

**BOARD OF DIRECTORS  
SANTA CLARA VALLEY WATER DISTRICT**

**RESOLUTION NO. 21-**

**APPROVAL OF CENTRAL VALLEY PROJECT REPAYMENT CONTRACT**

WHEREAS, Santa Clara Valley Water District ("Valley Water") was created by the Legislature of the State of California under the Santa Clara Valley Water District Act, California Water Code Appendix, Chapter 60 ("District Act"), as a special water district with an independent Board of Directors; and

WHEREAS, Section 4(a) of the District Act identifies the purposes of the District Act to authorize Valley Water to provide comprehensive water management for all beneficial uses; and protection from flooding within Santa Clara County; and

WHEREAS, Section 5(12) of the District Act authorizes Valley Water to enter into contracts and do all acts necessary for the full exercise of all powers vested in the district or any of the officers thereof, by the District Act, including ensuring Valley Water's comprehensive water management in Santa Clara County; and

WHEREAS, Valley Water is a Central Valley Project ("CVP") contractor pursuant to 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*, Contract No. 7-07-20-W0023, executed on June 7, 1977 ("CVP Contract"); and

WHEREAS, CVP water delivered under the terms of the CVP Contract is a major component of Valley Water's water portfolio to ensure its comprehensive water management in Santa Clara County; and

WHEREAS, to promote compliance with the Central Valley Project Improvement Act, consistent with the goal of ensuring a reliable long-term water supply for Valley Water, Valley Water and the United States of America (United States) executed 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*, Contract No. 7-07-20-W0023A, on March 28, 2007 ("First Amendment"); and

WHEREAS, the First Amendment also resulted in the conversion of Valley Water's payment of its San Felipe Division's capital costs from water service payment contract terms to repayment contract terms pursuant to a 30-year schedule commencing on January 1, 2007, and ending on July 1, 2036; and

WHEREAS, Valley Water and the United States executed the *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* on December 12, 2020 ("Second Amendment"), to provide for the delivery of CVP water to Valley Water at mutually agreed upon additional point or points of delivery; and

WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the Water Infrastructure Improvements for the Nation Act (Public Law 114-322, 130 Stat. 1628) ("WIIN Act"); and

WHEREAS, Section 4011(a)(1) of the WIIN Act provides that "upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users' association to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions."; and

WHEREAS, upon the request of a CVP contractor, the WIIN Act directs the Secretary to convert CVP water service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

WHEREAS, Valley Water requested the United States to convert its CVP Contract, as amended, into a Repayment Contract that complies with Section 4011 of the WIIN Act ("CVP Repayment Contract"); and

WHEREAS, the CVP Repayment Contract also reflects the current standard terms and conditions required by Federal Reclamation law, and continues existing water service to Valley Water with no expansion in service and no expansion in the scope or nature of the ongoing CVP or its existing facilities; and

WHEREAS, Valley Water is, and at all relevant times has been, a public agency within the meaning of Code of Civil Procedure Section 860 and is authorized by Section 32 of the District Act to file a validation action in a court of competent jurisdiction to satisfy the confirmation of contract requirement described in the CVP Repayment Contract.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District does hereby approve the attached Central Valley Project Repayment Contract; and

BE IT FURTHER RESOLVED that the Board Chair is hereby authorized to execute the Central Valley Project Repayment Contract as included as Exhibit A to this Resolution on behalf of the Santa Clara Valley Water District; and

BE IT FURTHER RESOLVED that the Board of Directors of the Santa Clara Valley Water District approves and authorizes the District Counsel or its designees to file a validation action to confirm the legality of the Central Valley Project Repayment Contract.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on June 8, 2021:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

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TONY ESTREMER  
Chair, Board of Directors

ATTEST: MICHELE L. KING, CMC

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Clerk, Board of Directors

# **EXHIBIT A COVERSHEET**

## **APPROVAL OF CENTRAL VALLEY PROJECT REPAYMENT CONTRACT**

No. of Pages: 75

Exhibit Attachments: Attachment 1: Central Valley Project Repayment Contract

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

AMENDED AND RESTATED CONTRACT BETWEEN THE UNITED STATES  
AND  
SANTA CLARA VALLEY WATER DISTRICT  
FOR WATER SERVICE, FACILITIES REPAYMENT, 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 .....	2
1.	Definitions .....	6
2.	Term of Contract – Right to Use of Water .....	12
3.	Water to be Furnished to the Contractor .....	14
4.	Delivery Schedules .....	18
5.	Maintenance of Flows – Temporary Reductions .....	18
6.	Constraints on the Availability of Water .....	19
7.	Point of Delivery – Measurement – Responsibility for Distribution .....	20
8.	Rates and Method of Payment for Water and Accelerated Repayment of Facilities .....	25
9.	San Felipe Division Repayment Obligation .....	34
10.	Adjustments .....	37
11.	Charges for Delinquent Payments .....	37
12.	Exchanges of Water .....	38
13.	Conveyance of Non-Project Water .....	38
14.	Operation and Maintenance by Operating Non-Federal Entity .....	39
15.	Operation and Maintenance of Transferred Works .....	40
16.	Examination, Inspection, and Audit of Project Works, Records, and Reports for Determining Adequacy of Operation and Maintenance .....	43
17.	Administration of Federal Project Lands .....	44
18.	Contamination or Pollution of Federal Property .....	47
19.	Clean Air and Water .....	48
20.	Operation and Maintenance by Santa Clara Valley Water District .....	49
21.	Right to Recover Costs Incurred by Santa Clara Valley Water District .....	50
22.	Pest Management .....	51

Table of Contents – continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
23.	Contractor to Pay Certain Miscellaneous Costs Relating to Transferred Works ..	52
24.	Emergency Reserve Fund .....	53
25.	Protection of Water and Air Quality.....	54
26.	Drainage Studies and Facilities .....	54
27.	Right to Return Flows.....	54
28.	Repeal of Amendment of Federal Reclamation Laws.....	55
29.	General Obligation – Benefits Conditioned Upon Payment.....	55
30.	Changes in the Contractor’s Organization or Service Area.....	55
31.	Books, Records, and Reports.....	55
32.	Rules, Regulations, and Determinations.....	56
33.	Determination of Findings of Facts .....	56
34.	Compliance with Civil Rights Laws and Regulations.....	57
35.	Equal Employment Opportunity.....	57
36.	Contractor’s Rights to Water .....	59
37.	Renegotiation.....	59
38.	Contingent on Appropriation or Allotment of Funds .....	59
39.	Officials Not to Benefit .....	60
40.	Assignment Limited – Successors and Assigns Obligated.....	60
41.	Notices .....	60
42.	Confirmation of Contract.....	60
43.	Water Conservation .....	60
44.	Reclamation Reform Act of 1982.....	62
45.	Privacy Act Compliance .....	62
46.	Medium for Transmitting Payments .....	63
47.	Contract Drafting Considerations .....	63
	Signature Page .....	65
	Exhibit A – Contractor’s Water Service Area	
	Exhibit B – Rates and Charges	
	Exhibit C – San Felipe Division Reimbursable Costs	
	Exhibit D – Santa Clara Valley Water District San Felipe Division Repayment Schedule	
	Exhibit E – Points of Delivery	
	Exhibit F – WIIN Repayment Obligation	
	Exhibit G – List of Transferred Project Facilities	

