Federal Reclamation law on the terms and conditions

as set forth below and to update the Standard Articles consistent with the Bureau of Reclamations current requirements; and

[7<sup>th</sup>] WHEREAS, the environmental compliance requirements for the execution of this contract have been met by Environmental Assessment Number (EA) 14-046 entitled "Santa Clara Valley Water District Second Contract Amendment," which resulted in a Finding of No Significant Impact Number 14-046 dated January 4, 2019.

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

MODIFICATION TO EXISTING CONTRACT

1. The contract number Contract No. 7-07-02-W0023A is corrected to Contract No. 7-07-20-W0023A wherever it occurs in the Existing Contract including exhibits.

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

(a) Subdivisions (b), (h), (i) and (k) in Article 1 of the Existing Contract are amended and replaced in their entirety with the following new subdivisions (b), (h), (i) and (k).

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

(h) "Agricultural Water" shall mean the use of Project Water to irrigate lands primarily for the production of commercial, agricultural crops or livestock, and domestic and other uses that are incidental thereto;

(i) "Municipal and Industrial Water or M&I" shall mean the use of Project Water for municipal, industrial, and miscellaneous other purposes not falling under the definition of Agricultural Water or within another category of water use under an applicable Federal authority;

66 (k) "Calendar Year" or "Year" shall mean the period January 1 through  
67 December 31, both dates inclusive;

68 (b) **Article 1 in the Existing Contract is amended to add the following**  
69 **definitions in subdivisions (u) through (cc):**

70 (u) "Condition of Shortage" shall mean a condition respecting the Project  
71 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
72 Contract Total;

73 (v) "Contract Total" shall mean the maximum amount of water to which the  
74 Contractor is entitled under subdivision (b) of Article 3 of this Contract;

75 (w) "CVPIA" shall mean the Central Valley Project Improvement Act, Title  
76 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

77 (x) "Delta Division Facilities" shall mean those existing and future Project  
78 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to,  
79 the Jones Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the  
80 San Luis Reservoir, used to divert, store and convey water to those Project Contractors entitled  
81 to receive water conveyed through the Delta-Mendota Canal;

82 (y) "Operation and Maintenance" or "O&M" shall mean normal and  
83 reasonable care, control, operation, repair, replacement (other than capital replacement), and  
84 maintenance of Project facilities;

85 (z) "Project Contractors" shall mean all parties who have water service  
86 contracts for Project Water from the Project with the United States pursuant to Federal  
87 Reclamation law;

88 (aa) "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;

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

(cc) "Water Scheduled" shall mean Project Water made available to the Contractor for which times and quantities for delivery have been established by the Contractor and Contracting Officer, pursuant to Article 4 of this Contract;

**3. Article 9(a) in the Existing Contract First sentence is amended and replaced in its entirety with the following:**

**POINT OF DELIVERY – MEASUREMENT – RESPONSIBILITY FOR DISTRIBUTION**

9. (a) Project Water scheduled as provided in Article 4 of this Contract shall be made available to the Contractor, pursuant to this Contract, at the headworks of the Santa Clara Facilities and/or 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. Such additional point or points of delivery shall be set forth in Exhibit "G", which may be revised without amending this Contract.

**4. Article 7 in the Existing Contract titled WATER SHORTAGE AND APPORTIONMENT is amended and replaced in its entirety with the following new Article 7:**

**CONSTRAINTS ON AVAILABILITY OF WATER**

7. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made

available to the Contractor pursuant to this contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then, except as provided in Article 32 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(c) In any year that the Contracting Officer determines there is a shortage in the quantity of water available to Project Contractors, the Contracting Officer will apportion available water among the water users capable of receiving water from the same Project facilities by reducing deliveries to all such water users by the same percentage, unless the Contracting Officer is prohibited by existing contracts, Project authorizations, or the Contracting Officer determines that some other method of apportionment is required to prevent undue hardship. In the event reduced deliveries within the Division are necessary, Project Water furnished under this Contract for M&I purposes will be allocated in accordance with the CVP M&I Water Shortage Policy. Such Policy shall be amended, modified, or superseded only through public notice and comment procedure.

(d) If operation of the Project to meet legally required Delta water quality control standards, including Federally adopted water quality standards, causes a shortage in water supply and requires a reduction in deliveries of water to the Contractor under this agreement, such reductions will be made in accordance with subdivision (c) of this article and shall not be deemed a breach hereof.

5. Article 8 in the Existing Contract titled QUALITY OF WATER is deleted in its entirety and Article 21 titled WATER AND AIR POLLUTION CONTROL is retitled



**PROTECTION OF WATER AND AIR QUALITY and is amended and replaced by the following Article 21 in its entirety:**

**PROTECTION OF WATER AND AIR QUALITY**

21. (a) The Contractor, without expense to the United States, will care for, operate and maintain transferred works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

(b) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(c) 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 water by the Contractor; and shall be responsible for compliance with all Federal[, State, and local] water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

(d) This article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

6. Article 10 in the Existing Contract titled **LIMITATION ON DELIVERY**, is deleted in its entirety.

7. Article 14 in the Existing Contract titled **CHARGES FOR DELINQUENT PAYMENTS**, is amended and replaced in its entirety with the following new Article 14:

14. (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.

8. Article 20 in the Existing Contract titled RESERVE FUND is retitled EMERGENCY RESERVE FUND and is amended and replaced by the following Article 20 in its entirety:

EMERGENCY RESERVE FUND  
(Annual Deposit)

20. (a) Commencing with the year following the transfer of operation and maintenance of the transferred works to the Contractor, the Contractor shall accumulate and maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are available for use as an emergency reserve fund. The Contractor shall establish and maintain that emergency reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service.

(b) The Contractor shall accumulate the reserve fund with annual deposits or investments of not less than \$50,000 to a Federally insured, interest- or dividend-bearing account or in securities guaranteed by the Federal Government: Provided, That money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of \$250,000 is accumulated. Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the previous balance is restored. After the initial amount is accumulated or after the previous balance is restored, the annual deposits may be discontinued, and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

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

208 executed.

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

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

222 (f) On or before November 1 of each year, the Contractor shall provide a  
223 current statement of the principal and accumulated interest of the reserve fund account to the  
224 Contracting Officer.

225 9. Article 28 in the Existing Contract titled GENERAL OBLIGATION-  
226 BENEFITS CONDITIONED UPON PAYMENT is amended and replaced by the following  
227 Article 28 in its entirety:

228 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

229 28. (a) The obligation of the Contractor to pay the United States as provided in  
230 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
231 obligation may be distributed among the Contractor's water users and notwithstanding the default  
232 of individual water users in their obligation to the Contractor.

233 (b) The payment of charges becoming due pursuant to this Contract is a  
234 condition precedent to receiving benefits under this Contract. The United States shall not make  
235 water available to the Contractor through Project facilities during any period in which the  
236 Contractor is in arrears in the advance payment of water rates due the United States. The  
237 Contractor shall not deliver water under the terms and conditions of this Contract for lands or  
238 parties that are in arrears in the advance payment of water rates as levied or established by the  
239 Contractor.

240 10. Article 29 in the Existing Contract titled CHANGES IN THE  
241 CONTRACTOR'S ORGANIZATION is retitled CHANGES IN THE CONTRACTOR'S

242 **ORGANIZATION OR SERVICE AREA** and is amended and replaced by the following

243 **Article 29 in its entirety:**

244 **CHANGES IN THE CONTRACTOR'S ORGANIZATION OR SERVICE AREA**

245 29. While this Contract is in effect, no change may be made in the Contractor's  
246 service area or organization, by inclusion or exclusion of lands or by any other changes which  
247 may affect the respective rights, obligations, privileges, and duties of either the United States or  
248 the Contractor under this Contract including, but not limited to, dissolution, consolidation, or  
249 merger, except upon the Contracting Officer's written consent.

250 11. **Article 30 in the Existing Contract Titled BOOKS, RECORDS, AND**

251 **REPORTS** is amended and replaced by the following Article 30 in its entirety:

252 **BOOKS, RECORDS, AND REPORTS**

253 30. (a) The Contractor shall establish and maintain accounts and other books and  
254 records pertaining to administration of the terms and conditions of this Contract, including the  
255 Contractor's financial transactions; water supply data; project operation, maintenance, and  
256 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
257 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
258 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
259 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws  
260 and regulations, each party to this Contract shall have the right during office hours to examine  
261 and make copies of the other party's books and records relating to matters covered by this  
262 Contract.

263 (b) Nothing in this Article 30 shall be construed to limit or constrain the  
264 ability of the Bureau of Reclamation to conduct contract compliance reviews of this contract in  
265 accordance with Reclamation Manual Directives and Standards PEC 05-08, last revised  
266 November 20, 2014, as may be further revised, amended, modified, or superseded.

267 12. **Article 31 in the Existing Contract titled RULES AND REGULATIONS is**  
268 **retitled RULES, REGULATIONS, AND DETERMINATIONS and subdivision (a) is**  
269 **amended and replaced by the following Article 31 subdivisions (a) and (b) and subdivision**  
270 **(b) is redesignated subdivision (c):**

**RULES, REGULATIONS, AND DETERMINATIONS**

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

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

13. Article 33 in the Existing Contract titled **TITLE VI, CIVIL RIGHTS ACT OF 1964** is retitled **COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS** is amended and replaced by the following Article 33 in its entirety:

**COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS**

33. (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 II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this Contract in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

(d) Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

14. Article 34 in the Existing Contract titled EQUAL OPPORTUNITY is retitled EQUAL EMPLOYMENT OPPORTUNITY is amended and replaced by the following Article 34 in its entirety:

EQUAL EMPLOYMENT OPPORTUNITY

34. 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, 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, 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, or national origin.

(c) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

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

(e) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) 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 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) 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 Executive Order 11246 of September 24, 1965, 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."

15. Article 38 in the Existing Contract titled CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS is amended and replaced by the following Article 38 in its entirety:

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

38. 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.

16. Article 39 in the Existing Contract titled OFFICIALS NOT TO BENEFIT subdivision (a) is amended and replaced by the following subdivision (a) in its entirety:

OFFICIALS NOT TO BENEFIT

39. (a) 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.

17. Article 40 in the Existing Contract titled ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED is amended and replaced by the following Article 40 in its entirety:

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

40. 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.

18. Article 41 in the Existing Contract titled NOTICES is replaced by the following Article 41 in its entirety:

NOTICES

41. 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 Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Valley Water District, 5750 Almaden Expressway, San Jose, California 95118. 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.

19. Article 42 in the Existing Contract titled CONFIRMATION OF CONTRACT is replaced by the following Article 42 in its entirety:

CONFIRMATION OF CONTRACT

42. Promptly after the execution of this Amendment, the Contractor will provide evidence to the Contracting Officer that, pursuant to the laws of the State of California, the Contractor is a legally constituted entity and the Amendment is lawful, valid, and binding on the Contractor. This Amendment will not be binding on the United States until the Contractor provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the Contractor may provide or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the



State of California, confirming the proceedings on the part of the Contractor for the authorization of the execution of this Amendment.

**20. The first sentence of subdivision (a) of Article 43 of the Existing Contract titled WATER CONSERVATION is amended and replaced with the following:**

**WATER CONSERVATION**

43. (a) Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

**21. Articles 44 through 46 are added to the Existing Contract:**

**PRIVACY ACT COMPLIANCE**

44. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act) 5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act (43 C.F.R. § 2.45, et seq.) in maintaining landholder certification and reporting records required to be submitted to the Contractor for compliance with sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43 C.F.R. § 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's employees who are responsible for maintaining the certification and reporting records referenced in paragraph (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. § 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Department of the Interior Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager responsible for making decisions on denials pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the

System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless the requester elects to cite the Privacy Act as authority for the request.

MEDIUM FOR TRANSMITTING PAYMENTS

45. (a) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(b) 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

46. 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.

22. Article 12 in the First Amendment titled PRESERVATION OF EXISTING CONTRACT is replaced by the following Article 47 in its entirety:

PRESERVATION OF EXISTING CONTRACT

47. Except as expressly modified by the provisions of this Second Amendment, the Existing Contract, along with all amendments to the Existing Contract, and Exhibits A and B attached to the Existing Contract, shall remain in full force and effect.

EFFECTIVE DATE

This Second Amendment to the Existing Contract shall be effective on the date first written above.

471                   IN WITNESS WHEREOF, the parties hereto have executed this Second  
472 Amendment to Contract No. 7-07-20-W0023B on the day and year first above written.

473                   THE UNITED STATES OF AMERICA

474                   By: \_\_\_\_\_  
475                   Regional Director  
476                   Interior Region 10: California-Great Basin  
477                   Bureau of Reclamation

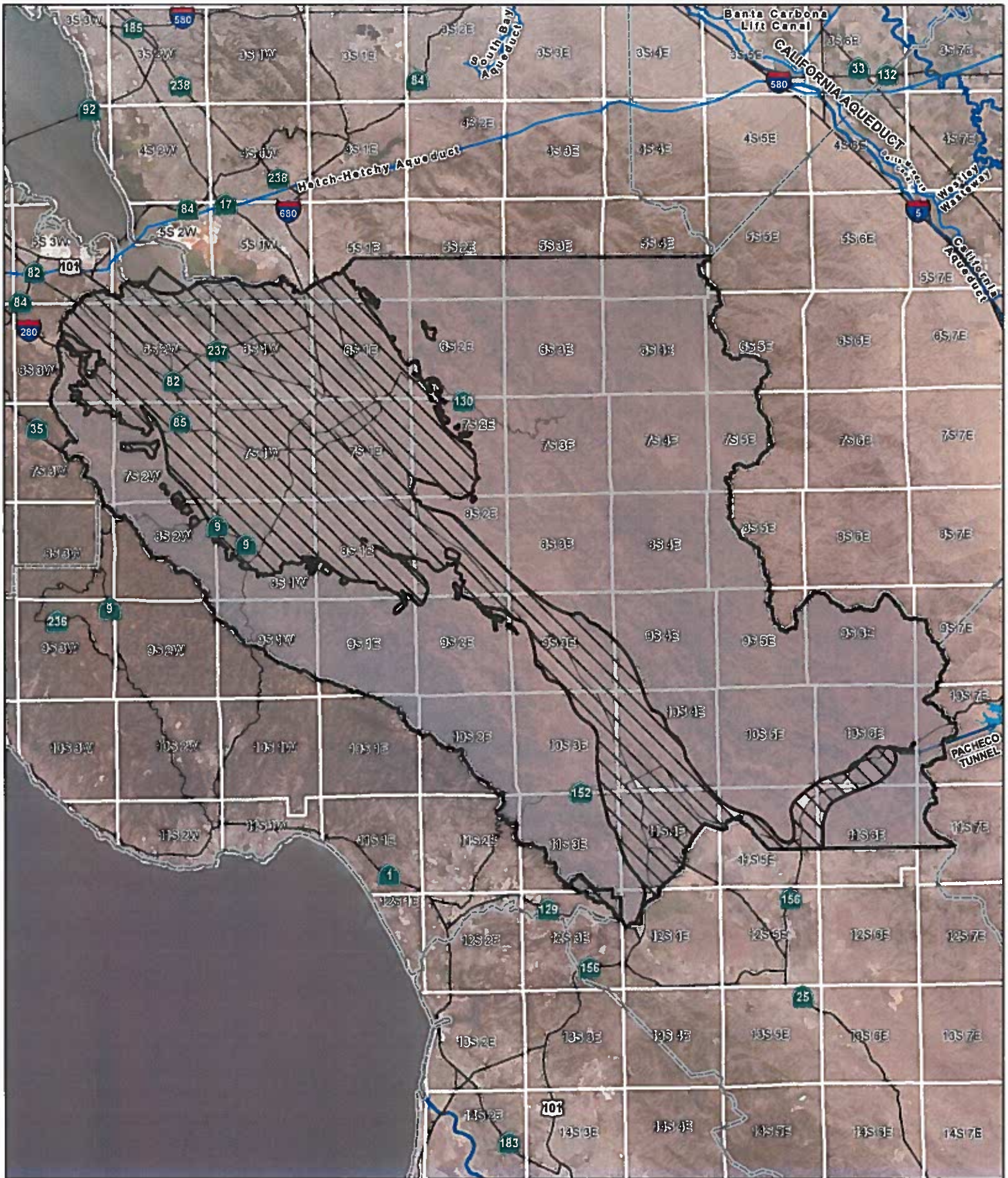
478                   SANTA CLARA VALLEY WATER DISTRICT



479                   By: \_\_\_\_\_  
480                   Rick L. Callender, Esq.  
481                   Chief Executive Officer

481                   ATTEST:

482                   By: \_\_\_\_\_  
483                   Clerk/Board of Directors





-  District Boundary
-  Contractor's Service Area

## Santa Clara Valley Water District

Contract No. 7-07-02-W0023B  
Exhibit A



— BUREAU OF —  
RECLAMATION

Date: 9/14/2020  
File Name: N:\Districts\Contracts\santa\_clara\santa\_clara\_20200914.mxd

0 5 10 Miles

Attachment 2  
805-202-135  
Page 20 of 123



**EXHIBIT B**  
**SANTA CLARA VALLEY WATER DISTRICT**  
**2020 Rates and Charges**  
**(Per Acre-Foot)**

	Irrigation Water	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>		
Construction Costs	\$28.46	\$3.89
DMC Aqueduct Intertie	\$0.77	
<b>O&amp;M Components</b>		
Water Marketing	\$8.97	\$6.12
Storage	\$17.87	\$14.84
Credit for other PUE Remittance	(\$3.78)	(\$3.58)
Conveyance Pumping		
Direct Pumping		
Deficit Cost Component (American Recovery and Reinvestment Act (ARRA) include	\$0.00	\$0.00
<b>TOTAL COS RATE (Tier 1 Rate)</b>	<b>\$52.29</b>	<b>\$21.27</b>
<b>IRRIGATION FULL COST RATE (RRA)</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited	76.63	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	93.49	
<b>Project Use Energy Payment <sup>1</sup></b>		
Direct Pumping	18.81	\$18.81
Other PUE Remittance	3.78	\$3.58
<b>M&amp;I FULL COST RATE</b>		<b>\$22.53</b>
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>		
<b>Irrigation</b>		
[Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate]/2 (Amount to be added to Tier 1 Rate)	\$12.17	
Tier 3 Rate: >90% of Contract Total [Section 202(3) Irrigation Full Cost Rate - Irrigation COS Rate] (Amount to be added to Tier 1 Rate)	\$24.34	
<b>M&amp;I</b>		
Tier 2 Rate: >80% <=90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)		\$0.63
Tier 3 Rate: >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to be Added to Tier 1 Rate)		\$1.26
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>		
[Section 3407(d)(2)(A)]	\$10.91	\$21.82
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12	\$0.12

**EXPLANATORY NOTES**

<sup>1</sup> Project Use Energy is in addition to the Contract Rate and Full-Cost Water Rates. Refer to the water rate books for more information.