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

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

1        THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_, 20\_\_ in pursuance generally of the  
2    Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto,  
3    including but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
4    supplemented; August 4, 1939 (53 Stat. 1187), as amended and supplemented; July 2, 1956 (70  
5    Stat. 483), June 21, 1963 (77 Stat. 68), August 27, 1967 (81 Stat. 173), October 12, 1982 (96  
6    Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October  
7    30, 1992, (106 Stat 4706), and the Water Infrastructure Improvements for the Nation Act (Public  
8    Law 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all collectively  
9    hereinafter referred to as the Federal reclamation laws, between THE UNITED STATES OF  
10   AMERICA, hereinafter referred to as the United States, and SANTA CLARA VALLEY  
11   WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of  
12   California, duly organized, existing, and acting pursuant to the laws thereof, with its principal  
13   place of business in San Jose, California,

WITNESSETH, That:

EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for 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 groundwater basins in the Contractor's Service Area have been overdrawn and the lands of the Contractor's Service Area and its inhabitants are in need of additional water for beneficial uses and purposes; and

[3<sup>rd</sup>] WHEREAS, the United States has constructed the San Felipe Division as a feature of the Project for the diversion, carriage, distribution, regulation, and beneficial use of waters of the Project; and

[4<sup>th</sup>] WHEREAS, the water supply developed by the Project has been made available to the Contractor for beneficial uses and purposes; and

[5<sup>th</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



[6<sup>th</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

[7<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 agreed to amend the 1977 Contract; and

[8<sup>th</sup>] WHEREAS, the Contractor executed a “Binding Agreement for Early Renewal Between the United States and Santa Clara Valley Water District”, dated September 30, 1997, Contract No. 7-07-20-W0023-BA; and

[9<sup>th</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 CVPIA activities, hereinafter referred to as “First Amendment”; and

[10<sup>th</sup>] WHEREAS under 4011, subsections (a)(2) and (a)(3) of the WIIN Act, except for those repayment contracts under which the Contractor has previously negotiated for prepayment, all repayment contracts under Section 9(d) and 9(c)(1) of the Act (53 Stat. 1195) in effect as of the date of the WIIN Act, at the request of the contractor, and all contracts converted pursuant to paragraph (1)(A) and (1)(B) of the WIIN Act shall provide for repayment either in lump sum or an accelerated prepayment; and

[11<sup>th</sup>] WHEREAS, the repayment obligations of the San Felipe Division Facilities set forth in the First Amendment were negotiated for repayment prior to the enactment of the WIIN Act and are not subject to accelerated prepayment under the WIIN Act, and will continue to be paid in accordance with the payment schedule set forth in Exhibit D; and

[12<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor also amended the 1977 Contract with a second amendment dated December 12, 2020, titled "*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*", which updated Article 9 of Contract No. 7-07-20-W0023A to add CVP-wide form of contract language providing for the mutually agreed upon point or points of delivery and updated certain Standard Articles consistent with the Bureau of Reclamations current requirements, hereinafter referred to as "Second Amendment"; and

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

[14<sup>th</sup>] WHEREAS, this Contract is intended to represent a continuation of the 1977 Contract, including its First Amendment and Second Amendment, as amended and restated in entirety by the terms and conditions contained in this Contract; and

[15<sup>th</sup>] WHEREAS, the Contractor and the United States entered into a contract titled "*Contract for the Transfer of the Operation and Maintenance of Certain San Felipe Division Facilities*", Contract No. 6-07-20-X0290, dated September 8, 1986, which established terms and conditions for the transfer of Operation and Maintenance of San Felipe Division facilities jointly used by the Contractor and San Benito County Water District; and

[16<sup>th</sup>] WHEREAS, the Contractor was notified via the transfer notices of the transfer of Operation and Maintenance of Certain San Felipe Division Facilities to the Contractor, by letters dated September 17, 1987, October 30, 1987, and January 12, 1988; and

[17<sup>th</sup>] WHEREAS, the initial delivery of Project Water to the Contractor commenced on January 1, 1988; and

[18<sup>th</sup>] WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the WIIN Act; and

[19<sup>th</sup>] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users’ association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.”; and

[20<sup>th</sup>] WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

[21<sup>st</sup>] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users’ association [Contractor], and

the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association [Contractor] and their landowners as provided under State law.”; and

[22<sup>nd</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this section, any obligations under the Federal Reclamation law, including the continuation of Restoration Fund Charges pursuant to section 3407(d) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

[23<sup>rd</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

[24<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[25<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other 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:

#### DEFINITIONS

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

- 126 (a) "Additional Capital Obligation" shall mean construction costs or other  
127 capitalized costs incurred after the Effective Date or not reflected in the Existing Capital  
128 Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and  
129 (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Public Law 114-322, 130  
130 Stat. 1628) ("WIIN Act");
- 131 (b) "Agricultural Water" or "Irrigation Water" shall mean the use of Project  
132 Water to irrigate lands primarily for the production of commercial, agricultural crops or  
133 livestock, and domestic and other uses that are incidental thereto;
- 134 (c) "Calendar Year" or "Year" shall mean the period January 1 through  
135 December 31, both dates inclusive;
- 136 (d) "Charges" shall mean the payments required by Federal Reclamation law  
137 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined  
138 annually by the Contracting Officer pursuant to this Contract;
- 139 (e) "Condition of Shortage" shall mean a condition respecting the Project  
140 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the  
141 Contract Total;
- 142 (f) "Contract" shall mean this Contract titled "*Amended and Restated*  
143 *Contract between the United States and Santa Clara Valley Water District for Water Service,*  
144 *Facilities Repayment, and for Operation and Maintenance of Certain San Felipe Division*  
145 *Facilities*", Contract No. 7-07-20-W0023AB-P;
- 146 (g) "Contract Total" shall mean the maximum amount of water to which the  
147 Contractor is entitled under subdivision (a) of Article 3 of this Contract;
- 148 (h) "Contracting Officer" shall mean the duly authorized representative of the  
149 Secretary of the Interior;

(i) "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;

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

(k) "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;

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

(m) "Division" shall mean the San Felipe Division of the Project;

(n) "Existing Capital Obligation" shall mean the remaining amount of construction costs or other capitalized costs allocable to the Contractor, exclusive of the construction costs identified as the San Felipe Division Repayment Obligation as described in Exhibit C and Exhibit D, and as described in Section 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, in the Final 2021 Ratebooks, as adjusted to reflect payments not reflected in such schedule. The Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit "F", which is incorporated herein by reference;

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

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

187                   (q)     “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to  
188 the delivery of M&I Water;

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

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

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

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

(v) "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;

(w) "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 8 of this Contract;

(x) "Restoration Fund Charges" shall mean those Charges required pursuant to Section 3407(d) of Public Law 102-575;

(y) "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:

(1) "Reach I" or "Reach 1 Facilities" 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 70 kV Line, Pacheco



218 Tunnel (including the inlet works in and under San Luis Reservoir), Pacheco Conduit and  
219 Pacheco Bifurcation Structure;

220 (2) "Reach 2" or "Reach 2 Facilities" shall mean the facilities from,  
221 but not including, the Pacheco Bifurcation Structure to and including the Watsonville Turnout  
222 facility, and Santa Clara Tunnel and the portion of the Conduit;

223 (3) "Reach 3" or "Reach 3 Facilities" shall mean the facilities from,  
224 but not including, the Watsonville Turnout facility to and including the Coyote Pumping Plant,  
225 including but not limited to, a portion of the Santa Clara Conduit, Coyote Pumping Plant, Coyote  
226 Pumping Plant Substation and Coyote Pumping Plant 115 kV Line;

227 (4) "San Benito Facilities" shall mean San Felipe Division Facilities  
228 used to deliver water to the San Benito Water District exclusively, including the Hollister  
229 Conduit and the San Justo Dam and Reservoir;

230 (z) "San Felipe Division Repayment Obligation" shall mean those San Felipe  
231 Division reimbursable capital costs that are payable by the Contractor as described in Exhibit C  
232 and Exhibit D;

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

236 (bb) "State" shall mean the State of California;

237 (cc) "Substantial Change" shall mean a modification in, or addition to, a  
238 project facility which involves changes in the original design intent, function, and/or operational  
239 parameters of the facility, or changes in project benefits, including non-routine maintenance  
240 activities that involve construction or reconstruction of a portion of the facility. These  
241 modifications may be capitalized or non-capitalized. A substantial change is not a  
242 characterization of the proposed action in terms of being a major or minor action as defined in  
243 the National Environmental Policy Act.

244 (dd) "Tiered Pricing Component" shall be the incremental amount to be paid  
245 for each acre-foot of Water Delivered as described in subdivision (k) of Article 8 of this  
246 Contract;

247 (ee) "Water Made Available" shall mean the estimated amount of Project  
248 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
249 Contracting Officer, pursuant to subdivision (a) of Article 3 of this Contract;

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

253 (gg) "WIIN Repayment Obligation" for Water Delivered as Irrigation Water  
254 shall mean the Existing Capital Obligation discounted by ½ of the Treasury rate, which shall be  
255 the amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN  
256 Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the  
257 United States, pursuant to the Section 4011(a)(3)(A) of the WIIN Act.

258 TERM OF CONTRACT – RIGHT TO USE OF WATER

259 2. (a) This Contract shall be effective July 1, 2021, hereinafter known as the  
260 "Effective Date", and shall continue so long as the Contractor pays applicable Rates and Charges  
261 under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat.  
262 1195) as applicable, and applicable law;

263 (1) Provided, That the Contracting Officer shall not seek to terminate  
264 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,  
265 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice  
266 to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay,

or to diligently commence and maintain full curative payments satisfactory to the Contracting Officer within the sixty (60) calendar days' notice period;

(2) Provided, further, That the Contracting Officer shall not seek to suspend making water available or declaring Water Made Available pursuant to this Contract for non-compliance by the Contractor with the terms of this Contract or Federal law, unless the Contracting Officer has first provided at least thirty (30) calendar days written notice to the Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully cured within the thirty (30) calendar days' notice period. If the Contracting Officer has suspended making water available pursuant to this paragraph, upon cure of such non-compliance satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

(3) Provided, further, That this Contract may be terminated at any time by mutual consent of the parties hereto.

(b) Upon complete payment of the San Felipe Division Repayment Obligation and the WIIN Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage limitations, reporting, and full cost pricing provisions of the Reclamation Reform Act of 1982, shall no longer be applicable.

(c) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483), to the extent allowed by law.

(d) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of June 21, 1963 (77 Stat. 68), to the extent allowed by law.

WATER TO BE FURNISHED TO THE CONTRACTOR

3. (a) The United States shall make available to the Contractor the quantities of Agricultural Water and M&I Water specified in the schedule submitted by the Contractor in accordance with Article 4, and the Contractor shall pay for said water at the Rates established by the provisions of Article 8: Provided, That the United States shall make available Agricultural Water and M&I Water and the Contractor shall pay for as a minimum the total quantities set forth in Column A of the following table, and the total annual minimum shall include at least the annual minimum for M&I Water required in Column B of the table. The total quantity the United States shall make available annually during the term of this Contract shall be 152,500 acre-feet, of which 119,400 acre-feet shall be M&I Water: Provided, however, That at any time or times after the Contractor's requirement for M&I Water exceeds 119,400 acre-feet per year for 3 years in any 5-year period, any or all of the Project Water to be furnished for agricultural use may be converted and shall be added to said 119,400 acre-feet and shall become the minimum quantity the Contractor shall pay for as M&I Water each Year thereafter during the term of this Contract. Years shown in the table refer to the Year of initial delivery (1988) and the following Years.