Recent Historic Use, as defined in the Reallocation Agreement, Agreement No. 7-07-20-W1428 dated April 17, 2007 is 111,000 acre-feet

Additional detail of rate components is available on the Internet at:  
<http://www.usbr.gov/mp/cvp/waterrates/ratebooks/index.html>

**EXHIBIT E**

**COPY OF  
SANTA CLARA VALLEY WATER DISTRICT  
1977 Contract dated June 7, 1977**

Contract No.  
7-07-20-W0023

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

CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY  
WATER DISTRICT FOR WATER SERVICE AND FOR OPERATION AND  
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1- 2
	Definitions	2- 4
1	Term of Contract--Renewals	4
2	Water to be Furnished to the Contractor	4- 9
3	Delivery Schedules	9
4	Design--Construction	10
5	Maintenance of Flows--Temporary Reductions	10-11
6	Water Shortage and Apportionment	11-12
7	Quality of Water	12
8	Point of Delivery--Measurement--Responsibility	
9	for Distribution	12-16
10	Limitation on Delivery	17
11	Rates of Payment For Water	18-20
12	Method of Payment For Water	21-23
13	Adjustments	23-24
14	Interest for Delinquent Payments	24
15	Exchanges of Water	24
16	Conveyance of Non-Project Water	25
17	Transfer of Care, Operation, and Maintenance	
	of Santa Clara Facilities to the Contractor	25-26
18	Care, Operation, and Maintenance of Transferred	
	and Other Division Works	27-34
19	Contractor to Pay Certain Miscellaneous Costs	
	Relating to Transferred Works	34
20	Reserve Fund	35-36
21	Environment Protection and Pollution Control	36
22	Drainage Studies and Facilities	36
23	Right to Return Flows	36-37

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
24	Lands Not to Receive Water Furnished to Contractor by United States Until Owners Thereof Execute Certain Contracts	37-38 38-40
25	Valuation and Sale of Excess Lands	40-43
26	Excess Lands	43
27	Repeal or Amendment of Federal Reclamation Laws	
28	General Obligation--Benefits Conditioned Upon Payment	44 44
29	Changes in the Contractor's Organization	44-45
30	Books, Records, and Reports	45
31	Rules and Regulations	45
32	Determination of Findings of Facts	46-47
33	Title VI, Civil Rights Act of 1964	48-50
34	Equal Opportunity	51
35	Contractor's Rights to Water	
36	Conversion of Portion of Contract Under Section 9(D) of the Reclamation Project Act of 1939	51-52 52
37	Renegotiation	52-53
38	Contingent on Appropriation or Allotment of Funds	53
39	Officials Not to Benefit	53
40	Assignment Limited--Successors and Assigns Obligated	54
41	Notices	54
42	Confirmation of Contract	55
	Signature page	



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

CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY  
WATER DISTRICT FOR WATER SERVICE AND FOR OPERATION AND  
MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

THIS CONTRACT, made this 7<sup>th</sup> day of June, 1972,

in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and  
acts amendatory thereof or supplementary thereto, all collectively  
hereinafter referred to as the Federal reclamation laws, between  
THE UNITED STATES OF AMERICA, hereinafter referred to as the United  
States, and SANTA CLARA VALLEY WATER DISTRICT, hereinafter referred  
to as the Contractor or the District, a public agency of the State  
of California, duly organized, existing, and acting pursuant to the  
laws thereof, with its principal place of business in San Jose, California,

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the United States is constructing and operating  
the Central Valley Project, for the purposes, among others, of  
furnishing water for irrigation, municipal, industrial, domestic,  
and other beneficial uses; and

WHEREAS, the groundwater basins in the District have been  
overdrawn and the lands of the District and its inhabitants are in  
need of additional water for beneficial uses and purposes; and

Preamble  
Explanatory Recitals . . .

1           WHEREAS, the United States proposes to construct the San  
2 Felipe Division as a feature of the Project for the diversion,  
3 carriage, distribution, regulation, and beneficial use of waters of  
4 the Project; and

5           WHEREAS, investigations indicate that the water supply to  
6 be developed by the Project can be made available to the Contractor  
7 for beneficial uses and purposes; and

8           WHEREAS, the Contractor desires to contract for a water supply  
9 from the Project at the rates and under the conditions hereinafter set  
10 forth;

11           NOW, THEREFORE, in consideration of the covenants herein  
12 contained, it is agreed as follows:

13                           DEFINITIONS

14           1. When used herein, unless otherwise distinctly expressed, or  
15 manifestly incompatible with the intent hereof, the term:

16                   (a) "The Contracting Officer" shall mean the duly authorized  
17 representative of the Secretary of the Interior;

18                   (b) "Project" shall mean the Central Valley Project,  
19 California, of the Bureau of Reclamation;

20                   (c) "Division" shall mean the San Felipe Division of the  
21 Project;

22

1 (d) "Division Facilities" shall mean main conveyance, pumping  
2 plants, regulating reservoirs, and other works constructed or  
3 acquired by the United States to deliver water to the contractors  
4 within the Division;

5 (e) "Santa Clara Facilities" shall mean the Division Facilities  
6 used to deliver water to the Contractor exclusively;

7 (f) "State" shall mean the State of California;

8 (g) "initial delivery date" shall mean the day that water  
9 from the Division Facilities is first available for deliver to  
10 the Contractor under this contract;

11 (h) "newly irrigated land" shall mean land on which, as  
12 demonstrated to the satisfaction of the Contracting Officer, an  
13 irrigated crop has not been produced prior to the time water from  
14 the Project becomes available for furnishing to said land;

15 (i) "agricultural water" shall mean water used primarily  
16 in the commercial production of agricultural crops or livestock,  
17 including domestic use incidental thereto, on tracts of land  
18 operated in units of more than 2 acres;

19 (j) "municipal, industrial, and domestic water" (hereinafter  
20 referred to as M&I water) shall mean water used for other than  
21 agricultural purposes;

22

1           (k) "reclaimed water" means waste water that has been  
2           treated to the extent necessary to be suitable for groundwater  
3           recharge, agricultural, municipal or industrial uses; and  
4           (1) "year" shall mean the calendar year.

5                           TERM OF CONTRACT--RENEWALS

6           2. This contract shall be effective on the date first herein-  
7           above written and shall remain in effect for a period of 40 years  
8           commencing with the year in which water is first available from  
9           the Division Facilities to any contractor under terms of a long-  
10          term contract for service therefrom: Provided, That under terms  
11          and conditions agreeable to the parties, renewals of this contract  
12          may be made for successive periods not to exceed 40 years each. The  
13          terms and conditions of each renewal shall be agreed upon not later  
14          than one year prior to the expiration of the then existing contract.

15                           WATER TO BE FURNISHED TO THE CONTRACTOR

16          3. (a) The Contracting Officer will notify the Contractor of  
17          the date on which water will be available for the Contractor from the  
18          Project at least 6 months in advance.

19          (b) The United States shall make available to the Contractor  
20          the quantities of agricultural and M&I water specified in the schedule  
21          submitted by the Contractor in accordance with Article 4, and the Con-  
22          tractor shall pay for said water at the rates established by the  
23          provisions of Article 11: Provided, That the United States shall make  
24          available agricultural and M&I water and the Contractor shall pay for as

1 a minimum the total quantities set forth in Column A of the following  
2 table, and the total annual minimum shall include at least the annual  
3 minimum for M&I water required in Column B of the table. The total  
4 quantity the United States shall make available annually during the term  
5 of this contract shall be 152,500 acre-feet, of which 119,400 acre-feet  
6 shall be M&I water: Provided further, That such total quantity of  
7 152,500 acre-feet per annum shall be limited to a maximum of 137,500  
8 acre-feet per annum until and unless the Contractor and the United States,  
9 before January 1, 1990, have found, and have executed writings that  
10 declare that wastewater reclamation will not feasibly provide for the  
11 supplemental water needs of the Contractor above said 137,500 acre-feet  
12 per annum: And provided further, That any adjustment of pricing schedule  
13 required, in the opinion of the Contracting Officer, by a decision not  
14 to exceed said 137,500 acre-feet per annum may be made effective  
15 January 1, 1990: Provided, however, That at any time or times after  
16 the Contractor's requirement for M&I water exceeds 119,400 acre-feet  
17 per year for 3 years in any 5-year period, any or all of the Project  
18 water to be furnished for agricultural use may be converted and shall  
19 be added to said 119,400 acre-feet and shall become the minimum quantity  
20 the Contractor shall pay for as M&I water each year thereafter during  
21 the term of this contract. Years shown in the table refer to the year  
22 of initial delivery and the following years.

**TABLE OF MINIMUM ANNUAL DELIVERIES**

1	2	COLUMN A		COLUMN B
		Year	Total Minimum Water Delivery	Minimum M&I Water Delivery
3	1	1	16,000	16,000
	2	2	22,000	20,000
4	3	3	27,000	24,000
	4	4	32,000	28,000
5	5	5	37,000	32,000
	6	6	43,000	36,000
6	7	7	49,000	40,000
	8	8	55,000	44,000
7	9	9	61,000	48,000
	10	10	67,000	52,000
8	11	11	74,000	56,000
	12	12	79,300	58,300
9	13	13	84,600	60,600
	14	14	89,900	62,900
10	15	15	95,200	65,200
	16	16	100,600	67,500
11	17	17	102,900	69,800
	18	18	105,200	72,100
12	19	19	107,500	74,400
	20	20	109,800	76,700
13	21	21	112,100	79,000
	22	22	114,400	81,300
14	23	23	116,700	83,600
	24	24	119,000	85,900
15	25	25	121,300	88,200
	26	26	123,600	90,500
16	27	27	125,900	92,800
	28	28	128,200	95,100
17	29	29	130,500	97,400
	30	30	132,800	99,700
18	31	31	135,100	102,000
	32	32	137,100	104,000
19	33	33	139,100	106,000
	34	34	141,100	108,000
20	35	35	143,100	110,000
	36	36	145,100	112,000
21	37	37	147,100	114,000
	38	38	149,100	116,000
22	39	39	151,100	118,000
	40	40	152,500	119,400

1           (c) Each year, the United States shall use all reasonable  
2 diligence to deliver and the Contractor shall make all reasonable  
3 efforts to schedule and accept the amounts of water necessary to  
4 satisfy the annual total minimum acre-feet set forth in the Table of  
5 Minimum Annual Deliveries: Provided, That if the Contractor is unable  
6 in any year to accept quantities sufficient to satisfy the total minimum  
7 for that year, the amount of payments for water not used may be applied  
8 to meet the payment for water taken in excess of the minimum requirement  
9 in any of the subsequent 5 years but not thereafter: Provided further,  
10 That payments for water received in excess of the total annual minimum,  
11 excluding payments for water received pursuant to subdivision (i) of  
12 this article, may be used to satisfy minimum payments due during any  
13 of the subsequent 5 years but not thereafter.

14           (d) In no event shall the United States be obligated to  
15 furnish more than 152,500 acre-feet of water during any year of the  
16 term of this contract: Provided, That this quantity may be increased  
17 pursuant to subdivisions (g) and (h) hereof: And provided further,  
18 That this quantity may be decreased by agreement of the parties for  
19 the remainder of the term of this contract.

20           (e) In the event the United States is unable to deliver the  
21 scheduled quantity of water due to water shortage or other disruption  
22 of service and part or all of the undelivered water was required to  
23 meet the contract minimum then the minimum for such year will be  
24 reduced to the amount delivered.

1           (f) The United States will provide the electrical capacity  
2 and energy, hereinafter referred to as Project power, necessary to  
3 deliver Project water to and through the Division Facilities without  
4 any charge over and above the rates and any adjustments thereof set  
5 forth in Article 11 of this contract.

6           (g) If the Contractor in any year requires a quantity of water  
7 in addition to the maximum quantity of 152,500 acre-feet per annum which  
8 the United States is obligated to deliver to the Contractor, additional  
9 water, if water and capacity are available as determined by the Con-  
10 tracting Officer, may be delivered upon receipt from the Contractor of  
11 a written request together with a schedule indicating the desired times,  
12 uses, and quantities of water and payment at the applicable rates speci-  
13 fied in Article 11 hereof. The delivery by the United States and  
14 acceptance by the Contractor of such additional water shall neither en-  
15 title nor obligate the Contractor to receive such quantities in  
16 subsequent years.

17           (h) If from time to time the Contracting Officer determines  
18 that other potential contractors within the Division have not obligated  
19 themselves to purchase the maximum quantity of water the Division is  
20 capable of supplying, the Contracting Officer will notify all contractors  
21 within the Division of such unobligated supply and will make the same  
22 available on a prorated basis to such contractors who request additional  
23 water and demonstrate a need therefor to the satisfaction of the Contract-  
24 ing Officer. Any such additional quantities made available to the  
25 Contractor shall be delivered and paid for as shall be agreed upon in  
26 writing by the parties hereto.



1           (1) The United States may furnish Project water to the Con-  
2 tractor in excess of the quantities shown in the Table of Minimum Annual  
3 Deliveries in subdivision (b) of this article for the purpose of replacing  
4 the historical depletion of groundwater: Provided, That during the term  
5 of this contract a total of 350,000 acre-feet, or an amount otherwise  
6 agreed upon, may be provided as available from the Project for this purpose,  
7 as determined by the Contracting Officer. All such water delivered for  
8 this purpose shall hereinafter be referred to as replacement water and  
9 shall be paid for at the rates established in Article 11.

#### 10                   DELIVERY SCHEDULES

11           4. The Contractor will submit for each year a schedule satisfactory  
12 to the Contracting Officer showing the quantities of water, including a  
13 separate schedule for water to be delivered pursuant to Article 3(1),  
14 required each month during such year. The schedule for the year in which  
15 the initial delivery date occurs shall be submitted 2 months prior to the  
16 initial delivery date. Thereafter, schedules will be submitted not later  
17 than November 1st preceding the year covered by the schedule and at such  
18 other times as is necessary to assure coordination of Project operation.  
19 The United States shall notify the Contractor of concurrence with or  
20 changes to said schedule prior to December 15th and shall attempt to  
21 deliver water in accordance with said schedules or any revision thereof  
22 satisfactory to the Contracting Officer which are submitted to the Con-  
23 tracting Officer within a reasonable time before the desired time for  
24 delivery. The inability, failure, or refusal of the Contractor to  
25 submit a schedule shall not relieve it of its payment obligations.



1 United States shall use its best efforts to avoid any discontinuance  
2 or reduction in service for a period longer than 3 days. Upon resump-  
3 tion of service after such reduction and if requested by the Contractor,  
4 the United States will attempt to deliver the quantity of water which  
5 would have been furnished hereunder in the absence of such contingency.

6 WATER SHORTAGE AND APPORTIONMENT

7 7. (a) In its operation of the Project, the United States will  
8 use all reasonable means to guard against a condition of shortage in  
9 the quantity of water available to the Contractor pursuant to this  
10 contract. Nevertheless, if a shortage does occur during any year  
11 because of drought, or other causes which, in the opinion of the Con-  
12 tracting Officer, are beyond the control of the United States, no  
13 liability shall accrue against the United States or any of its officers,  
14 agents, or employees for any damage, direct or indirect, arising therefrom.

15 (b) In any year that the Contracting Officer determines there  
16 is a shortage in the quantity of water available to customers of the  
17 United States from the Project, the Contracting Officer will apportion  
18 available water among the water users capable of receiving water from the  
19 same Project facilities by reducing deliveries to all such water users  
20 by the same percentage, unless he is prohibited by existing contracts,  
21 Project authorizations, or he determines that some other method of appor-  
22 tionment is required to prevent undue hardship. In the event reduced  
23 deliveries within the Division are necessary, the water supplies for both  
24 M&I and agricultural use shall be reduced by the same percentage for each  
25 contractor.

1           (c) If operation of the Project to meet legally required  
2 Delta water quality control standards, including Federally adopted water  
3 quality standards, causes a shortage in water supply and requires a  
4 reduction in deliveries of water to the Contractor under this agreement,  
5 such reductions will be made in accordance with subdivision (b) of this  
6 article and shall not be deemed a breach hereof.

7                           QUALITY OF WATER

8           8. The operation and maintenance of Project facilities and the  
9 construction of new Project facilities for the provision of Project water  
10 under this contract shall be performed in such a manner as is practicable  
11 to maintain the quality of raw water to be furnished hereunder at the  
12 highest level reasonably attainable as determined by the Contracting  
13 Officer. The United States is under no obligation to construct or  
14 furnish water treatment facilities to maintain or better the quality of  
15 water. Further the United States does not warrant the quality of water  
16 to be furnished pursuant to this contract.

17                           POINT OF DELIVERY--MEASUREMENT--RESPONSIBILITY FOR DISTRIBUTION

18           9. (a) The water to be furnished to the Contractor pursuant to  
19 this contract will be made available to the Contractor at the headworks  
20 of the Santa Clara Facilities, hereinafter referred to as the point of  
21 delivery. Turnouts will be constructed by the United States at its  
22 expense at such points within the Santa Clara Facilities as may be agreed  
23 upon in writing by the Contracting Officer and the Contractor: Provided,  
24 That in the event the United States shall have reached the construction

1 of the portion of the Division Facilities which will embrace such  
2 turnouts and their location has not been agreed upon, such turnouts  
3 shall be established at locations as in the conclusive determination  
4 of the Contracting Officer will best serve the needs of the Contractor:  
5 Provided further, That future additional turnouts shall be provided at  
6 the Contractor's expense.

7 (b) The Contractor shall construct and install, without cost  
8 or expense to the United States, suitable connection facilities required  
9 by the Contractor to take and convey the water from the turnouts. The  
10 Contractor will furnish for approval of the Contracting Officer drawings  
11 showing the construction to be performed by the Contractor within the  
12 United States right-of-way 3 months before issuance of the invitations  
13 for bids. The facilities may be installed, operated, and maintained  
14 on or across the United States right-of-way subject to such restrictions  
15 and regulations as to type, location, method of installation, operation,  
16 and maintenance as may be prescribed by the Contracting Officer.

17 (c) All water delivered to the Contractor shall be measured  
18 by the Contractor at the first measuring device installed on the Santa  
19 Clara Facilities at or downstream from the point of delivery with  
20 equipment furnished and installed by the United States. The measuring  
21 equipment shall be operated and maintained in proper condition for  
22 accurate measurement by the Contractor at its expense. The United States  
23 shall have access to the measuring equipment it furnished at all reason-  
24 able times.

1           (d) The quantity of Project water furnished to the Con-  
2 tractor exclusive of replacement water shall be determined as follows:

3           (1) Project water delivered by the Contractor directly  
4 to its customers shall be computed by a method or methods satis-  
5 factory to the Contracting Officer or measured by meters furnished,  
6 installed, operated, and maintained by the Contractor or its  
7 customers. Upon the request of the Contracting Officer, the  
8 Contractor shall investigate and test the accuracy of said meters  
9 and shall adjust any errors disclosed by such investigation. The  
10 United States shall be afforded reasonable opportunity to be  
11 present during said investigations and tests by the Contractor for  
12 the purpose of determining the accuracy and conditions of the  
13 meters. If said meters are found to be defective or inaccurate,  
14 the Contractor will be responsible for making timely repairs, replace-  
15 ments, or adjustments to eliminate defects or inaccuracies.

16           (2) The amount of Project water delivered by the United  
17 States in any year which is used for groundwater recharge shall be  
18 equal to the difference between the total amount delivered to the  
19 Contractor in that year and the total of the direct deliveries by  
20 the Contractor determined in accordance with subsection (d)(1) of  
21 this article. The Contractor will cause determinations of ground-  
22 water extractions and use to be made and recorded and will cause

1 the water surface elevations in the groundwater basins to be  
2 recorded, all in a manner satisfactory to the Contracting  
3 Officer. The installation, operation, and maintenance of all  
4 measuring devices and all computations of amounts of water re-  
5 charged and extracted shall be made without cost or expense to  
6 the United States. The United States shall have the same rights  
7 with respect to the investigations and testing of said measuring  
8 devices and records as are set forth in subsection (d)(1) of this  
9 article. Prior to April 30 of each year after the year in which  
10 the initial delivery date occurs the Contractor will submit to  
11 the Contracting Officer a report setting forth the amount of  
12 Project water recharged by the Contractor and the quantities of  
13 water that were pumped from the basins and put to M&I and agri-  
14 cultural use respectively during the preceding year. The quantities  
15 of Project water recharged in each basin shall be computed annually  
16 by prorating between M&I water and agricultural water in the  
17 same proportion that the water pumped from the basin and used  
18 for each of said purposes bears to the total water pumped from the  
19 basin in that year: Provided, That the Contractor shall not divide  
20 the District into more than three basins for accounting purposes:  
21 Provided further, That firm supplies of water purchased by the Con-  
22 tractor from the State of California or the City and County of San  
23 Francisco shall be deemed to be M&I and any such water percolated

1 will be subtracted from the M&I water pumped prior to computa-  
2 tions of Project water use but surplus water purchased from  
3 the State of California and percolated to the underground will  
4 not be subtracted.

5 (e) The quantity of replacement water shall be either that  
6 quantity of water scheduled by the Contractor and approved by the Con-  
7 tracting Officer to be used for groundwater replacement, or as otherwise  
8 agreed upon.

9 (f) The Contractor shall maintain, in a manner satisfactory  
10 to the Contracting Officer, monthly records of the quantities of water  
11 determined pursuant to section (c) of this article and will submit a  
12 report to the Contracting Officer before the 7th day of the following  
13 month.

14 (g) The United States shall not be responsible for the control,  
15 carriage, handling, use, disposal, or distribution of water beyond the  
16 point of delivery, and the Contractor shall hold the United States  
17 harmless on account of damage or claim of damage of any nature whatso-  
18 ever for which there is legal responsibility, including property damage,  
19 personal injury or death arising out of or connected with the control,  
20 carriage, handling, use, disposal, or distribution of such water beyond  
21 said points of delivery.  
22



**LIMITATION ON DELIVERY**

**10. Prior to and including the year 1977, no water from the Division Facilities shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in Section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.**

RATES OF PAYMENT FOR WATER

11. (a) The Contractor shall pay for water at the following rates:

(1) Agricultural water shall be \$16.50 per acre-foot which will be adjusted as specified in subdivision (b) below.

(2) M&I water shall be \$61 per acre-foot which will be adjusted as specified in subdivision (c) below.

(3) Replacement water shall be \$24 per acre-foot which will be adjusted effective January 1, 1991, and every 5 years thereafter by the Contracting Officer.

(b) The agricultural water rate shall be adjusted as follows:

(1) Effective January 1, 1996, and every 5th year thereafter, the Contracting Officer shall adjust the rate for changes in operation, maintenance, replacement, and Project power costs as appropriate: Provided, That if the 5th year following the first year of delivery is after 1996, the first adjustment will be made at that time, but this will not affect the subsequent adjustment dates.

(2) Effective January 1, 2001, and January 1, 2011, the Contracting Officer shall adjust the rate in accordance with the then current agricultural rate setting policies of the Project: Provided, That rate adjustments will be restricted to changes in operation, maintenance, replacement, and Project power costs

1 in accordance with (b)(1) above, in the event the then current  
2 agricultural policies of the Project discontinue the requirement  
3 for adjustment of the full agricultural rate in future or renewed  
4 contracts.

5 (c) The M&I water rate of \$61 per acre-foot shall be  
6 considered in two parts and adjusted as follows:

7 (1) Effective January 1, 1991, and every 5th year  
8 thereafter, the Contracting Officer shall adjust that portion  
9 of the rate (initially \$18 per acre-foot), to account for  
10 changes in costs (including operation, maintenance and replace-  
11 ment) for Project water supply, Project power, and conveyance,  
12 exclusive of Division Facilities costs, as appropriate, in  
13 accordance with the then current M&I rate setting policies  
14 of the Project: Provided, That if the 5th year following  
15 the first year of delivery is after 1991, the first adjustment  
16 will be made at that time, but this will not affect the sub-  
17 sequent adjustment dates: Provided further, That in each  
18 rate adjustment hereunder the conveyance portion will be  
19 limited to the authorized conveyance facilities of the Project  
20 as of the date of this contract and future conveyance additions  
21 which directly relate to the quantity and quality of water  
22 available to the Division as conclusively determined by the  
23 Contracting Officer. .

1                   (2) Effective January 1, 2006, and every 5th year  
2                   thereafter, the Contracting Officer shall adjust that portion  
3                   of the rate (initially \$43 per acre-foot), for the Division  
4                   Facilities costs, exclusive of Project power which is covered  
5                   in (c)(1) above, as appropriate, in accordance with the then  
6                   current M&I rate setting policies of the Project: Provided,  
7                   That if the 20th year following the first year of delivery  
8                   occurs after 2006, the first adjustment will be made at that  
9                   time, but this will not affect the subsequent adjustment dates.

10                  (d) The Contracting Officer will make available to the  
11                  Contractor the computations, appropriate rate policy, and cost  
12                  allocation upon which any proposed rate adjustment is based and will  
13                  afford the Contractor not less than 3 months to study, to comment,  
14                  and the opportunity to consult on the proposed adjustment of rates,  
15                  the rate policies, or the cost allocation procedures before announc-  
16                  ing an adjustment of the rate. Final determination of an adjustment  
17                  will be announced by the Contracting Officer after consideration of  
18                  the Contractor's comments but not less than 6 months prior to the  
19                  effective date thereof.

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METHOD OF PAYMENT FOR WATER

12. The method of payments to be made by the Contractor for water furnished pursuant to this contract shall be as follows:

(a) Prior to the date on which it wishes to accept the first delivery of water hereunder the Contractor shall pay for the water scheduled to be delivered for agricultural, M&I, and replacement purposes during the first 2 calendar months. Before the end of the first month of delivery and before the end of each month thereafter, the Contractor shall pay for the water to be delivered pursuant to the latest approved schedule during the second month immediately following. Water furnished pursuant to subdivision (g) of Article 3 shall be paid for in full at the time or times such requests are made: Provided, That if the Contractor does not accept delivery of water as soon as it becomes available in the month in which the initial delivery date occurs and each month for the remainder of that year and each month of each year thereafter until the Contractor desires to accept delivery of water, the Contractor shall pay for 1/12th of the quantity of water that will fulfill the total minimum quantity requirement for that year specified in Article 3.

(b) Adjustment for any difference between the payment for the scheduled quantities of water and payment for the quantities of water actually delivered in any month shall be

1        made in the payment in the month immediately following: Provided,  
2        That the total quantity of water paid for in any year shall be  
3        no less than the minimum quantity specified in Column A of the  
4        Table of Minimum Annual Deliveries except that the minimum for  
5        the first year shall be prorated on the basis of 1/12th of the  
6        total for that year for each month water is available, and by  
7        December 1 the Contractor shall make any additional payment  
8        necessary to pay for such minimum: Provided further, That the  
9        quantity of M&I water paid for annually shall not be less than  
10       the quantity necessary to fulfill the minimum quantity require-  
11       ment specified in Column B of the Table of Minimum Annual  
12       Deliveries except that the minimum for the first year shall be  
13       prorated on the basis of 1/12th of the total for that year for  
14       each month water is available, or a greater actual quantity  
15       delivered in that year, or any greater quantity resulting from  
16       the use of water furnished for agricultural purposes but used  
17       for M&I purposes, as specified and provided in Article 3.

18        (c) Upon determination of the amounts of Project M&I and  
19        agricultural water used during the preceding year, in accord-  
20        ence with Article 9(d), if a greater amount of M&I water and a  
21        lesser amount of agricultural water were used than set forth in  
22        the Article 4 schedule, such greater amount of M&I water used

1 shall be deducted from the agricultural water scheduled but  
2 not used in said year and the Contractor will, on or before  
3 April 30 of the following year, pay the difference between the  
4 M&I and agricultural water rates for the amount of M&I water  
5 used in excess of the amount scheduled.

6 (d) In the event the Contractor is unable, fails, or  
7 refuses to accept delivery of the quantities of water available  
8 for delivery to it and which it is required to pay for pursuant  
9 to this contract, said inability, failure, or refusal shall not  
10 relieve the Contractor of the obligation to pay for such water,  
11 and the Contractor agrees to make payment in the same manner as  
12 if such water had been delivered and accepted by the Contractor.  
13 Payment for undelivered water will be determined in the same  
14 ratio as payment for water used for recharge into groundwater  
15 basins as provided in Article 9.

16 ADJUSTMENTS

17 13. The amount of any payment by the Contractor during any year  
18 over the amount the Contractor otherwise under the provisions of this  
19 contract would have been required to pay, as conclusively determined  
20 by the Contracting Officer, shall be applied first to any accrued  
21 indebtedness arising out of this contract then due and owing to the  
22 United States by the Contractor, and any amount of such overpayment then  
23 remaining, at the option of the Contractor, shall be refunded to the

. . . Articles 12 - 13 . . .

1 Contractor or credited upon amounts to become due to the United States  
2 from the Contractor in the ensuing year under the provisions hereof.

3 INTEREST FOR DELINQUENT PAYMENTS

4 14. The Contractor shall pay interest on installments or charges  
5 which become delinquent computed at the rate of one percent per month  
6 of the amount of such delinquent installments or charges for each day  
7 from such delinquency until paid: Provided, That no interest shall be  
8 charged to the Contractor unless such delinquency continues for more  
9 than 30 days in which event the interest shall accrue from the initial  
10 date of delinquency.

11 EXCHANGES OF WATER

12 15. The Contractor may from time to time, with the prior written  
13 approval of the Contracting Officer, enter into contracts, transfers,  
14 or exchanges with other contractors for a water supply from the Project  
15 which would have the effect of providing additional Project water to the  
16 Contractor, or which would have the effect of transferring water furnished  
17 or delivered hereunder to other parties having contracts with the United  
18 States for water from the Project.

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1                                    CONVEYANCE OF NON-PROJECT WATER

2            16. The Contractor shall have the right to use Division Facil-  
3 ities to convey non-Project water, subject, however, to each of the  
4 following conditions:

5                    (1) the Contractor and the Contracting Officer shall  
6 agree upon the charge to be paid by the Contractor prior to the  
7 use of the Facilities;

8                    (2) such conveyance shall not interfere with deliveries  
9 of Project water to the Contractor or to any other user of the  
10 Facilities;

11                   (3) arrangements for power necessary to convey such  
12 water shall be the responsibility of the Contractor;

13                   (4) the United States shall not incur any liability or  
14 unreimbursed cost or expense thereby; and,

15                   (5) to the extent that non-Project water conveyed  
16 through Division Facilities is directly applied to land for  
17 agricultural use, such water shall be subject to the provisions  
18 of Articles 24, 25, and 26 hereof.