307

## TABLE OF MINIMUM ANNUAL DELIVERIES

308

Column AColumn B

309

Total Minimum  
Water DeliveryMinimum M&I  
Water Delivery

310

Year

311

1

16,000

16,000

312

2

22,000

20,000

313

3

27,000

24,000

314

4

32,000

28,000

315

5

37,000

32,000

316

6

43,000

36,000

317

7

49,000

40,000

318

8

55,000

44,000

319

9

61,000

48,000

320

10

67,000

52,000

321

11

74,000

56,000

322

12

79,300

58,300

323

13

84,600

60,600

324

14

89,900

62,900

325

15

95,200

65,200

326

16

100,600

67,500

327

17

102,900

69,800

328

18

105,200

72,100

329

19

107,500

74,400

330

20

109,800

76,700

331

21

112,100

79,000

332

22

114,400

81,300

333

23

116,700

83,600

334

24

119,000

85,900

335

25

121,300

88,200

336

26

123,600

90,500

337

27

125,900

92,800

338

28

128,200

95,100

339

29

130,500

97,400

340

30

132,800

99,700

341

31

135,100

102,000

342

32

137,100

104,000

343

33

139,100

106,000

344

34

141,100

108,000

345

35

143,100

110,000

346

36

145,100

112,000

347

37

147,100

114,000

348

38

149,100

116,000

349

39

151,100

118,000

350

40

152,500

119,400

(b) Each Year, the United States shall use all reasonable diligence to deliver and the Contractor shall make all reasonable efforts to schedule and accept the amounts of water necessary to satisfy the annual total minimum acre-feet set forth in the Table of Minimum Annual Deliveries: Provided, That if the Contractor is unable in any Year to accept quantities sufficient to satisfy the total minimum for that Year, the amount of payments for water not used may be applied to meet the payment for water taken in excess of the minimum requirement in any of the subsequent 5 Years but not thereafter: Provided, further, That payments for water received in excess of the total annual minimum, excluding payments for water received pursuant to subdivision (h) of this Article, may be used to satisfy minimum payments due during any of the subsequent 5 Years but not thereafter.

(c) In no event shall the United States be obligated to furnish more than 152,500 acre-feet of water during any Year of the term of this Contract: Provided, That this quantity may be increased pursuant to subdivisions (f) and (g) of this Article: And Provided, further, That this quantity may be decreased by agreement of the parties for the remainder of the term of this Contract.

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

(e) The United States will provide the electrical capacity and energy, hereinafter referred to as Project power, necessary to deliver Project Water to and through the Division Facilities without any charge over and above the Rates and any adjustments thereof set forth in Article 8 of this Contract.

(f) If the Contractor in any Year requires a quantity of water in addition to the maximum quantity of 152,500 acre-feet per annum which the United States is obligated to deliver to the Contractor, additional water, if water and capacity are available as determined by the Contracting Officer, may be delivered upon receipt from the Contractor of a written request together with a schedule indicating the desired times, uses, and quantities of water and payment at the applicable Rates specified in Article 8 of this Contract. The delivery by the United States and acceptance by the Contractor of such additional water shall neither entitle nor obligate the Contractor to receive such quantities in subsequent Years.

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

(h) The United States may furnish Project Water to the Contractor in excess of the quantities shown in the Table of Minimum Annual Deliveries in subdivision (b) of this Article for the purpose of replacing the historical depletion of groundwater: Provided, That during the term of this Contract a total of 350,000 acre-feet, or an amount otherwise agreed upon, may be provided as available from the Project for this purpose, as determined by the Contracting Officer. All such water delivered for this purpose shall hereinafter be referred to as replacement water and shall be paid for at the Rates established in Article 8.

(i) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 5 or subdivision (b) of Article 6 of this Contract.

#### DELIVERY SCHEDULES

4. The Contractor will submit for each Year a schedule satisfactory to the Contracting Officer showing the quantities of water, including a separate schedule for water to be delivered pursuant to Article 3(h), required each month during such Year. Schedules will be submitted not later than November 1st preceding the Year covered by the schedule and at such other times as is necessary to assure coordination of Project operation. The United States shall notify the Contractor of concurrence with or changes to said schedule prior to December 15th and shall attempt to deliver water in accordance with said schedules or any revision thereof satisfactory to the Contracting Officer which are submitted to the Contracting Officer within a reasonable time before the desired time for delivery. The inability, failure, or refusal of the Contractor to submit a schedule shall not relieve it of its payment obligations.

#### MAINTENANCE OF FLOWS – TEMPORARY REDUCTIONS

5. (a) Subject to: (i) the authorized purposes and priorities of the Project and the requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.



(b) The United States may temporarily discontinue or reduce the quantity of water to be furnished to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the facilities necessary for the furnishing of water to the Contractor, but so far as feasible the United States will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given: Provided, however, That the United States shall use its best efforts to avoid any discontinuance or reduction in service for a period longer than 3 days. Upon resumption of service after such reduction and if requested by the Contractor, the United States will attempt to deliver the quantity of water which would have been furnished hereunder in the absence of such contingency.

#### CONSTRAINTS ON THE AVAILABILITY OF WATER

6. (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 Project 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 the Project, drought, other physical or natural 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, results in a shortage in water supply and requires a reduction in deliveries of water to the Contractor under this Contract, such reductions will be made in accordance with subdivision (c) of this Article and shall not be deemed a breach hereof.

POINT OF DELIVERY – MEASUREMENT – RESPONSIBILITY FOR DISTRIBUTION

7. (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 Contractor's headworks on the San Felipe Division 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 "E", which may be revised without amending this Contract.

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

(c) All Water Delivered to the Contractor shall be measured by the Contractor or the Contracting Officer's designee at the first measuring device installed on the San Felipe Division Facilities at or downstream from the Contractor's primary point of delivery and at other point or points satisfactory to the Contracting Officer with equipment furnished and installed by the Contractor, Contracting Officer's designee, or the United States. The measuring equipment shall be operated and maintained in proper condition for accurate measurement by the Contractor at its expense. The United States shall have access to the measuring equipment it furnished at all reasonable times.

(1) Water Delivered to the Contractor through Non-Project Facilities shall be measured by the Contractor or the Contracting Officer's designee at a measuring point or points agreed to in writing by the Contracting Officer. Measuring equipment, subject to approval of the Contracting Officer, will be purchased, installed, operated and maintained in proper condition for accurate measurement at the Contractor's expense. The United States shall have reasonable access to the measuring equipment.

(d) The quantity of Project Water furnished to the Contractor exclusive of replacement water shall be determined as follows:

(1) (A) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation purposes to the Contractor's customers within the Contractor's Service Area is measured at each agricultural turnout and such water delivered for M&I purposes to the Contractor's customers is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for ensuring that its retail customers are

installing, operating, and maintaining and repairing all measuring devices and implementing all water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the 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.

(B) 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)(l)(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.

(C) 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) 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.

(E) 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.