19                                    TRANSFER OF CARE, OPERATION  
20                                    AND MAINTENANCE OF SANTA CLARA FACILITIES  
                                      TO THE CONTRACTOR

21            17. (a) On completion of construction of the Santa Clara  
22 Facilities or so much thereof as in the conclusive determination of

Articles 16 - 17 . . .

1 the Contracting Officer will permit the commencement of the delivery  
2 of water without interference with the construction of the rest of  
3 said Facilities, the Contracting Officer will furnish to the Contractor,  
4 a written notice, hereinafter referred to as the transfer notice,  
5 announcing the transfer to the Contractor for care, operation, and maintenance of the completed portion or portions of the said Facilities, together  
6 with a description thereof, and the effective date of the transfer. If  
7 all of said Facilities are not transferred pursuant to the aforesaid  
8 notice, a similar notice or notices may be given as other parts thereof  
9 are ready for transfer. All Facilities so transferred shall hereinafter  
10 be referred to as transferred works.  
11

12 (b) Prior to the effective date of a transfer notice, the  
13 Contractor shall determine what, if any, movable property, including  
14 equipment, supplies and records used in connection with the transferred  
15 works it desires to accept and shall submit a list thereof to the  
16 Contracting Officer. To the extent authorized by law, title to such  
17 movable property as the Contracting Officer determines to be essential  
18 to the operation of the transferred works, shall be transferred to the  
19 Contractor in accordance with the Federal Property Management Regulations at the time of transfer and the value thereof will be added to  
20 and become a part of the Division construction costs.  
21  
22

. . . Article 17

1        CARE, OPERATION, AND MAINTENANCE OF TRANSFERRED AND OTHER DIVISION WORKS

2        18. (a) The Contractor, without expense to the United States, shall  
3        care for, operate, and maintain the transferred works in full compliance  
4        with Federal reclamation law and in such manner that they will remain in  
5        good and efficient condition: Provided, That the United States shall be  
6        responsible for major repair or replacement of transferred works and other  
7        Division works required as a result of disaster or obsolescence, as  
8        determined by the Contracting Officer.

9        (b) The Contractor, upon the effective date of the transfer,  
10       shall assume all obligations of the United States under any contract or  
11       contracts related to the crossing of the transferred works in, over,  
12       along, or across land or rights-of-way of public utilities, the State  
13       of California, or agencies thereof.

14       (c) The Contractor will furnish to the United States such records  
15       of its operations of the transferred works as the Contracting Officer may  
16       require. The Contractor will furnish and install in said transferred  
17       works such replacement parts as are required for proper maintenance.

18       (d) The United States will furnish to the Contractor copies  
19       of documents, drawings, and other records necessary for the operation  
20       and maintenance of the Project works as shall from time to time be requested  
21       by the Contractor in writing. The Contractor will pay for the cost of  
22       reproducing copies of said records requested after one year from the  
23       effective date of the transfer. The Contractor will keep drawings current  
24       and will furnish a copy of all revised drawings to the Contracting Officer.

1           (e) For the purposes of this contract, definitions of the  
2 following terms are:

3           (1) An easement is an instrument which grants an  
4 estate in the land which is not revocable except as may be  
5 provided in the instrument. Rights of way for roads, transmission  
6 lines, pipelines, and like uses, are granted by an easement.

7           (2) A lease is an instrument by which lands and  
8 tenements are conveyed for a number of years or at will.  
9 Leases may be used to convey lands for grazing, agricultural,  
10 commercial and other uses.

11           (3) A license is an instrument granting authority to  
12 do an act or acts on lands without conveying an interest therein.  
13 It may be used to allow such uses as surveying, temporary cross-  
14 ings, bank travel, or installation of temporary pumps. It is an  
15 instrument giving a personal privilege which is temporary and  
16 revocable.

17           (f) When the Contracting Officer receives a request for  
18 use of the right-of-way transferred to the Contractor for operation  
19 and maintenance, he shall forward the request, together with any  
20 comments which may be pertinent, to the Contractor. Notice of referral  
21 shall be sent to the applicant without comment. The applicant also  
22 should be told that further information regarding the application will

. . . Article 18 . . .

1 emanate from the Contractor and all subsequent inquiries concerning  
2 the application should be sent direct to the Contractor.

3 (g) Subject to the provisions of (h) below, the Contractor  
4 may grant or deny licenses to use the right-of-way. The Contractor  
5 will send the Contracting Officer a copy of each license granted.  
6 The Contractor will obtain the prior written approval of the  
7 Contracting Officer for any license that involves a major installa-  
8 tion and construction of structures in the right-of-way, such flumes,  
9 siphons, culverts, drains, and permanent turnouts.

10 (h) The following rights to use the right-of-way shall be  
11 granted only by the Contracting Officer:

12 (1) All leases and grants of easement.

13 (2) Licenses, consents, and other forms of agreement  
14 requested by Pacific Gas and Electric Company or any other entity  
15 which has a master contract with the United States.

16 (3) Licenses for removal of sand, gravel, or spoil.

17 (4) Licenses for transmission lines with voltage in  
18 excess of 33 k.v.

19 If the application is one which can only be granted by the Contracting  
20 Officer then the Contractor shall furnish a copy of the application  
21 and comments thereon to the Contracting Officer. If the request is  
22 compatible with the operation and maintenance of the transferred works

. . . Article 18 . . .

1 and if the Contractor has indicated approval, the Contracting Officer  
2 will send the appropriate executed documents to the Contractor for  
3 transmittal to the applicant.

4 (i) In granting permission to use the right-of-way, care  
5 shall be exercised to assure that:

6 (1) The encroachment is held to the minimum practical,

7 (2) There is no interference with water supply opera-  
8 tions on the right of way,

9 (3) A license is not issued as a substitute for an  
10 easement or lease, and

11 (4) Disposal of land by the United States is not being  
12 contemplated. When there is doubt on any of these matters, the  
13 application shall be sent to the Contracting Officer.

14 (j) Charges will normally be made for easements, leases,  
15 and licenses to use the right of way.

16 (1) The charge shall be based on the fair value of  
17 the right granted with a minimum sufficient to cover the adminis-  
18 tration expenses involved. The Contractor may establish uniform  
19 charges for servicing licenses.

20 (2) No charge will be made by the United States for  
21 rights granted to governmental entities or to such quasi-govern-  
22 mental agencies or nonprofit organizations as the parties shall

. . . Article 18 . . .

1       agree upon. However, if a governmental entity requests a  
2       right for the specific benefit of a private entity, charges  
3       will be imposed and will be paid to the Contractor direct as  
4       though the grant were to the private entity.

5               (k) The parties agree that the procedures set forth in  
6       subdivisions (d) through (j) appear desirable and feasible at this  
7       time. However, the effectiveness of these procedures is subject to  
8       review during operations. Necessary or desirable changes will be  
9       made by agreement of the parties when the need therefor becomes  
10      evident.

11             (1) No change in any of the transferred works, which in the  
12      opinion of the Contracting Officer is substantial, shall be made by  
13      the Contractor without prior written consent of the Contracting  
14      Officer. The Contractor promptly shall make any repairs and replace-  
15      ments to the transferred works which in the opinion of the Contracting  
16      Officer are necessary and are the responsibility of the Contractor.  
17      If the Contractor neglects or fails to make such repairs and replace-  
18      ments or, in the event of operation of the transferred works by the  
19      Contracting Officer, pursuant to subsection (o) of this article, the  
20      United States may cause the repairs and replacements to be made and  
21      the Contractor's share of the cost thereof, as determined by the Con-  
22      tracting Officer, shall be paid by the Contractor to the United States  
23      upon notice of the payment due but not later than April 1 of the year  
24      following that during which such work was completed.

1           (m) The Contracting Officer with the Contractor may, from  
2 time to time, review the maintenance of transferred works being  
3 operated by the Contractor in order to assist the Contractor in  
4 determining the condition of facilities and the adequacy of the  
5 maintenance program. A report of the review, including recommenda-  
6 tions, if any, will be prepared and copies will be furnished to the  
7 Contractor. Except for such participation by the Contractor as it  
8 may desire, such reviews will be without cost to the Contractor.

9           (n) If deemed necessary by the Contracting Officer, special  
10 inspections of any transferred works and of the Contractor's books  
11 and records may be made to ascertain the extent of any operation  
12 and maintenance deficiencies, to determine the remedial measures  
13 required for their correction, and to assist the Contractor in solving  
14 specific problems. Any special inspection or audit shall, except in  
15 a case of emergency, be made after written notice to the Contractor  
16 and the actual cost thereof shall be paid by the Contractor to the  
17 United States.

18           (o) If the Contracting Officer determines that the Contractor  
19 has not properly cared for, operated, or maintained the transferred  
20 works or has failed to comply with any of the provisions of this contract,  
21 the United States, at the election of the Contracting Officer, may take  
22 over from the Contractor, or make any other arrangements as in his

. . . Article 18 . . .



1 opinion are necessary, for the care, operation, and maintenance of all  
2 or any part of the transferred works by giving written notice to the  
3 Contractor of such election and the effective date thereof. During  
4 the period of operation by the Contracting Officer the Contractor  
5 shall pay to the United States in advance of the use of such trans-  
6 ferred work its share of the cost of operation and maintenance thereof  
7 and replacements therefor as fixed in notices from the Contracting  
8 Officer. If such advances are inadequate to properly care for,  
9 operate, and maintain the transferred works to the end of any year,  
10 the Contracting Officer may give written notice of a supplemental  
11 operation and maintenance charge and the Contractor shall pay its  
12 share of such amount on or before the date specified in said notice.  
13 The Contractor shall provide for the collection of sufficient opera-  
14 tion and maintenance or toll charges to pay all such bills to the  
15 United States within the time stated herein in addition to providing  
16 the necessary funds to meet the other obligations of the Contractor.  
17 Any amount of such advances remaining unexpended or unobligated shall,  
18 at the option of the Contractor, either be refunded or credited upon  
19 amounts to become due to the United States from the Contractor under  
20 the provisions of this contract in subsequent years. The transferred  
21 works so taken back by the United States may be retransferred to the  
22 Contractor upon furnishing to the Contractor a 90-day written notice  
23 of intention to retransfer.

. . . Article 18 . . .

1           (p) No liability shall accrue against the United States and  
2 its officers and employees because of any damage or injury caused by the  
3 operation of said transferred works by the Contractor. The Contractor shall  
4 hold the United States harmless from every claim for damage to persons or  
5 property arising out of or connected with the care, operation, and maintenance  
6 of said transferred works by the Contractor.

7           (q) At the option of the United States the Contractor will operate  
8 the Pacheco Tunnel and the approximately 6,000 feet of conveyance facilities  
9 downstream therefrom to the bifurcation of Division Facilities: Provided,  
10 That in the event the Contractor operates these facilities, the United States  
11 shall require other entities receiving water as a result of such operation  
12 to pay the Contractor an equitable share of the operating costs. Such  
13 tunnel and conveyance facilities, subject to the terms of an auxiliary  
14 agreement, may also be maintained by the Contractor.

15 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO TRANSFERRED WORKS

16           19. During the time the transferred works are operated and maintained  
17 by the Contractor, in addition to all other payments to be made by the Contractor  
18 under this contract, the Contractor shall pay to the United States  
19 within 60 days following the receipt of a detailed cost statement such  
20 specific items of direct cost incurred by the United States for work associated  
21 with this contract as are normally charged by the United States to water  
22 users and properly and equitably chargeable to the Contractor plus a percentage  
23 of direct costs for administrative and general overhead in accordance  
24 with the procedures approved by the Contracting Officer: Provided, That costs  
25 incurred by the United States as a result of disaster or obsolescence in  
26 accordance with subdivision (a) of Article 18 are not considered to be costs  
27 within the meaning of this article.

**RESERVE FUND**

20. Commencing with the year following the transfer of operation and maintenance of the transferred works to the Contractor, the Contractor shall accumulate and maintain a reserve fund which will be available for use in the manner, for the purposes, and in the circumstances hereinafter set forth. Such reserve fund shall consist of annual deposits by the Contractor of not less than \$50,000 to a special account created by the Contractor for this purpose. Such annual deposits shall continue until the amount in the reserve fund is not less than \$250,000. Expenditures shall be made from such reserve fund only for meeting unforeseen extraordinary costs which are the responsibility of the Contractor for operation and maintenance, repair and replacement of the transferred works, and for operation and maintenance during periods of special stress, such as may be caused by drought, hurricane, earthquakes, storms, or other like emergencies. Whenever said reserve fund is reduced below \$250,000 by expenditures therefrom, it shall be restored by the accumulation of annual deposits of \$50,000 commencing with the next year following that in which the fund is reduced below said amount. During any period in which any of the Division Facilities are operated and maintained by the United States, such fund shall be available for like use by the United States. At the option of the Contractor, the reserve fund may be invested to the extent permitted by law: Provided, That such reserve fund may be made available within a reasonable time to meet the expenses for the purpose for which it

1 was accumulated: Provided further, That upon mutual agreement said  
2 fund and the annual installments may be adjusted to reflect the addition,  
3 deletion, or changes in the transferred works and operation and mainte-  
4 nance costs not contemplated when this contract was executed.

5 WATER AND AIR POLLUTION CONTROL

6 21. The Contractor, in carrying out this contract, shall comply  
7 with all applicable water and air pollution laws and regulations of  
8 the United States and the State of California and shall obtain all  
9 required permits or licenses from the appropriate Federal, State, or  
10 local authorities.

11 DRAINAGE STUDIES AND FACILITIES

12 22. To aid in determining the source and solution of future  
13 potential drainage problems, the Contractor shall initiate and maintain,  
14 in a manner satisfactory to the Contracting Officer, a program of ground-  
15 water observation in order to delineate shallow water-table areas and  
16 furnish annually to the Contracting Officer, during the term of this  
17 contract and any renewal thereof, records, and analyses of such  
18 observations as they relate to potential drainage problems.

19 RIGHT TO RETURN FLOWS

20 23. The United States reserves the right to all waste, seepage,  
21 and return-flow waters derived from water furnished to the Contractor  
22 which escapes or is discharged beyond the District's boundaries. Nothing

1 herein shall be construed as claiming for the United States any right,  
2 as waste, seepage, or return flow, to water being used pursuant to this  
3 contract for surface irrigation or underground storage within the  
4 District's boundaries by the Contractor, or those claiming by or through  
5 the Contractor.

6 LANDS NOT TO RECEIVE WATER FURNISHED TO CONTRACTOR  
7 BY UNITED STATES UNTIL OWNERS  
8 THEREOF EXECUTE CERTAIN CONTRACTS

8 24. No water made available pursuant to this contract shall be  
9 furnished to any excess lands as defined in Article 26 hereof unless  
10 the owners thereof shall have executed valid recordable contracts in  
11 form prescribed by the United States, agreeing to the provisions of  
12 this article and Articles 25 and 26 hereof, agreeing to the appraisal  
13 provided for in Article 25 hereof and that such appraisal shall be  
14 made on the basis of the actual bona fide value of such lands at the  
15 date of the appraisal without reference to the construction of the  
16 Project, all as hereinafter provided, and agreeing to the sale of  
17 such excess lands under terms and conditions satisfactory to the  
18 Secretary and at prices not to exceed those fixed, as hereinafter  
19 provided. No sale of any excess lands shall carry the right to receive  
20 water made available pursuant to this contract, unless and until the  
21 purchase price involved in such sale is approved by the Contracting  
22 Officer and upon proof of fraudulent representation as to the true  
23 consideration involved in such sales the United States may instruct

1 the Contractor by written notice to refuse to furnish any water  
2 subject to this contract to the land involved in such fraudulent  
3 sales and the Contractor thereafter shall not furnish said water  
4 to such lands until such written notice is withdrawn: Provided,  
5 That the requirements of this article and Articles 25 and 26 hereof  
6 shall not apply to any use on excess land of any water pumped from  
7 any underground source.

8 VALUATION AND SALE OF EXCESS LANDS

9 25. (a) The value of the excess irrigable lands within the  
10 District as defined in Article 26, held in private ownership of  
11 large landowners as defined in said article for the purpose of this  
12 contract, shall be appraised in a manner to be prescribed by the  
13 Secretary. At the option of the large landowner, however, the  
14 value of such land may be appraised, subject to the approval thereof  
15 by the Secretary, by three appraisers. One of said appraisers shall  
16 be designated by the Secretary and one shall be designated by the  
17 Contractor and the two appraisers so appointed shall name the third.  
18 If the appraisers so designated by the Secretary and the Contractor  
19 are unable to agree upon the appointment of the third, a Presiding  
20 Justice of the Court of Appeal of the State of California, First  
21 Appellate District, shall be requested to name the third appraiser.

22

. . . Articles 24 - 25 . . .

1           (b) The following principles shall govern the appraisal:  
2           (1) No value shall be given such lands on account of  
3           the existing or prospective possibility of securing water from  
4           the Project; and  
5           (2) The value of improvements on the land at the time  
6           of said appraisal shall be included therein, but shall also be  
7           set forth separately in such appraisal.  
8           (c) The excess land of any large landowners shall be  
9           reappraised in the manner provided in subdivision (a) hereof at the  
10          instance of the United States or at the request of said landowner.  
11          The cost of the first appraisal of each tract of excess land  
12          shall be paid by the United States. The cost of each appraisal  
13          thereafter shall be paid by the party requesting such appraisal.  
14          (d) Any improvements made or placed on the appraised land  
15          after the appraisal hereinabove provided for prior to sale of the  
16          land by a large landowner may be appraised in like manner.  
17          (e) Excess irrigable lands sold by large landowners within  
18          the District shall not carry the right to receive water made available  
19          pursuant to this contract for such land and the Contractor agrees to  
20          refuse to furnish such water to lands so sold until, in addition to  
21          compliance with the other provisions hereof, a verified statement  
22          showing the sale price upon any such sale shall have been filed with

. . . Article 25 . . .

1 property, the beneficial ownership of each coowner shall be that  
2 fraction of the total acreage held in coownership which equals the  
3 coowner's fractional interest therein. The term "large landowner"  
4 means an owner of excess lands, and the term "nonexcess land" means  
5 all irrigable land within the District which is not excess land as  
6 defined herein. Lands owned by the State, its political subdivisions,  
7 and agencies shall be administered in accordance with Public Law 91-310.

8 (b) Each large landowner as a condition precedent to the  
9 right to receive water made available pursuant to this contract for  
10 any of his excess land shall:

11 (1) Before any water is furnished by the Contractor  
12 to his excess land, execute a valid recordable contract in form  
13 prescribed by the United States agreeing to the provisions con-  
14 tained in this article and Articles 24 and 25 hereof and agreeing  
15 to dispose of his excess lands in accordance therewith to persons who  
16 can take title thereto as nonexcess land as herein provided and at a  
17 price not to exceed the approved, appraised value of such excess land  
18 and within a period of 10 years after the date of the execution of  
19 said recordable contract and agreeing further that if said land is  
20 not so disposed of within said period of 10 years the Secretary shall  
21 have the power to dispose of said land at the appraised value thereof  
22 fixed as provided herein or such lower price as may be approved by the



1 owner of such land, subject to the same conditions as would apply to  
2 the same conditions as would apply to such large landowner. The  
3 Contractor shall refuse to furnish water to any large landowner  
4 other than for his nonexcess lands until such owner meets the  
5 condition precedent herein stated; and

6 (2) Within 30 days after the date of notice from the  
7 United States requesting a large landowner to designate his  
8 irrigable lands within the District which he desires to designate  
9 as nonexcess lands, file in the office of the Contractor, in  
10 duplicate, one copy thereof to be furnished by the Contractor to  
11 the Bureau of Reclamation his written designation and description  
12 of lands so selected to be nonexcess land and upon failure to do so  
13 the Contractor shall make such designation and mail a notice thereof  
14 to the large landowner, and in the event the Contractor fails to  
15 act within such period of time as the Contracting Officer considers  
16 reasonable, such designation will be made by the Contracting Officer,  
17 who will mail a notice thereof to the Contractor and the large land-  
18 owner. The large landowner shall become bound by any such action  
19 on the part of the Contractor or the Contracting Officer and the  
20 Contractor will furnish said water only to the land so designated  
21 to be nonexcess land. A large landowner may with the consent of  
22 the Contracting Officer designate land other than that previously  
23 designated as nonexcess land: Provided, That an equal acreage of

1 the land previously designated as nonexcess shall upon such new  
2 designation, become excess land thereafter subject to the  
3 provisions of this article and Articles 24 and 25 of this contract  
4 and shall be described in an amendment of such recordable contract  
5 as may have been executed by the large landowner in the same  
6 manner as if such land had been excess land at the time of the  
7 original designation.

8 REPEAL OR AMENDMENT OF FEDERAL RECLAMATION LAWS

9 27. In the event that the Congress of the United States repeals  
10 the so-called excess land provisions of the Federal reclamation laws,  
11 Articles 24, 25, and 26 of this contract will no longer be of any force  
12 or effect and, in the event that the Congress amends the excess land  
13 provisions or other provisions of the Federal reclamation laws, the  
14 United States agrees, at the option of the Contractor, to negotiate  
15 amendments of appropriate articles of this contract, all consistent  
16 with the provisions of such amendment.

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1           GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

2           28. (a) The obligation of the Contractor to pay the United  
3 States as provided in this contract is a general obligation of the  
4 Contractor notwithstanding the manner in which the obligation may be  
5 distributed among the Contractor's water users and notwithstanding  
6 the default of individual water users in their obligations to the  
7 Contractor.

8           (b) The payment of charges becoming due hereunder is a  
9 condition precedent to receiving benefits under this contract. No  
10 water will be made available to the Contractor through Project facilities  
11 during any period in which the Contractor may be in arrears in the  
12 advance payment of water rate or any operation and maintenance charges  
13 due the United States.

14           CHANGES IN THE CONTRACTOR'S ORGANIZATION

15           29. The boundaries of the District, being the same as the exterior  
16 boundaries of the County of Santa Clara, are established by Section 2  
17 of the Santa Clara Valley Water District Act (Statutes of California 1951,  
18 chapter 1405, as amended). The District cannot be dissolved nor can its  
19 boundaries be changed except by State statute. The Contractor will not  
20 recommend to the California legislature any enactment which will result  
21 in a dissolution or change in the boundaries of the District except with  
22 the prior written concurrence of the Contracting Officer.

23           BOOKS, RECORDS, AND REPORTS

24           30. The Contractor shall establish and maintain accounts and  
25 other books and records pertaining to its financial transactions, land

1 use and crop census, water use, and to other matters as the Contracting  
2 Officer may require. Reports thereon shall be furnished to the Con-  
3 tracting Officer in such form and on such date or dates as he may require.  
4 Subject to applicable Federal laws and regulations each party shall have  
5 the right during office hours to examine and make copies of each other's  
6 books and records relating to matters covered by this contract.

7 RULES AND REGULATIONS

8 31. The Contracting Officer, after offering the Contractor an  
9 opportunity for consultation, shall make rules and regulations and  
10 supply necessary details for administration of this contract. Such  
11 rules and regulations shall be consistent with the provisions of this  
12 contract, the laws of the United States, and the State of California.  
13 The Contracting Officer may add to or modify them as may appear  
14 necessary and the Contractor shall observe such rules and regulations.

15 DETERMINATION OF FINDINGS OF FACTS

16 32. Where the terms of this contract provide for action to be based  
17 upon the opinion or determination of either party to this contract, said  
18 terms shall not be construed as permitting such action to be predicated  
19 upon arbitrary, capricious, or unreasonable opinions or determination,  
20 whether or not stated to be conclusive. If the Contractor questions  
21 any determination made by the Contracting Officer, the findings of facts  
22 shall be made by the Secretary of Interior after consultation with the  
23 Contractor and shall be binding upon the parties.

TITLE VI, CIVIL RIGHTS ACT OF 1964

33. (a) The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by the United States, this assurance obligates the Contractor, or, in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Contractor for the period during which the Federal financial assistance is extended to it by the United States.

1           (c) This assurance is given in consideration of and for  
2 the purpose of obtaining any and all Federal grants, loans, contracts,  
3 property, discounts, or other Federal financial assistance extended  
4 after the date hereof to the Contractor by the United States, including  
5 installment payments after such date on account of arrangements for  
6 Federal financial assistance which were approved before such date. The  
7 Contractor recognizes and agrees that such Federal financial assistance  
8 will be extended in reliance on the representations and agreements  
9 made in this assurance, and that the United States shall reserve the  
10 right to seek judicial enforcement of this assurance. This assurance  
11 is binding on the Contractor, its successors, transferees, and assignees.

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**EQUAL OPPORTUNITY**

34. 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, 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, 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 Equal Opportunity 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, or national origin.

1           (c) The Contractor will send to each labor union or  
2       representative of workers with which it has a collective  
3       bargaining agreement or other contract or understanding, a  
4       notice, to be provided by the Contracting Officer, advising  
5       the labor union or workers' representative of the Contractor's  
6       commitments under this Equal Opportunity clause, and shall  
7       post copies of the notice in conspicuous places available to  
8       employees and applicants for employment.

9           (d) The Contractor will comply with all provisions of  
10      Executive Order No. 11246 of September 24, 1965, as amended,  
11      and of the rules, regulations, and relevant orders of the  
12      Secretary of Labor.

13          (e) The Contractor will furnish all information and  
14      reports required by said amended Executive Order and by the  
15      rules, regulations, and orders of the Secretary of Labor, or  
16      pursuant thereto, and will permit access to its books, records,  
17      and accounts by the Contracting Officer and the Secretary of  
18      Labor for purposes of investigation to ascertain compliance  
19      with such rules, regulations, and orders.

20          (f) In the event of the Contractor's noncompliance with  
21      the Equal Opportunity clause of this contract or with any of  
22      the said rules, regulations, or orders, this contract may be



1 canceled, terminated, or suspended, in whole or in part, and  
2 the Contractor may be declared ineligible for further Govern-  
3 ment contracts in accordance with procedures authorized in said  
4 amended Executive Order, and such other sanctions may be imposed  
5 and remedies invoked as provided in said Executive Order, or by  
6 rule, regulation, or order of the Secretary of Labor, or as  
7 otherwise provided by law.

8 (g) The Contractor will include the provisions of para-  
9 graphs (a) through (g) in every subcontract or purchase order  
10 unless exempted by rules, regulations, or orders of the Secretary  
11 of Labor issued pursuant to Section 204 of said amended Executive  
12 Order, so that such provisions will be binding upon each sub-  
13 contractor or vendor. The Contractor will take such action with  
14 respect to any subcontract or purchase order as the Contracting  
15 Officer may direct as a means of enforcing such provisions,  
16 including sanctions for noncompliance: Provided, however, That  
17 in the event the Contractor becomes involved in, or is threatened  
18 with, litigation with a subcontractor or vendor as a result of  
19 such direction by the Contracting Officer, the Contractor may  
20 request the United States to enter into such litigation to  
21 protect the interests of the United States.

22

1                                    CONTRACTOR'S RIGHTS TO WATER

2            35. (a) The right to the beneficial use of water furnished  
3            to the Contractor pursuant to this contract and any renewal hereof  
4            shall not be disturbed so long as the Contractor fulfills all of  
5            its obligations under this contract and such renewal.

6            (b) Except as provided by Section 14 of the Reclamation  
7            Project Act of 1939, or as otherwise provided by law, the Contracting  
8            Officer shall not furnish water to other contractors or water users  
9            for use within the County of Santa Clara without the prior written  
10           approval of the Contractor unless the Contractor determines that it  
11           is unable or unwilling to furnish such water.

12           (c) The provisions of this contract shall not be applicable  
13           to or affect water or water rights now owned or hereafter acquired by  
14           the District or any landowner therein other than from the United  
15           States.

16                                   CONVERSION OF PORTION OF CONTRACT UNDER SECTION (9)D  
17                                   OF THE RECLAMATION PROJECT ACT OF 1939

18           36. Upon the request of the Contractor to the Contracting  
19           Officer not later than one year prior to the expiration of this  
20           contract, insofar as it relates to agricultural water, whenever,  
21           account being taken of the amount then credited to the costs of  
22           construction of Project water supply works, the remaining amount of

1 construction costs of water supply works which is properly assignable  
2 for ultimate return by the Contractor, as established by the Secretary  
3 pursuant to (3) Section 1 of Public Law 84-643 (70 Stat. 483), probably  
4 can be repaid to the United States within the term of a contract under  
5 subsection (d) of Section 9 of the Reclamation Project Act of 1939  
6 (53 Stat. 1187), the portions of this contract pertaining to the  
7 furnishing of agricultural water may be converted to a contract under  
8 said subsection (d) upon terms and conditions agreeable to the United  
9 States and the Contractor.

10 RENEGOTIATION

11 37. If hereafter the United States enters into, renews, or  
12 amends any contract for water from the Project which, because of a  
13 change in general Reclamation law or generally applicable policy,  
14 contains terms and conditions which would be substantially more favor-  
15 able to the Contractor with respect to matters similar to those  
16 contained in this contract, the United States upon the Contractor's  
17 request, will renegotiate this contract for the purpose of providing  
18 comparable terms in accordance with the new law or policy.

19 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

20 38. The expenditure of any money or the performance of any work  
21 by the United States hereunder which may require appropriation of  
22 money by the Congress or the allotment of funds shall be contingent

1 upon such appropriation or allotment being made. The failure of the  
2 Congress to appropriate funds or the absence of any allotment of funds  
3 shall not relieve the Contractor from any obligation under this contract.  
4 No liability shall accrue to the United States in case such funds are  
5 not appropriated or allotted.

6 OFFICIALS NOT TO BENEFIT

7 39. (a) No member of or delegate to Congress or resident com-  
8 missioner shall be admitted to any share or part of this contract or  
9 to any benefit that may arise herefrom. This restriction shall not be  
10 construed to extend to this contract if made with a corporation for its  
11 general benefit.

12 (b) No official of the Contractor shall receive any benefit  
13 that may arise by reason of this contract other than as a landowner  
14 within the Project and in the same manner as other landowners within  
15 the Contractor's service area.

16 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

17 40. The provisions of this contract shall apply to and bind the  
18 successors and assigns of the parties hereto, but no assignment or  
19 transfer of this contract or any part or interest therein shall be  
20 valid until approved by the Contracting Officer.

21

22



1 IN WITNESS WHEREOF, the parties have executed this contract  
2 on the date first above written.

3 THE UNITED STATES OF AMERICA

4  
5 APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY

6 *James C. Turner*  
7 OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

By *B. E. Martin*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

8 SANTA CLARA VALLEY WATER DISTRICT

9 By *Charles F. Bush*  
Chairman, Board of Directors

10 (SEAL)

11  
12 Attest:

13 *Walter T. Edwards*  
14 Clerk



RESOLUTION NO. 77- 50

APPROVING AND AUTHORIZING  
EXECUTION OF CONTRACT WITH  
THE UNITED STATES

RESOLVED, by the Board of Directors of Santa Clara Valley Water District that, it appearing, and being hereby found that all requirements of law have been duly met and that the form of contract hereinafter identified is in the best interests of the residents, farms and industries of the County of Santa Clara, the CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND FOR OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION, being R.O. Draft 3/2-1976 as modified and amended by letter to this District dated June 2, 1977, from the Regional Director, Mid-Pacific Region, United States Bureau of Reclamation, shall be and the same is hereby approved and the Chairman of this Board shall be and he is hereby authorized to execute the same for and on behalf of Santa Clara Valley Water District.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District this 7th day of June, 1977, by the following vote:

AYES: Directors J. CHINI, M. E. DULLEA, P. T. FERRARO,  
J. J. LEWIS, L. PERALTA, G. RUSH, R. T. SAPP  
NOES: Directors NONE  
ABSENT: Directors NONE

SANTA CLARA VALLEY WATER DISTRICT

By: Courtland M. Pugh  
Chairman of the Board of Directors

ATTEST: VIOLET V. ENANDER

Violet V. Enander  
Clerk of said Board of Directors

I hereby certify that the foregoing is a full, true and correct copy of the original thereof on file in my office.