(2) The amount of Project Water delivered by the United States in any Year which is used for groundwater recharge shall be equal to the difference between the total amount delivered to the Contractor in that Year and the total of the direct deliveries by the Contractor determined in accordance with subdivision (d)(1) of this Article. The Contractor will cause determinations of groundwater extractions and use to be made and recorded and will cause the water surface elevations in the groundwater basins to be recorded, all in a manner satisfactory to the Contracting Officer. The installation, operation, and maintenance of all measuring devices and all computations of amounts of water re-charged and extracted shall be made without cost or expense to the United States. The United States shall have the same rights with respect to the investigations and testing of said measuring devices and records as are set forth in subdivision (d)(1) of this Article. Prior to April 30 of each Year, the Contractor will submit to the

Contracting Officer a report setting forth the amount of Project Water recharged by the Contractor and the quantities of water that were pumped from the basins and put to M&I and agricultural use respectively during the preceding Year. The quantities of Project Water recharged in each basin shall be computed annually by prorating between M&I Water and Agricultural Water in the same proportion that the water pumped from the basin and used for each of said purposes bears to the total water pumped from the basin in that Year: Provided, That the Contractor shall not divide the Contractor's Service Area into more than three basins for accounting purposes: Provided, further, That firm supplies of water purchased by the Contractor from the State of California or the City and County of San Francisco shall be deemed to be M&I and any such water percolated will be subtracted from the M&I Water pumped prior to computation of Project Water use but surplus water purchased from the State of California and percolated to the underground will not be subtracted.

(e) The quantity of replacement water shall be either that quantity of water scheduled by the Contractor and approved by the Contracting Officer to be used for groundwater replacement, or as otherwise agreed upon.

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

(g) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the point of delivery, and the Contractor shall hold the United States harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury or

death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond said points of delivery.

RATES AND METHOD OF PAYMENT FOR WATER AND ACCELERATED REPAYMENT  
OF FACILITIES

8. (a) Notwithstanding the Contractor's full prepayment of the WIIN Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit "F", and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subdivision (b), the Contractor's Project construction and other cost obligations shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and 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) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing Component in accordance with policies for Irrigation Water and M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable costs included in the Operation and Maintenance component of the Rate and amounts established to recover deficits and other Charges, if any, including construction costs as identified in the following subdivisions.

589 (2) In accordance with the WIIN Act, the Contractor's allocable share  
590 of Project construction costs will be repaid pursuant to the provisions of this Contract.

591 (A) The amount due and payable to the United States, pursuant  
592 to the WIIN Act, shall be the WIIN Repayment Obligation. The WIIN Repayment Obligation  
593 has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is  
594 set forth as a lump sum payment (M&I and Irrigation) and as four (4) approximately equal  
595 annual installments (Irrigation Only) to be repaid no later than three (3) years after the Effective  
596 Date of this Contract as set forth in Exhibit "F". The WIIN Repayment Obligation is due in  
597 lump sum by August 30, 2021 as provided by the WIIN Act. The Contractor must provide  
598 appropriate notice to the Contracting Officer in writing no later than thirty (30) days prior to the  
599 Effective Date if electing to repay the amount due using the lump sum alternative. If such notice  
600 is not provided by such date, the Contractor shall be deemed to have elected the installment  
601 payment alternative, in which case, the first such payment shall be made no later than August 30,  
602 2021. The second payment shall be made no later than the first anniversary of the first payment  
603 date. The third payment shall be made no later than the second anniversary of the first payment  
604 date. The final payment shall be made no later than July 1, 2024. If the installment payment  
605 option is elected by the Contractor, the Contractor may pre-pay the remaining portion of the  
606 WIIN Repayment Obligation by giving the Contracting Officer sixty (60) days written notice, in  
607 which case, the Contracting Officer shall re-compute the remaining amount due to reflect the  
608 pre-payment using the same methodology as was used to compute the initial annual installment  
609 payment amount, which is illustrated in Exhibit "F". Notwithstanding any Additional Capital  
610 Obligation that may later be established, receipt of the Contractor's payment of the WIIN



611 Repayment Obligation to the United States shall fully and permanently satisfy the Existing  
612 Capital Obligation.

613 (B) Additional Capital Obligations that are not reflected in  
614 Exhibit "F", which addresses the WIIN Repayment Obligation, and are properly assignable to  
615 the Contractor, shall be repaid as prescribed by the WIIN Act without interest except as required  
616 by law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I  
617 portion of the Additional Capital Obligation assigned to the Contractor until such costs are paid.  
618 Increases or decreases in the Additional Capital Obligation assigned to the Contractor caused  
619 solely by annual adjustment of the Additional Capital Obligation assigned to each Project  
620 contractor by the Secretary shall not be considered in determining the amounts to be paid  
621 pursuant to this subdivision (a)(2)(B), however, will be considered under subdivision (b) of this  
622 Article. A separate agreement shall be established by the Contractor and the Contracting Officer  
623 to accomplish repayment of the Additional Capital Obligation assigned to the Contractor within  
624 the timeframe prescribed by the WIIN Act, subject to the following:

625 (1) If the collective Additional Capital Obligation  
626 properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act  
627 is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable  
628 to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer  
629 notifies the Contractor of the Additional Capital Obligation; Provided, That the reference to the  
630 amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

631 (2) If the collective Additional Capital Obligation  
632 properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act  
633 is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs

properly assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law and Project ratesetting policy; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

(b) In the event that the final cost allocation referenced in Section 4011(b) of the WIIN Act determines that the costs properly assignable to the Contractor are greater than what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be not less than one (1) year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the Contractor and Contracting Officer. In the event that the final cost allocation indicates that the costs properly assignable to the Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such overpayment as an offset against any outstanding or future obligations of the Contractor, with the exception of Restoration Fund Charges pursuant to Section 3407(d) of Public Law 102-575.

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

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

(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project Water for the following Year and the computations and cost allocations upon which those Rates are based. The Contractor shall be allowed not less than two months to review and 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."

(d) 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

680 Water shall be delivered to the Contractor unless and an advance payment at the Rates then in  
681 effect for such additional Project Water is made. Final adjustment between the advance  
682 payments for the water scheduled and payments for the quantities of Water Delivered during  
683 each Year pursuant to this Contract shall be made as soon as practicable but no later than April  
684 30th of the following Year.

685 (e) The Contractor shall also make a payment in addition to the Rate(s) in  
686 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
687 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
688 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered  
689 Pricing Component pursuant to subdivision (k)(2) of this Article. The payments shall be  
690 consistent with the quantities of Agricultural Water and M&I Water delivered as shown in the  
691 water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or,  
692 if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery  
693 report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing  
694 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges  
695 shall be made through the adjustment of payments due to the United States for Charges for the  
696 next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing  
697 Component shall be computed pursuant to Article 11 of this Contract.

698 (f) The Contractor shall pay for any Water Delivered under subdivision (f) or  
699 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
700 statutes, associated regulations, any applicable provisions or guidelines or ratesetting policies;  
701 Provided, That the Rate for Water Delivered under subdivision (f) or (g) of Article 3 of this

702 Contract shall be no more than the otherwise applicable Rate for Agricultural Water or M&I  
703 Water under subdivision (a) of this Article;

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

706 (h) All revenues received by the United States from the Contractor relating to  
707 the delivery of Project Water or the delivery of non-Project Water through Project facilities shall  
708 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
709 regulations, and the then current Project ratesetting policies for M&I Water or Agricultural  
710 Water.

711 (i) The Contracting Officer shall keep its accounts pertaining to the  
712 administration of the financial terms and conditions of its long-term contracts, in accordance  
713 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
714 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
715 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
716 disposition of all Project and Contractor revenues, and a summary of all water delivery  
717 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
718 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

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

726                   (k)     (1)     Beginning at such time as deliveries of Project Water in a Year  
727 exceed 80 percent of the total available pursuant to this Contract, then before the end of the  
728 month following the month of delivery the Contractor shall make an additional payment to the  
729 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component  
730 for the amount of Water Delivered in excess of 80 percent of the total available pursuant to this  
731 Contract, but less than or equal to 90 percent of that total, shall equal one-half of the difference  
732 between the Rate established under subdivision (a) of this Article and the Full Cost Rate for  
733 Agricultural Water or Full Cost Rate for M&I Water, whichever is applicable. The Tiered  
734 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the total  
735 available pursuant to this Contract shall equal the difference between (i) the Rate established  
736 under subdivision (a) of this Article and (ii) the Full Cost Rate for Agricultural Water or Full  
737 Cost Rate for M&I Water, whichever is applicable.

738                   (2)     Subject to the Contracting Officer's written approval, the  
739 Contractor may request and receive an exemption from such Tiered Pricing Component for  
740 Project Water delivered to produce a crop which the Contracting Officer determines will provide  
741 significant and quantifiable habitat values for waterfowl in fields where the water is used and the  
742 crops are produced; Provided, That the exemption from the Tiered Pricing Component for  
743 Agricultural Water shall apply only if such habitat values can be assured consistent with the  
744 purposes of the CVPIA through binding agreements executed with or approved by the  
745 Contracting Officer prior to use of such water.

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

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

(m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in accordance with the then applicable Project ratesetting policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall not be adjusted to reflect the Contractor's inability to pay.

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

SAN FELIPE DIVISION REPAYMENT OBLIGATION

The Contractor's repayment obligation is described below:

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

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

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

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

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



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

(c) San Felipe Division Facilities Interest Rates. The interest rate for the Pacheco Tunnel Inlet used for M&I purposes is 3.137 percent per annum. The interest rate for the San Felipe Division Facilities, not including the Pacheco Tunnel Inlet, used for M&I purposes is 3.50 percent per annum. Any calculation or recalculation of the semi-annual payment schedule shown in Exhibit D in this Contract, or in any subsequent renewed or amended contract during the 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) San Felipe Division Repayment Obligation and Annual Payment Schedule.

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

822                               (2)     Final San Felipe Division Repayment Obligation. Using the same  
823 allocation of Reach 1 Facilities cost to the Contractor and the same stepped repayment structure  
824 as in subparagraph (e)(1), the Contractor's final San Felipe Division Repayment Obligation will  
825 be computed by totaling its separate, individual share of reimbursable capital costs for Reach 1  
826 Facilities, Reach 2 Facilities and Reach 3 Facilities, as of September 30, 2006, plus its final  
827 balance of unpaid capital interest, minus its final accumulated repayment. The reimbursable San  
828 Felipe Division capital costs shown on Exhibit C, and the Contractor's semi-annual payment  
829 schedule on Exhibit D will be revised in a manner consistent with the above, without amending  
830 this Contract.

831                               (f)     Supplemental Payments and Relief from Payment Schedule.

832                               (1)     The Contractor may, at any time prior to the expiration of this  
833 Contract, make supplemental payment(s) of all or part of the unpaid balance for any or part of  
834 the Contractor's share of Reach 1 Facilities, Reach 2 Facilities or Reach 3 Facilities, or its unpaid  
835 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.

#### ADJUSTMENTS

10. The amount of any payment by the Contractor during any Year over the amount the Contractor otherwise under the provisions of this Contract would have been required to pay, as conclusively determined by the Contracting Officer, shall be applied first to any accrued indebtedness arising out of this Contract then due and owing to the United States by the Contractor, and any amount of such overpayment then remaining, at the option of the Contractor, shall be refunded to the Contractor or credited upon amounts to become due to the United States from the Contractor in the ensuing Year under the provisions hereof.

#### CHARGES FOR DELINQUENT PAYMENTS

11. (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.

#### EXCHANGES OF WATER

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

#### CONVEYANCE OF NON-PROJECT WATER

13. The Contractor shall have the right to use Division Facilities to convey non-Project water, subject, however, to each of the following conditions:

(a) The Contractor and the Contracting Officer shall agree upon the charge to be paid by the Contractor prior to the use of the Facilities;

(b) Such conveyance shall not interfere with deliveries of Project Water to the Contractor or to any other user of the Facilities;

(c) Arrangements for power necessary to convey such water shall be the responsibility of the Contractor;

(d) The United States shall not incur any liability or unreimbursed cost or expense thereby; and

(e) To the extent that non-Project water conveyed through Division Facilities is directly applied to land for agricultural use, such water shall be subject to subdivision (b) of Article 44 of this Contract.

OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

14. (a) The Operation and Maintenance 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-X) 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

915 payments on behalf of the United States in accordance with the separate agreement identified in  
916 subdivision (a) of this Article.

917 (c) For so long as the O&M of any portion of the Project facilities serving the  
918 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
919 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
920 Rates for Water Delivered under this Contract representing the cost associated with the activity  
921 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
922 Authority or its successor.

923 (d) In the event the O&M of the Project facilities operated and maintained by  
924 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by  
925 the United States during the term of this Contract, the Contracting Officer shall so notify the  
926 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include  
927 the portion of the Rates to be paid by the Contractor for Project Water under this Contract  
928 representing the O&M costs of the portion of such Project facilities which have been re-assumed.  
929 The Contractor shall, thereafter, in the absence of written notification from the Contracting  
930 Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the  
931 revised Exhibit "B" directly to the United States in compliance with Article 8 of this Contract.