DATED: June 7, 1977

Violet V. Enander  
VIOLET V. ENANDER  
Clerk, Board of Directors  
Santa Clara Valley  
Water District

**EXHIBIT F**

**COPY OF  
SANTA CLARA VALLEY WATER DISTRICT  
FIRST AMENDMENT AND ATTACHMENTS  
(EXHIBIT "A", EXHIBIT "B", EXHIBIT "C"  
AND EXHIBIT "D" dated March 28, 2007**





# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825-1898

IN REPLY  
REFER TO:  
MP-440  
WTR-4.00

MAR 28 2007

RECEIVED		
APR - 2 2007		
DATE	INITIALS	CODE
		84-5600

Mr. Larry Wilson  
Chair  
Board of Directors  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, California 95118-3686

Subject: First Amendment Contract No. 7-07-02-W0023A Between the United States and Santa Clara Valley Water District (District) for Water Service and for Operation and Maintenance of Certain Works of the San Felipe Division – Central Valley Project, California

Dear Mr. Wilson:

Enclosed is an executed original of the subject contract amendment for your records. We would like to take this opportunity to express our appreciation for the District's cooperation and assistance in expediting the execution of the contract amendment.

If you have questions concerning this contract amendment, please contact Ms. Angela Slaughter, Repayment Specialist, at 916-978-5252.

Sincerely,

(sgd) Kirk C. Rodgers

Kirk C. Rodgers  
Regional Director

Enclosure

cc: Mr. Thomas M. Berliner  
Attorney  
Duane Morris, LLP  
1 Market Spear Tower No. 2000  
San Francisco, California 94105-1104

bc: Deputy Director, Office of Program and Policy Services, Denver, CO  
Attention: D-5600 (M. Peterson)  
Assistant Solicitor, Water and Power Branch, Washington, DC  
Regional Solicitor, Pacific Southwest Region, Sacramento, CA  
Attention: Jim Turner  
MP-440 (lab), SCC-440 (jt) (ea w/cpy encl.)  
MP-3400 (w/original contract)

WBR:aslaughter:lab:2/12/2007:916-978-5252

H:\PUB440\CONTRACTS\Water Service Contracts\Long-term Contracts\San Felipe  
Division\Transmittal Letters\scvwd w0023a-2-12-2007.doc

Surnames: MP-440(2), MP-400, -1150, MP-115, MP-100

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

**SCVWD ENACTED COPY**  
**Contract Administration Unit**  
**AGMT: A0315W2 FILE: 3163-363**

FIRST AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES AND  
SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE FOR  
OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE  
DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble .....	1
	Explanatory Recitals .....	1-2
1	Replacement of Subdivisions (d) and (e) with New Definitions causing Redesignation of Subdivisions (e) – (k); and Addition of Definitions (l) – (t).....	2-5
2	Replacement of Last Sentence in Subdivision (b) of Article 7 with New Sentence .....	5-6
3	Addition of Subdivision (b) to Article 8 .....	6
4	Replacement of Subdivision (d)(1) of Article 9 with New Language .....	6-8
5	Replacement of Articles 11 and 12 with New Language .....	8-18
6	Replacement of Article 14 with New Language .....	18-19
7	Word Substitution for Subdivision (5) of Article 16 .....	19
8	Redesignation of Article 17 to 17.1, and Adding New Article 17 entitled <u>Operation And Maintenance By Operating Non-Federal Entity</u> .....	19-21
9	Addition of Articles 18.1 Entitled <u>Operation and Maintenance By Santa Clara Valley Water District</u> and 18.2 Entitled <u>Right to Recover Costs Incurred By Santa Clara Valley Water District</u> .....	22-24
10	Deletion of Articles 24, 25 and 26, and Additional Language Added to Subdivision (b) of Article 31 .....	24
11	Addition of Article 43 .....	24-26
12	Preservation of Existing Contract .....	26
	Signature Page .....	27

Exhibit A – Contractors Water Service Area

Exhibit B – Rates and Charges

Exhibit C – San Felipe Division Reimbursable Capital Costs

Exhibit D – Santa Clara Valley Water District Repayment Schedule

1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California  
5

6 FIRST AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES AND  
7 SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND  
8 OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE  
9 DIVISION  
10  
11

12 THIS FIRST AMENDMENT CONTRACT No. 7-07-20-W0023A, is made this A day  
13 of A, 2007 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and  
14 acts amendatory and supplementary thereto, including but not limited to, the Acts of August 26,  
15 1937 (50 Stat. 844), as amended and supplemented; August 4, 1939 (53 Stat. 1187), as amended  
16 and supplemented; July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), August 27, 1967 (81  
17 Stat. 173), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and  
18 Title XXXIV of the Act of October 30, 1992, (106 Stat 4706), all collectively hereinafter  
19 referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
20 hereinafter referred to as the United States, and THE SANTA CLARA VALLEY WATER  
21 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
22 duly organized, existing, and acting pursuant to the laws thereof;

23 WITNESSETH, That:

24 EXPLANATORY RECITALS

25 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
26 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for  
27 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection

and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of water of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the Contractor and the United States entered into a contract for delivery of Central Valley Project water to the Contractor, Contract No. 7-07-20-W0023, dated June 7, 1977, which established terms for the delivery to the Contractor of Central Valley Project Water from January 1, 1988 through December 31, 2027, (hereinafter referred to as the "Existing Contract"); and

[3<sup>rd</sup>] WHEREAS, in 1992, Congress enacted the Central Valley Project Improvement Act (CVPIA) (106 Stat. 4706), which addressed the renewal of existing long-term water service contracts and established that certain terms should be included in contracts renewed or amended after January 1, 1988; and

[4<sup>th</sup>] WHEREAS, to promote compliance with the CVPIA, consistent with the goal of ensuring a reliable long-term water supply for the Contractor, the parties desire to amend the Existing Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

**MODIFICATION TO EXISTING CONTRACT**

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

a) Subdivisions (d) and (e) are hereby deleted in their entirety and replaced with the following definitions, and the remaining definitions are redesignated (e) – (k) accordingly:

(d) “San Felipe Division Facilities” shall mean those existing and future Project facilities generally west of San Luis Reservoir used to divert, store and convey water to the Contractor(s). San Felipe Facilities are divided into reaches, as defined as follows:

i) “Reach 1” shall mean the facilities from the Pacheco Tunnel to and including the Pacheco Bifurcation Structure, including but not limited to, the Pacheco Pumping Plant Substation, Pacheco Pumping Plant Substation – 70kvLine, Pacheco Tunnel (including the inlet works in and under San Luis Reservoir), Pacheco Conduit and Pacheco Bifurcation Structure;

ii) “Reach 2” shall mean the facilities from, but not including, the Pacheco Bifurcation Structure to and including the Watsonville Turnout facility, and Santa Clara Tunnel and Conduit;

iii) “Reach 3” shall mean the facilities from, but not including, the Watsonville Turnout facility to and including the Coyote Pumping Plant, including but not limited to, the Santa Clara Tunnel and Conduit, Coyote Pumping Plant, Coyote Pumping Plant Substation and Coyote Pumping Plant 115 kv Line;

iv) “San Benito Facilities” shall mean San Felipe Division Facilities used to deliver water to the San Benito Water District exclusively, including the Hollister Conduit and the San Justo Dam and Reservoir;

b) The following definitions are hereby added to Article 1 as follows:

(l) "Charges" shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;

(m) "Contract," shall mean the Existing Contract as amended hereby;

(n) "Contractor's Service Area" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract, as set forth on Exhibit "A" attached hereto which may be modified from time to time without amendment to this Contract;

(o) "Delivered Water" or "Water Delivered" shall mean Project water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

(p) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting Officer, that shall amortize the expenditures for construction properly allocable to the Project irrigation or M&I functions, as appropriate, or facilities in service including all O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(b) and (3)(C) of the RRA. The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations of the RRA;

(q) "Operating Non-Federal Entity" shall mean the Operating Non-Federal Entity(ies) and their successors or assigns, which have the obligation to operate and maintain all or a portion of the Project facilities including the Division Facilities pursuant to written agreements with the United States. As of the effective date of this Contract, the Operating Non-Federal Entity(ies) were the San Luis & Delta-Mendota Water Authority with respect to certain Delta Division Facilities, Santa Clara Valley Water District with respect to certain Division Facilities, and the San Benito County Water District with respect to certain Division Facilities;

(r) "Rates" shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable ratesetting policies for the Project, as described in Article 11 of this Contract;

(s) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the delivery of M&I Water;

(t) "Tiered Pricing Component" shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (j) of Article 11 of this Contract.

2. The last sentence of subdivision (b) of Article 7 of the Existing Contract entitled WATER SHORTAGE AND APPORTIONMENT is hereby deleted and replaced with the following:

"In the event reduced deliveries within the Division are necessary, Project water furnished under this contract for M&I purposes will be allocated in accordance with the CVP M&I Water



111 Shortage Policy. Such Policy shall be amended, modified, or superseded only through public  
112 notice and comment procedure.”

113 3. Article 8 of the Existing Contract entitled QUALITY OF WATER is  
114 amended to add the following subdivision:

115 (b) The Contractor shall be responsible for compliance with all State and  
116 Federal water quality standards applicable to the Contractor for surface and subsurface  
117 agricultural drainage discharges generated through the use of Federal facilities for Water  
118 Delivered to the Contractor.

119 4. Article 9(d)(1) of the Existing Contract entitled POINT OF DELIVERY –  
120 MEASUREMENT – RESPONSIBILITY FOR DISTRIBUTION – is deleted in its entirety  
121 and replaced with the following:

122 9. (d)(1)(i) The Contractor has established a measuring program satisfactory  
123 to the Contracting Officer. The Contractor shall ensure that all surface water delivered for  
124 irrigation purposes to the Contractor’s customers within the Contractor’s Service Area is  
125 measured at each agricultural turnout and such water delivered for M&I purposes to the  
126 Contractor’s customers is measured at each M&I service connection. The water measuring  
127 devices or water measuring methods of comparable effectiveness must be acceptable to the  
128 Contracting Officer. The Contractor shall be responsible for ensuring that its retail customers are  
129 installing, operating, and maintaining and repairing all measuring devices and implementing all  
130 water measuring methods at no cost to the United States. The Contractor shall use the  
131 information obtained from such water measuring devices or water measuring methods to ensure

its proper management of the water, to bill water users for water delivered by the Contractor;  
and, if applicable, to record water delivered for M&I purposes by customer class as defined in  
the Contractor's water conservation plan provided for in Article 43 of this Contract. Nothing  
herein contained, however, shall preclude the Contractor from establishing and collecting any  
charges, assessments, or other revenues authorized by California law. The Contractor shall  
include a summary of all its annual surface water deliveries in the annual report described in  
subdivision (c) of Article 43 of this Contract.

(d)(1)(ii) To the extent the information has not otherwise been  
provided, upon the effective date of this Contract, the Contractor shall provide to the Contracting  
Officer a written report describing the measurement devices or water measuring methods being  
used or to be used to implement subdivision (d)(1)(i) of this Article and identifying the  
agricultural turnouts and the M&I service connections or alternative measurement programs  
approved by the Contracting Officer, at which such measurement devices or water measuring  
methods are being used, and, if applicable, identifying the locations at which such devices and/or  
methods are not yet being used including a time schedule for implementation at such locations.  
The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy,  
and necessary modifications, if any, of the measuring devices or water measuring methods  
identified in the Contractor's report and if the Contracting Officer does not respond in such time,  
they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the  
measuring devices or methods are inadequate, the parties shall within 60 days following the  
Contracting Officer's response, negotiate in good faith the earliest practicable date by which the

Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (d)(1)(i) of this Article.”

(d)(1)(iii) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also comply with the measurement provisions described in subdivision (d)(1)(i) of this Article.”

(d)(1)(iv) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.”

(d)(1)(v) The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Agricultural Water and M&I Water taken during the preceding month.

5. Article 11 of the Existing Contract entitled RATES OF PAYMENT FOR WATER and Article 12 of the Existing Contract entitled METHOD OF PAYMENT FOR WATER are hereby deleted in their entirety and replaced with the following:

RATES AND METHOD OF PAYMENT FOR WATER

11. (a) The Contractor shall pay the United States as provided in this Article for all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the Secretary of the Interior's Irrigation Ratesetting Policy and the Secretary's then-existing ratesetting policy for M&I water. Such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii)

174 other applicable provisions of this Contract. Payments shall be made by cash transaction,  
175 electronic funds transfer, or any other mechanism as may be agreed to in writing by the  
176 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component  
177 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," which  
178 shall be attached hereto, as may be revised annually.

179 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,  
180 and Tiered Pricing Component as follows:

181 (1) Prior to July 1 of each calendar year, the Contracting Officer shall  
182 provide the Contractor an estimate of the Charges for Project water that will be applied to the  
183 period October 1, of the current calendar year, through September 30, of the following calendar  
184 year, and the basis for such estimate. The Contractor shall be allowed not less than two months  
185 to review and comment on such estimates. On or before September 15 of each calendar year, the  
186 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the  
187 period October 1 of the current calendar year, through September 30, of the following calendar  
188 year, and such notification shall revise Exhibit "B."

189 (2) Prior to October 1 of each calendar year, the Contracting Officer  
190 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component  
191 for Project water for the following year and the computations and cost allocations upon which  
192 those Rates are based. The Contractor shall be allowed not less than two months to review and  
193 comment on such computations and cost allocations. By December 31 of each calendar year, the

Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the upcoming year, and such notification shall revise Exhibit "B."

(c) At the time the Contractor submits the initial schedule for the delivery of Project water for each year pursuant to Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project water scheduled to be delivered pursuant to this Contract during the first two calendar months of the year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the water scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for water scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of water scheduled and paid for by the Contractor, no additional Project water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project water is made. Final adjustment between the advance payments for the water scheduled and payments for the quantities of Water Delivered during

215 each year pursuant to this Contract shall be made as soon as practicable but no later than April  
216 30th of the following year.

217 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
218 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
219 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
220 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
221 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be  
222 consistent with the quantities of agricultural water and M&I water delivered as shown in the  
223 water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or,  
224 if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery  
225 report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing  
226 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges  
227 shall be made through the adjustment of payments due to the United States for Charges for the  
228 next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing  
229 Component shall be computed pursuant to Article 14 of this Contract.

230 (e) The Contractor shall pay for any Water Delivered under subdivision (g) or  
231 (h) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
232 statutes, associated regulations, any applicable provisions or guidelines or ratesetting policies;  
233 Provided, That the Rate for Water Delivered under subdivision (g) or (h) of Article 3 of this  
234 Contract shall be no more than the otherwise applicable Rate for agricultural water or M&I water  
235 under subdivision (a) of this Article;

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

238 (g) All revenues received by the United States from the Contractor relating to  
239 the delivery of Project water or the delivery of non-Project water through Project facilities shall  
240 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
241 regulations, and the then current Project ratesetting policies for M&I water or agricultural water.

242 (h) The Contracting Officer shall keep its accounts pertaining to the  
243 administration of the financial terms and conditions of its long-term contracts, in accordance  
244 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
245 The Contracting Officer shall, each year upon request of the Contractor, provide to the  
246 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
247 disposition of all Project and Contractor revenues, and a summary of all water delivery  
248 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
249 to resolve any discrepancies or disputes relating to accountings, reports, or information.

250 (i) The parties acknowledge and agree that the efficient administration of this  
251 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
252 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,  
253 and/or for making and allocating payments, other than those set forth in this Article may be in  
254 the mutual best interest of the parties, it is expressly agreed that the parties may enter into

255 agreements to modify the mechanisms, policies, and procedures for any of those purposes while  
256 this Contract is in effect without amending this Contract.

257                   (j)     (1)     Beginning at such time as deliveries of Project water in a year  
258 exceed 80 percent of the total available pursuant to this Contract, then before the end of the  
259 month following the month of delivery the Contractor shall make an additional payment to the  
260 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component  
261 for the amount of Water Delivered in excess of 80 percent of the total available pursuant to this  
262 Contract, but less than or equal to 90 percent of that total, shall equal one-half of the difference  
263 between the Rate established under subdivision (a) of this Article and the Full Cost Rate for  
264 agricultural water or Full Cost Rate for M&I water, whichever is applicable. The Tiered Pricing  
265 Component for the amount of Water Delivered which exceeds 90 percent of the total available  
266 pursuant to this Contract shall equal the difference between (i) the Rate established under  
267 subdivision (a) of this Article and (ii) the Full Cost Rate for agricultural water or Full Cost Rate  
268 for M&I water, whichever is applicable.

269                   (2)     Subject to the Contracting Officer's written approval, the  
270 Contractor may request and receive an exemption from such Tiered Pricing Component for  
271 Project water delivered to produce a crop which the Contracting Officer determines will provide  
272 significant and quantifiable habitat values for waterfowl in fields where the water is used and the  
273 crops are produced; Provided, That the exemption from the Tiered Pricing Component for  
274 agricultural water shall apply only if such habitat values can be assured consistent with the



275 purposes of the CVPIA through binding agreements executed with or approved by the  
276 Contracting Officer prior to use of such water.

277 (3) For purposes of determining the applicability of the Tiered Pricing  
278 Component pursuant to this Article, Water Delivered shall include Project water that the  
279 Contractor transfers to others and Project water provided to the Contractor pursuant to  
280 subdivision (h) of Article 3 of this Contract, but shall not include Project water transferred to the  
281 Contractor.

282 (k) For the term of this Contract, Rates applied under the respective  
283 ratesetting policies will be established to recover only reimbursable O&M (including any  
284 deficits) and capital costs of the Project, as those terms are used in the then-current Project  
285 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is  
286 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in  
287 practices which implement the Contracting Officer's ratesetting policies will not be implemented  
288 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,  
289 need, and impact of the proposed change.

290 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
291 CVPIA, the Rates for Project water transferred by the Contractor shall be the Contractor's Rates  
292 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting  
293 Officer in the delivery of the transferred Project water to the transferee's point of delivery in  
294 accordance with the then applicable Project ratesetting policy. If the Contractor is receiving

295 lower Rates and Charges because of inability to pay and is transferring Project water to another  
296 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges  
297 for transferred Project water shall not be adjusted to reflect the Contractor's inability to pay.

298 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting  
299 Officer is authorized to adjust determinations of ability to pay every five years.

300 REPAYMENT OBLIGATION

301 The Contractor's repayment obligation is described below:

302 12. (a) Repayment of San Felipe Division Facilities. The Contractor and  
303 San Benito County Water District are each entering into contracts with the United States  
304 committing to repay their separate, individual share of the total reimbursable capital costs for the  
305 San Felipe Division Facilities. These contracts collectively will provide for repayment of the  
306 unpaid reimbursable capital costs as of September 30, 2006. Until the final accounting of such  
307 costs is available, the Contractor's and San Benito County Water District's interim repayment  
308 terms will be based on the September 30, 2004, reimbursable capital costs for the San Felipe  
309 Division Facilities, which totaled \$319,417,648, as shown on Exhibit C, which exhibit may be  
310 revised by mutual agreement of the parties and San Benito County Water District without  
311 amending this Contract. These reimbursable capital costs for the San Felipe Division Facilities  
312 are summarized below:

313 (1) Reach 1 Facilities. The total reimbursable capital cost of Reach 1  
314 Facilities including allocated interest during construction as of September 30, 2004, is  
315 \$154,767,564.

316 (2) Reach 2 Facilities and Reach 3 Facilities. The total reimbursable  
317 capital cost of Reach 2 Facilities and Reach 3 Facilities including allocated interest during  
318 construction, as of September 30, 2004, is \$102,546,257.

319 (3) San Benito Facilities. The total reimbursable capital costs of the  
320 San Benito Facilities including allocated interest during construction as of September 30, 2004,  
321 is \$62,103,817.

322 (4) Interest During Construction. The reimbursable San Felipe  
323 Division interest during construction, as of September 30, 2004, is \$32,227,149.

324 (b) Final Accounting for San Felipe Division Facilities. In the event that the  
325 September 30, 2006, final accounting of the unpaid reimbursable capital costs for the San Felipe  
326 Division Facilities is not available by December 31, 2007, the Contractor's and San Benito  
327 County Water District's repayment obligations will be based on the most recent total  
328 reimbursable capital costs available, and include all payments through December 31, 2007.

329 (c) San Felipe Division Facilities Interest Rates. The interest rate for the  
330 Pacheco Tunnel Inlet used for M&I purposes is 3.137 percent per annum. The interest rate for the  
331 San Felipe Division Facilities, not including the Pacheco Tunnel Inlet, used for M&I purposes is  
332 3.50 percent per annum. Any calculation or recalculation of the semi-annual payment schedule  
333 shown in Exhibit D in this Contract, or in any subsequent renewed or amended contract during the  
334 remainder of the 50-year repayment period, shall be based on these interest rates.

(d) Repayment of Unpaid Capital Interest. The Contractor shall pay for unpaid capital interest, consistent with the "Agreement Among the United States, City of Fresno, City of Coalinga, Contra Costa Water District, Keswick County Service Area #25, Mountain Gate Community Services District, Sacramento Municipal Utility District, San Juan Water District, Santa Clara Valley Water District, Shasta County Water Agency, and City of Tracy for Settlement of the CVP M&I Ratesetting Lawsuit" entered into in 2005 to resolve City of Fresno v. United States, Civ. No. F-03-5350 (E.D.Cal). As specified in the settlement agreement, the interest rate for the unpaid balance shall be 3.50 percent per annum.

(e) Repayment Obligation and Annual Payment Schedule.

(1) Interim Repayment Obligation. The Contractor's interim repayment obligation will be computed by totaling its separate, individual share of reimbursable capital costs for Reach 1 Facilities, Reach 2 Facilities and Reach 3 Facilities, as of September 30, 2004, shown on Exhibit C, plus its unpaid capital interest, minus its accumulated repayment as of September 30, 2004. The Contractor's semiannual payment schedule shown on Exhibit D reflects a stepped repayment structure. Reach 1 Facilities costs are allocated 81.02% to the Contractor, and Reach 1 Facilities interest during construction (IDC) costs are allocated 94.816% to the Contractor.

(2) Final Repayment Obligation. Using the same allocation of Reach 1 Facilities cost to the Contractor and the same stepped repayment structure as in subparagraph (e)(1), the Contractor's final repayment obligation for San Felipe Division Facilities will be computed by totaling its separate, individual share of reimbursable capital costs for Reach 1

Facilities, Reach 2 Facilities and Reach 3 Facilities, as of September 30, 2006, plus its final balance of unpaid capital interest, minus its final accumulated repayment. The reimbursable San Felipe Division capital costs shown on Exhibit C, and the Contractor's semi-annual payment schedule on Exhibit D will be revised in a manner consistent with the above, without amending this Contract.

(f) Supplemental Payments and Relief from Payment Schedule.

(1) The Contractor may, at any time prior to the expiration of this Contract, make supplemental payment(s) of all or part of the unpaid balance for any or part of the Contractor's share of Reach 1 Facilities, Reach 2 Facilities or Reach 3 Facilities, or its unpaid capital interest, in which case the repayment schedule in Exhibit D will be shortened and will maintain the same stepped repayment structure over the remaining repayment period. Exhibit D may be revised by mutual agreement of the Parties without amending this Contract.

(2) If circumstances arise that compromise the Contractor's ability to make payments according to Exhibit D, the Contractor may request a deferment of said payments consistent with Reclamation law, and if approved, Exhibit D shall be revised accordingly by mutual agreement without amending this Contract.

(g) Upon repayment of the amounts required under this Article, the Contractor shall have no further repayment obligations associated with the capital costs of the San Felipe Division Facilities or unpaid capital interest.

6. Article 14 of the Existing Contract entitled PENALTY FOR DELINQUENT PAYMENTS is deleted in its entirety and replaced with the following:

CHARGES FOR DELINQUENT PAYMENTS

14. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall 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, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

7. Subdivision 5 of Article 16 of the Existing Contract entitled CONVEYANCE OF NON-PROJECT WATER is hereby amended by deleting the words:

"the provisions of Articles 24, 25, and 26 hereof" and substituting the words "subdivision (b) of Article 31 of this Contract."

8. Article 17 of the Existing Contract entitled TRANSFER OF CARE, OPERATION, AND MAINTENANCE OF SANTA CLARA FACILITIES TO THE CONTRACTOR is hereby amended by changing its designation as article 17, to article "17.1", and the following is added as article 17:

OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

17. (a) The operation and maintenance (O&M) of a portion of the Project facilities which serve the Contractor, and responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority 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, Charges, and Tiered Pricing Component except to the extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article.

(c) For so long as the O&M of any portion of the Project facilities serving the Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, 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 San Luis & Delta-Mendota Water Authority or its successor

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



9. The Existing Contract is hereby amended to add Articles 18.1 and 18.2  
entitled OPERATION AND MAINTENANCE BY SANTA CLARA VALLEY WATER  
DISTRICT; and RIGHT TO RECOVER COSTS INCURRED BY SANTA CLARA  
VALLEY WATER DISTRICT:

OPERATION AND MAINTENANCE BY SANTA CLARA VALLEY WATER DISTRICT

18.1 (a) The O&M of a portion of the Division Facilities have been transferred to  
Santa Clara Valley Water District by separate agreement (Contract No. 6-07-20-X0290) between  
the United States and the existing San Felipe Division Contractors. Unless otherwise expressly  
set forth herein, nothing in this Contract is intended to affect the rights and obligations set forth  
in Contract No. 6-07-20-X0290. The United States and the Contractor agree that this Contract,  
and any amendments or renewals thereto, shall be considered to be within the definition of  
"Contract" as provided in Contract No. 6-07-20-X0290, so that the execution of this Contract  
shall not impact the effectiveness of Contract No. 6-07-20-X0290, and Contract No. 6-07-20-  
X0290 is hereby deemed to so provide.

(b) The Contractor is authorized under Contract No. 6-07-20-X0290 and this  
Contract to undertake activities necessary for the complete care, operation, maintenance and  
replacement of Reach 1 Facilities, Reach 2 Facilities and Reach 3 Facilities, to maintain efficient  
and reliable operating condition and fulfillment of authorized San Felipe Division purposes. The  
Contracting Officer shall use its best efforts to promptly review proposals for work to be  
undertaken by the Contractor pursuant to said agreement, and to promptly coordinate and  
facilitate such work. To the extent that the approval or determination of the Contracting Officer

is required in connection with any such activities, such approval or determination shall not be  
unreasonably withheld.

RIGHT TO RECOVER COSTS INCURRED BY SANTA CLARA VALLEY WATER  
DISTRICT

18.2 (a) Subject to Articles 18.2(b) and 18.2(c) of this Contract, the Contractor, as  
the Operating Non-Federal Entity, has the right to require any entity or individual to pay the  
Contractor an amount(s) to recover costs incurred by the Contractor for Reach 1 Facilities, Reach  
2 Facilities and Reach 3 Facilities, in addition to O&M costs, provided that such amount(s) are  
just and reasonable. In any contract or approval by the Contracting Officer to deliver water  
through such Facilities, the Contracting Officer shall require the entity or individual to pay such  
amount(s) to the Contractor, upon presentation of Contractor's invoice therefore.

(b) Unless otherwise agreed, the Contractor's right to recover capital costs  
from San Benito County Water District is limited to such capital costs for its share of Reach 1  
Facilities that are not paid directly to the United States by San Benito County Water District  
under the terms of Contract No. 8-07-20-W0130A. San Benito County Water District's share of  
Reach 1 Facilities shall be based on Article 3(b) of Contract No. 6-07-20-X0290 or as otherwise  
mutually agreed upon by the Contractor and San Benito County Water District in a separate  
contract.

(c) Amount(s) imposed by the Contractor to recover costs from Pajaro Valley  
Water Management Agency shall include previous and current costs, and Pajaro Valley Water  
Management Agency's share of capital repayment, all of which are to be consistent with the  
cost-sharing provisions of Contract No. 6-07-20-X290, or as otherwise mutually agreed by the

Contractor and Pajaro Valley Water Management Agency in a separate contract. Such contract and amount(s) collected pursuant thereto shall satisfy the requirements of Article 3 of Contract No. 6-07-20-X0290.

10. Article 24 of the Existing Contract entitled LANDS NOT TO RECEIVE WATER FURNISHED TO CONTRACTOR BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS, Article 25 of the Existing Contract entitled VALUATION AND SALE OF EXCESS LANDS and Article 26 of the Existing Contract entitled EXCESS LANDS are hereby deleted in their entirety and the following is added as subdivision (b) of Article 31 of the Existing Contract entitled RULES AND REGULATIONS:

(b) Except as provided by the San Felipe Division Act of August 28, 1967 (81 Stat. 173), the parties agree that the delivery of agricultural water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

11. The Existing Contract is hereby amended to add Article 43 entitled WATER CONSERVATION:

WATER CONSERVATION

43. (a) Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this contract, the Contractor

shall be implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project water delivery pursuant to this contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to this Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) Should the amount of M&I Water delivered pursuant to subdivision (b) of Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

530                   (c)     The Contractor shall submit to the Contracting Officer a report on the  
531     status of its implementation of the water conservation plan on the reporting dates specified in the  
532     then existing conservation and efficiency criteria established under Federal law.

533                   (d)     At 5 year intervals, the Contractor shall revise its water conservation plan  
534     to reflect the then current conservation and efficiency criteria for evaluating water conservation  
535     plans established under Federal law and submit such revised water management plan to the  
536     Contracting Officer for review and evaluation. The Contracting Officer will then determine if  
537     the water conservation plan meets Reclamation's then current conservation and efficiency  
538     criteria for evaluating water conservation plans established under Federal law.

539                   (e)     If the Contractor is engaged in direct groundwater recharge, such activity  
540     shall be described in the Contractor's water conservation plan.

541                             PRESERVATION OF EXISTING CONTRACT

542             12.           Except as expressly modified by the provisions hereof, the Existing  
543     Contract shall remain in full force and effect.

544 IN WITNESS WHEREOF, the parties hereto have executed this First Amendment Contract No.  
545 7-07-20-W0023A on the day and year first above written.

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APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*James E. Turner*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

By: *[Signature]*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

SANTA CLARA VALLEY WATER DISTRICT



By: *[Signature]*  
Chair, Board of Directors

Attest:

By: *[Signature]*  
Clerk of the Board of Directors



## Santa Clara Valley W.D.

-  Santa Clara Valley WD Boundary
-  Santa Clara Valley WD Service Area
-  Consolidated Place of Use

Santa Clara Valley W.D. Contract No. 7-07-02-W0023A  
Exhibit A

0 10 20 Miles



Date: June 27, 2006  
File Name: N:\Districts\Contract\Santa Clara San Benito Joint\Santa Clara.mxd

921-202-5

EXHIBIT B  
[RATES AND CHARGES]

EXHIBIT B

January 1, 2007 to December 31, 2007, Water Rates  
for Amendment No. 1 to Contract No. 7-07-20-W0023  
Santa Clara Valley WD

<u>BUREAU OF RECLAMATION</u> <u>O&amp;M COST-OF-SERVICE</u> <u>RATES:</u>	Rates per Acre-Foot	
	<u>Irrigation</u> <u>Water</u>	<u>M&amp;I</u> <u>Water</u>
Capital Rates	\$8.49	\$13.47
O&M Rates:		
Water Marketing	\$6.86	\$5.76
Storage	\$7.23	\$9.10
Direct Pumping	<u>\$9.91</u>	<u>\$9.91</u>
TOTAL O&M RATE:	\$24.00	\$24.77
CFO/PFR Adjustment Rate:	\$1.32	\$2.06
Deficit Rates:		
Non-Interest Bearing	N/A	N/A
Interest Bearing	<u>\$0.00</u>	<u>\$3.03</u>
TOTAL DEFICIT RATE:	\$0.00	\$3.03
<b>TOTAL COST-OF-SERVICE RATES</b>	<b><u>\$33.81</u></b>	<b><u>\$43.33</u></b>
<u>FULL COST RATES</u>		
<u>Section 202(3) Rates is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981</u>	<b>\$49.92</b>	



Section 205(a)(3) Rate is applicable to a  
Limited Recipient that did not receive  
irrigation water on or before October 1, 1981. \$58.13

TIERED PRICING RATES

Tier 1 Pricing Rate  $\leq$  80%  
of Contract total [COS Rate] \$33.81 \$43.33

Tier 2 Pricing Rate  $>$  80%  
 $\leq$  90%  
of Contract Total [Full Cost Rate [(202(3)) +  
(COS Rate)/2] \$41.87 \$48.29

Tier 3 Pricing Rate  $>$  90%  
of Contract Total [Full Cost Rate [202(3)]] \$49.92 \$53.24

SURCHARGES UNDER P.L. 102-575 TO  
RESTORATION FUND \*

Restoration Payments (3407 (d)(2)(A)) \$8.58 \$17.15

\*Conveyance and Conveyance Pumping Operating & Maintenance cost were removed for  
ratesetting purposes and are to be billed directly to the water authorities

\*\* The surcharges are payments in addition to water rates and were determined pursuant to  
Title XXXIV of Public Law 102-575. These surcharges are on a fiscal year basis (10/1-9/30)  
and will change each fiscal year.