932 OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

933 15. (a) Upon substantial completion of the San Felipe Division Facilities, or as  
934 otherwise determined by the Contracting Officer, and following written notification, the care,  
935 operation, and maintenance of any or all of those San Felipe Division Facilities may be  
936 transferred to the Contractor. Title to the transferred works will remain in the name of the  
937 United States, unless otherwise provided by the Congress of the United States.

938 Facilities transferred by this Contract include Reach 2 Facilities and Reach 3 Facilities as shown  
939 in Exhibit G.

(b) The Contractor, without expense to the United States, will care for, operate, and maintain the transferred works in full compliance with the terms of this Contract and in such a manner that the transferred works remain in good and efficient condition.

(1) The United States shall be responsible for major repair or replacement of transferred works and other Division works required as a result of disaster or obsolescence, as determined by the Contracting Officer.

(c) Necessary repairs of the transferred works shall be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1) make the necessary repairs; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting Officer that contains a timeframe for completing the necessary repairs. In the case of an emergency the written notice of necessary repairs will include a timeframe for completion of the repairs. If the Contractor fails to either: 1) make the necessary repairs within the identified timeframe; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice and accomplish the repairs within the timeframe identified therein, the Contracting Officer may cause the repairs to be made, and the cost of those repairs shall be paid by the Contractor as directed by the Contracting Officer.

(d) The Contractor shall not make any Substantial Changes in the transferred works without first obtaining written consent of the Contracting Officer. The Contractor will take all reasonable measures to prevent any unauthorized encroachment on Project land and rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its existence.

(e) The Contractor agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character, except for intentional torts committed by employees of the United States, brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or the United States on transferred works required under this Contract, regardless of who performs those duties;

Provided, That for the purposes of this Article 15(e), the term "Intentional torts" includes acts or omissions under California law that constitute gross or willful misconduct, gross or willful negligence, and sole negligence; and, provided further, that the term "employees of the United

975 States,' includes agents and independent contractors who are directly responsible to the United  
976 States.

977 (f) The Contractor will cooperate with the Contracting Officer in  
978 implementing an effective dam safety program. The United States agrees to provide the  
979 Contractor and the appropriate agency of the State or States in which the Project facilities are  
980 located with design data, designs, and an operating plan for the dam(s) and related facilities  
981 consistent with the current memorandum of understanding between the United States and the  
982 State of California relating to the coordination of planning, design, construction, operation, and  
983 maintenance processes for dams and related facilities.

984 (g) In the event the Contractor is found to be operating the transferred works  
985 or any part thereof in violation of this Contract or the Contractor is found to be failing any  
986 financial commitments or other commitments to the United States under the terms and conditions  
987 of this Contract, then upon the election of the Contracting Officer, the United States may take  
988 over from the Contractor the care, operation, and maintenance of the transferred works by giving  
989 written notice to the Contractor of such election and the effective date thereof. Thereafter,  
990 during the period of operation by the United States, upon notification by the Contracting Officer  
991 the Contractor will pay to the United States, annually in advance, the cost of Operation and  
992 Maintenance of the works as determined by the Contracting Officer. Following written  
993 notification from the Contracting Officer the care, operation, and maintenance of the works may  
994 be transferred back to the Contractor.

995 (1) If such advances payments are inadequate to properly care for,  
996 operate, and maintain the transferred works to the end of any Year, the Contracting Officer may  
997 give written notice of a supplemental Operation and Maintenance charge and the Contractor shall  
998 pay its share of such amount on or before the date specified in said notice. The Contractor shall  
999 provide for the collection of sufficient Operation and Maintenance or toll charges to pay all such  
1000 bills to the United States within the time stated herein in addition to providing the necessary  
1001 funds to meet the other obligations of the Contractor. Any amount of such advances remaining  
1002 unexpended or unobligated shall, at the option of the Contractor, either be refunded or credited  
1003 upon amounts to become due to the United States from the Contractor under the provisions of  
1004 this Contract in subsequent Years.

1005 (h) In addition to all other payments to be made by the Contractor under this  
1006 Contract, the Contractor will reimburse to the United States, following the receipt of a statement



1007 from the Contracting Officer, all miscellaneous costs incurred by the United States for any work  
1008 involved in the administration and supervision of this Contract.

1009 (i) Nothing in this Article will be deemed to waive the sovereign immunity of  
1010 the United States.

1011 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND  
1012 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

1013 16. (a) The Contracting Officer may, from time to time, examine the following:  
1014 the Contractor's books, records, and reports; the project works being operated by the Contractor;  
1015 the adequacy of the Operation and Maintenance program[s]; the reserve fund; and the water  
1016 conservation program including the water conservation fund, if applicable. Notwithstanding title  
1017 ownership, where the United States retains a financial, physical, or liability interest in facilities  
1018 either constructed by the United States or with funds provided by the United States, the  
1019 Contracting Officer may examine any or all of the project works providing such interest to the  
1020 United States.

1021 (b) The Contracting Officer may, or the Contractor may ask the Contracting  
1022 Officer to, conduct special inspections of any project works being operated by the Contractor and  
1023 special audits of the Contractor's books and records to ascertain the extent of any Operation and  
1024 Maintenance deficiencies to determine the remedial measures required for their correction and to  
1025 assist the Contractor in solving specific problems. Except in an emergency, any special  
1026 inspection or audit shall be made only after written notice thereof has been delivered to the  
1027 Contractor by the Contracting Officer.

1028 (c) The Contractor shall provide access to the project works, operate any  
1029 mechanical or electrical equipment, and be available to assist in the examination, inspection, or  
1030 audit.

1031 (d) The Contracting Officer shall prepare reports based on the examinations,  
1032 inspections, or audits and furnish copies of such reports and any recommendations to the  
1033 Contractor.

1034 (e) The costs incurred by the United States in conducting Operation and  
1035 Maintenance examinations, inspections, and audits and preparing associated reports and  
1036 recommendations related to high- and significant-hazard dams and associated facilities shall be  
1037 nonreimbursable. Associated facilities include carriage, distribution, and drainage systems;  
1038 pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and  
1039 storage dams (low-hazard); Type 2 bridges which are Bureau of Reclamation-owned bridges not  
1040 located on a public road; regulating reservoirs (low-hazard); fish passage and protective  
1041 facilities, including hatcheries; river channelization features; rural/municipal water systems;  
1042 desalting and other water treatment plants; maintenance buildings and service yards; facilities  
1043 constructed under Federal loan programs (until paid out); and recreation facilities (reserved  
1044 works only); and any other facilities as determined by the Contracting Officer.

(f) Expenses incurred by the Contractor, as applicable, in participating in the Operation and Maintenance site examination will be borne by the Contractor.