M&I HISTORIC USE  
FOR 2006 CONTRACT YEAR:<sup>1</sup>  
111,000acre-feet

<sup>1</sup> If the historic use amount (as determined pursuant to the existing CVP M&I Water Shortage Policy) is less than 111,000  
acre-feet, then the historic use shall be determined pursuant to Article 2 of the Water Reallocation Agreement between the  
United States, Santa Clara Valley Water District and the San Luis Delta-Mendota Water Authority dated April 17, 1997.

EXHIBIT C  
SAN FELIPE DIVISION REIMBURSABLE CAPITAL COSTS

	Total	Reach 1 Facilities	Reach 2 Facilities	Reach 3 Facilities	SBCWD Facilities
<b>Reclamation Facilities</b>					
Pacheco Pumping Plant	\$30,220,448	\$30,220,448			
Pacheco Substation 70 kv Line	\$239,745	\$239,745			
Pacheco Substation 70-kv IDC	\$5,044	\$5,044			
Pacheco Tunnel	\$75,352,668	\$75,352,668			
Pacheco Conduit	\$29,764,210	\$29,764,210			
Santa Clara Tunnel and Conduit	\$67,877,286		\$23,186,694	\$44,690,592	
Coyote Pumping Plant	\$16,493,415			\$16,493,415	
Coyote Pumping Plant - 115 kv Line	\$1,923,559			\$1,923,559	
Coyote Pumping Plant - 115 kv Line IDC	\$18,082			\$18,082	
Hollister Canal and Conduit	\$26,032,191				\$26,032,191
San Justo Dam & Reservoir	\$35,286,142				\$35,286,142
San Felipe Division IDC	\$32,227,149	\$17,075,058	\$4,907,593	\$9,459,014	\$785,484
San Felipe Division Permanent Operating Facilities	\$234,222	\$234,222			
San Felipe Division Wildlife Mitigation Lands	\$301,445	\$301,445			
<b>Power System</b>					
Pacheco Pumping Plant Substation	\$1,203,910	\$1,203,910			
Pacheco Pumping Plant IDC	\$370,824	\$370,824			
Coyote Pumping Plant Substation	\$1,649,124			\$1,649,124	
Coyote Pumping Plant IDC	\$218,184			\$218,184	
	\$319,417,648	\$154,767,574	\$28,094,287	\$74,451,970	\$62,103,817

Amounts listed for each facility include interest during construction.  
Amounts reflected are as of September 30, 2004.

**EXHIBIT D**  
**SANTA CLARA VALLEY WATER DISTRICT**  
**REPAYMENT SCHEDULE**

Integration	MRI*	Unpaid Capital	TOTAL
1,434,533.52	5173,625,828.97	380,756,129.00	\$305,815,482.48
0.0000%	3.4874%	3.5000%	

[illegible]

**EXHIBIT D**  
**SANTA CLARA VALLEY WATER DISTRICT**  
**REPAYMENT SCHEDULE**

PAYMENT SCHEDULE																
Payment #	Payment Due Date	Payment @			Interest Charges			Unpaid Cap Int			Principal Paid	Capital Interest	Remaining Balance	3.4814%	3.5000%	Total
		Interest	MI	MI	MI	MI	MI	MI	MI	MI						
41	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
42	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
43	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
44	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
45	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
46	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
47	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
48	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
49	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
50	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
51	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
52	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
53	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
54	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
55	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
56	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
57	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
58	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
59	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00
60	January 1, 2027	\$1,899,992.97	\$2,181,523.02	\$1,643,976.71	\$9,615,432.38	\$729,957.02	\$481,973.57	\$1,989,952.57	\$2,231,565.20	\$1,162,338.20	\$1,162,338.20	\$17,659,525.97	\$17,659,525.97	\$20,754,129.00	\$20,754,129.00	\$20,754,129.00

Weighted composite rate (across level) was 3.13% (95% CI 2.50-3.80%).

**Santa Clara Valley  
Water District**



**CONFORMED COPY  
BOARD AGENDA MEMO**

Meeting Date: 01/09/07  
Agenda Item No.: **10**  
Manager: K. Whitman  
Extension: 2080  
Directors: All

☐ Discussion    ☒ Action    ☐ Consent    ☐ Information

**SUBJECT:** Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

**RECOMMENDATION:**

That the Board adopt the Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division (Attachment 1).

Failure to execute the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division (First Amendment) means that the District would continue to receive Central Valley Project (CVP) water service and continue to operate and maintain (O&M) certain San Felipe Division facilities under its existing CVP contract, which extends through 2027. Financial and administrative modifications to comply with the 1992 Central Valley Project Improvement Act (CVPIA) would likely be delayed until 2008 or later, after ongoing Endangered Species Act consultations are completed by the Bureau of Reclamation (Reclamation) on its CVP Operating Criteria and Plan, assuming that a long-term renewal contract can be negotiated successfully at that time. Also, the Agreement Between Santa Clara Valley Water District and San Benito County Water District for Repayment and Management of San Felipe Division Facilities (Santa Clara-San Benito Agreement) that the Board recently approved on November 28, 2006, will take effect only if both districts complete amendments of their respective CVP contracts. The Santa Clara-San Benito Agreement significantly reduces the District's share of existing San Felipe Division capital costs, provides greater ability to control future costs, and addresses other facility management issues of mutual benefit to the two districts.

**RATIONALE:**

Executive Limitation 5.7 states that the CEO shall not "make a single purchase, contract, 3<sup>rd</sup> party claim settlement of liability, or commitment in amounts greater than the following, unless authorized by the Board:

5.7.2 For Consultant Service Contracts—\$100,000."

**ADOPTED**

**JAN 09 2006**

**SUBJECT:** Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

Approval of the First Amendment may commit the District to paying up to \$390,000 in asset management consultant costs under the Santa Clara-San Benito Agreement, if San Benito County Water District follows through as expected with amendment of its CVP contract.

**EL-3.7 COMPLIANCE:**

Not applicable.

**SUMMARY:**

On February 28, 2006, staff informed the Board of impending action by Reclamation to release the District's draft long-term CVP renewal contract for 60-day public review. Shortly after that, Reclamation decided, in response to ongoing litigation, to re-initiate consultation under the Endangered Species Act on its CVP Operating Criteria and Plan. These consultations form part of the underlying environmental documentation for long-term contract renewal, and Reclamation therefore suspended contract renewals until the consultations are complete, which is expected by mid-2008.

On February 28, staff also described the District's overall strategy of amending its existing CVP contract in order to create an acceptable "fall back" position in the event of legal challenge of the renewal contract. Unlike other CVP contractors completing renewals under CVPIA, the District's existing CVP contract extends through 2027. Rather than have to pull together short-term interim contracts while legal challenges are resolved, Reclamation agreed to allow the District to step back to its existing contract as long as it was amended to include administrative and financial provisions of CVPIA. The amendment also establishes repayment of San Felipe Division facilities and allows repayment to continue in an orderly fashion, rather than lapse back to water service terms.

Attachment 2 contains the review draft of the First Amendment that was released for 60-day public review ending December 22, 2006.

Final forms of the following Exhibits for the First Amendment are also provided:

Attachment 3: Exhibit A, Santa Clara Valley Water District Service Area Map  
Attachment 4: Exhibit C, San Felipe Division Reimbursable Plant in Service Costs  
Attachment 5: Exhibit D, Santa Clara Valley Water District Repayment Schedule

**Highlights of the First Amendment:**

- Pursuant to CVPIA, all surface water delivered within the Districts service area must be measured at each agricultural turnout and M&I service connection. This requirement is also included in the District's interim CVP contract for the Mercy Springs joint assignment, and therefore is already being met.

**SUBJECT:** Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

- The District must develop and be implementing a CVPIA Water Management Plan that is determined by Reclamation to be in compliance with federal law prior to receiving CVP water under the amended contract. The Board adopted the CVPIA Water Management Plan by Board Resolution on June 27, 2006, and Reclamation has determined that the District is in compliance.
- Pursuant to CVPIA, all new, amended and renewed water service and repayment contracts must include a tiered pricing rate structure that applies to CVP water deliveries over 80 percent of the contract quantity. Therefore, CVP deliveries in excess of 122,000 acre-feet (80 percent of 152,500 acre-feet) will be subject to additional charges of \$5 to \$10 per acre-foot for M&I water, and \$8 to \$16 per acre-foot for Agricultural water. Modeling of District operations indicates that less than 3 percent of future CVP deliveries will be subject to tiered rates, due to plentiful local supplies that also occur in wet years, and due to the Water Reallocation Agreement under which the District voluntarily foregoes wet-year CVP water deliveries in return for more reliable dry-year CVP deliveries. As a result, it is anticipated that CVPIA tiered pricing will not change the quantity of CVP water requested by or delivered to the District, nor alter the District's water management.
- Repayment terms for existing San Felipe Division capital are established based on the cost allocation contained in the Santa Clara-San Benito Agreement. The District's cost allocation is reduced by \$35 million (net), resulting in a present-value savings of \$123 million over the repayment period, or over \$3 million annually.
- Under both the existing CVP contract and the First Amendment, San Felipe Division costs allocated to the District include capital costs for uncommitted capacity originally constructed to serve a future third contractor. Because the First Amendment establishes a fixed repayment obligation for the District, it also provides the District the right to recover these capital costs from third parties or future contractors that may wheel water through San Felipe Division facilities, in addition to O&M costs, provided that such wheeling rates are "just and reasonable".

#### **CEQA REQUIREMENTS:**

The First Amendment provides for repayment of San Felipe Division facilities, implementation of tiered pricing and water conservation reporting consistent with the Central Valley Project Improvement Act. The First Amendment will not result in any change in water deliveries, facilities, distribution or management of water compared to water deliveries, facilities, distribution or management of water that would occur under the District's existing CVP contract. None of the provisions of the First Amendment will result in a direct physical change to the environment, nor any reasonably foreseeable indirect change to the environment. Therefore, the First Amendment does not rise to the level of a "project" as defined by CEQA.

**SUBJECT:** Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

**PUBLIC OUTREACH:**

The San Felipe Division contract negotiations with Reclamation and San Benito were all publicly noticed, and the final contracts were released for 60-day public review that concluded on December 22, 2006.

**FINANCIAL IMPACT:**

The First Amendment will reduce the District's share of San Felipe Division capital costs by \$35 million (net), resulting from a \$58 million decrease in allocated M&I costs and a \$23 million increase in allocated Agricultural costs. This results in present-value savings of \$123 million over the repayment period through 2036, or savings of over \$3 million annually. The First Amendment establishes fixed, semi-annual payments of approximately \$7.5 million each, due in January and July each year, for San Felipe Division capital and unpaid capital interest. Funds for these payments are available in the FY07 Water Purchases budget, and are included in future Water Utility rate projections.

Other financial impacts related to the First Amendment were described in the November 28, 2006, agenda memorandum (Attachment 6) for approval of the Santa Clara-San Benito Agreement that will take effect upon completion of CVP contract amendments by both districts. New costs that would be incurred include (1) the District's share of consultant costs to develop a Reach 1 asset management plan (78 percent of a maximum amount of \$500,000, or up to \$390,000); and (2) provision of District staff time for technical consultation on issues related to San Justo Reservoir, up to 200 hours per year for five years (estimated value up to \$40,000 per year). Sufficient funds are available in the current budget to accommodate these new FY07 costs.

Comparison of water rates under the District's existing and amended CVP contracts are provided below:

<b>M&amp;I Cost per Acre-Foot</b>	<b>Existing Contract</b>	<b>Amended Contract</b>
"In Basin" Water Service	\$41	\$41
CVPIA Restoration Fund	16	16
SL&DMWA O&M	11	11
San Felipe Division**	188	153
Tiered Rates* (Avg. Annual)	--	<1
<b>Total</b>	<b>\$256</b>	<b>\$222</b>



**SUBJECT:** Resolution Approving the Form and Content of and Authorizing the Execution of the First Amendment to Contract Between the U.S. Bureau of Reclamation and the Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division

(01/02/07)

<b>Agricultural Cost per Acre-Foot</b>	<b>Existing Contract</b>	<b>Amended Contract</b>
"In Basin" Water Service	\$34	\$34
CVPIA Restoration Fund	8	8
SL&DMWA O&M	11	11
San Felipe Division**-SCVWD	41	41
Tiered Rates* (Avg. Annual)	--	<1
<b>Subtotal</b>	<b>\$94</b>	<b>\$94</b>
San Felipe Division***-Additional Capacity	--	32
<b>Total</b>	<b>\$94</b>	<b>\$126</b>

**\*CVPIA Tiered Rates:**

<b>Tier</b>	<b>% of Contract Deliveries</b>	<b>M&amp;I "In Basin" Rate</b>	<b>Ag "In Basin" Rate</b>
1	0-80%	\$41	\$34
2	81-90%	\$46	\$42
3	91-100%	\$51	\$50

On a long-term average basis, the District anticipates taking little wet-year CVP water, and the average annual cost of CVPIA tiered rates is estimated to be less than \$1 per acre-foot.

**\*\*San Felipe Division:**

Under the First Amendment, San Felipe Division capital costs will be repaid in two fixed semi-annual payments, however, for purposes of comparison these annual payments have been converted to rates using the same water delivery base as the existing water service rates.

The District's existing CVP contract does not contain an Agricultural rate for San Felipe Division facilities. However, all Agricultural capital costs are required by law to be repaid by 2036, and absent the First Amendment or early renewal under CVPIA, would be included in the renewal contract negotiated in 2027.

**\*\*\*Additional Capacity:**

Under the First Amendment, the District will be carrying additional San Felipe Division uncommitted capacity costs as part of its non-interest-bearing Agricultural cost allocation. The First Amendment provides mechanisms to recover a portion of these costs from San Benito County Water District, and also from third parties or future contractor(s) who wheel water through the facilities. At the end of 2036, the District will gain permanent rights to any additional capacity that is not reimbursed by San Benito County Water District or a future contractor.

RESOLUTION NO. 07-01

A RESOLUTION OF THE BOARD OF DIRECTORS OF SANTA CLARA VALLEY WATER DISTRICT APPROVING THE FORM AND CONTENT OF AND AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO CONTRACT BETWEEN THE UNITED STATES AND SANTA CLARA VALLEY WATER DISTRICT FOR WATER SERVICE AND OPERATION AND MAINTENANCE OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

WHEREAS, on June 7, 1977, the District entered into Contract No. 7-07020-W0023, with the United States providing for water service from the United States Central Valley Project (CVP) through December 2027; and

WHEREAS, Section 3406(c)(3) of the Central Valley Project Improvement Act (CVPIA), Title XXXIV of Public Law 102-575, enacted on October 30, 1992, established that certain terms should be included in contracts renewed or amended after January 1, 1988; and

WHEREAS, to promote compliance with the CVPIA, consistent with the goal of improving financial certainty and reducing the cost of CVP water, the District and the United States desire to enter into the First Amendment; and

WHEREAS, all negotiations were conducted in public and were concluded in April 2006, and thereafter the First Amendment was made available for a 60-day public review and comment period; and

WHEREAS, the First Amendment does not result in a direct or indirect change to the environment; and

WHEREAS, it is in the best interest of the District that its existing water service contract with the United States of America be amended, thereby providing for a method for the repayment of San Felipe Division facilities in accordance with existing law;

WHEREAS, the U.S. Bureau of Reclamation requires that the District's Board of Directors approve the form and content of the contract entitled "The First Amendment to Contract Between the United States and Santa Clara Valley Water District for Water Service and Operation and Maintenance of Certain Works of the San Felipe Division" and authorize the Chair, Board of Directors to execute the contract on behalf of the District.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on January 9, 2007:

AYES: Directors J. Judge, G. Zlotnick, R. Kamei, S. Sanchez, R. Santos,  
L. Wilson, T. Estremera

NOES: Directors None

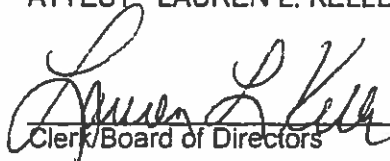
ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By:   
TONY ESTREMER  
Chair/Board of Directors

ATTEST: LAUREN L. KELLER

  
Clerk/Board of Directors

**EXHIBIT G**  
**SANTA CLARA VALLEY WATER DISTRICT**  
**POINTS OF DELIVERY**

**Point(s) of Delivery:** Central Valley Project (Project) water scheduled pursuant to Article 4 of Contract No. 7-07-20-W0023B shall be delivered to the Contractor at the headworks of the San Felipe Division Facilities and/or at any point or additional points of delivery on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

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