(g) Requests by the Contractor for consultations, design services, or modification reviews, and the completion of any Operation and Maintenance activities identified in the formal recommendations resulting from the examination (unless otherwise noted) are to be funded as Project Operation and Maintenance and are reimbursable by the Contractor to the extent of current Project Operation and Maintenance allocations.

(h) Site visit special inspections that are beyond the regularly scheduled Operation and Maintenance examinations conducted to evaluate particular concerns or problems and provide assistance relative to any corrective action (either as a follow up to an Operation and Maintenance examination or when requested by the Contractor) shall be nonreimbursable.

(i) The Contracting Officer may provide the State an opportunity to observe and participate in, at its (their) own expense, the examinations and inspections. The State(s) may be provided copies of reports and any recommendations relating to such examinations and inspections.

#### ADMINISTRATION OF FEDERAL PROJECT LANDS

17. (a) The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, operation, and maintenance of San Felipe Division Facilities may be used by the Contractor for such purposes. The Contractor shall ensure that no unauthorized encroachment occurs on Federal Project lands and rights-of-way. The Contractor does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

(b) The United States retains responsibility for compliance with the National Historic Preservation Act of 1966 (NHPA), and the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). The Contractor will notify the Contracting Officer and, only when on tribal land, also notify the appropriate tribal official, immediately upon the discovery of any potential historic properties or Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

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

(d) For the purposes of this Contract, definition of the following terms are:

1078 (1) An easement is an instrument which grants an estate in the land  
1079 which is not revocable except as may be provided in the instrument. Rights of way for roads,  
1080 transmission lines, pipelines, and like uses, are granted by an easement.

1081 (2) A lease is an instrument by which lands and tenements are  
1082 conveyed for a number of years or at will. Leases may be used to convey lands for grazing,  
1083 agricultural, commercial and other uses.

1084 (3) A license is an instrument granting authority to do an act or acts on  
1085 lands without conveying an interest therein. It may be used to allow such uses as surveying,  
1086 temporary crossings, bank travel, or installation of temporary pumps. It is an instrument giving a  
1087 personal privilege which is temporary and revocable.

1088 (e) When the Contracting Officer receives a request for use of the right-of-  
1089 way transferred to the Contractor for Operation and Maintenance, he shall forward the request,  
1090 together with any comments which may be pertinent, to the Contractor. Notice of referral shall  
1091 be sent to the applicant without comment. The applicant also should be told that further  
1092 information regarding the application will emanate from the Contractor and all subsequent  
1093 inquiries concerning the application should be sent direct to the Contractor.

1094 (f) Subject to the provisions of (h) below, the Contractor may grant or deny  
1095 licenses to use the right-of-way. The Contractor will send the Contracting Officer a copy of each  
1096 license granted. The Contractor will obtain the prior written approval of the Contracting Officer  
1097 for any license that involves a major installation of construction of structures in the right-of-way,  
1098 such as flumes, siphons, culverts, drains, and permanent turnouts.

1099 (g) The following rights to use the right-of-way shall be granted only by the  
1100 Contracting Officer:

- 1101 (1) All leases and grants of easement.
- 1102 (2) Licenses, consents, and other forms of agreement requested by
- 1103 Pacific Gas and Electric Company or any other entity which has a master contract with the
- 1104 United States.
- 1105 (3) Licenses for removal of sand, gravel, or spoil.
- 1106 (4) Licenses for transmission lines with voltage in excess of 33 kV If
- 1107 the application is one which can only be granted by the Contracting Officer, then the Contractor
- 1108 shall furnish a copy of the application and comments thereon to the Contracting Officer. If the
- 1109 request is compatible with the Operation and Maintenance of the transferred works and if the
- 1110 Contractor has indicated approval, the Contracting Officer will send the appropriate executed
- 1111 documents to the Contractor for transmittal to the applicant.
- 1112 (h) In granting permission to use the right-of-way care shall be exercised to
- 1113 assure that:
- 1114 (1) The encroachment is held to the minimum practical,
- 1115 (2) There is no interference with water supply operations on the right
- 1116 of way,
- 1117 (3) A license is not issued as a substitute for an easement or lease, and
- 1118 (4) Disposal of land by the United States is not being contemplated.
- 1119 When there is doubt on any of these matters, the application shall be sent to the Contracting
- 1120 Officer.
- 1121 (i) Charges will normally be made for easements, leases, and licenses to use
- 1122 the right of way.

1123 (1) The charge shall be based on the fair value of the right granted  
1124 with a minimum sufficient to cover the administration expenses involved. The Contractor may  
1125 establish uniform charges for servicing licenses.

1126 (2) No charge will be made by the United States for rights granted to  
1127 governmental entities or to such quasi-governmental agencies or nonprofit organizations as the  
1128 parties shall agree upon. However, if a governmental entity requests a right for the specific  
1129 benefit of a private entity, charges will be imposed and will be paid to the Contractor direct as  
1130 though the grant were to the private entity.

1131 (j) The parties agree that the procedures set forth in subdivisions (c) through  
1132 (i) appear desirable and feasible at this time. However, the effectiveness of these procedures is  
1133 subject to review during operations. Necessary or desirable changes will be made by agreement  
1134 of the parties when the need therefor becomes evident.

1135 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

1136 18. (a) The Contractor shall not allow contamination or pollution of Federal  
1137 project lands, Project Waters, or project works of the United States or administered by the United  
1138 States and for which the Contractor has the responsibility for care, operation, and maintenance  
1139 by its employees or agents. The Contractor shall also take reasonable precautions to prevent  
1140 such contamination or pollution by third parties.

1141 (b) The Contractor shall comply with all applicable Federal, State, and local  
1142 laws and regulations and Bureau of Reclamation policies and instructions existing, or hereafter  
1143 enacted or promulgated, concerning any hazardous material that will be used, produced,  
1144 transported, stored, released, or disposed of on or in Federal Project lands, Project Waters, or  
1145 project works.

1146 (c) "Hazardous material" means (1) any substance falling within the  
1147 definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the  
1148 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §  
1149 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and  
1150 the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage  
1151 effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste,  
1152 and (4) any other substance regulated as hazardous or toxic under Federal, State, local or Tribal  
1153 law.

(d) Upon discovery of any event which may or does result in contamination or pollution of Federal Project lands, Project Water, or project works, the Contractor shall immediately undertake all measures necessary to protect public health and the environment, including measures necessary to contain or abate any such contamination or pollution, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

(e) If violation of the provisions of this Article occurs and the Contractor does not take immediate corrective action, as determined by the Contracting Officer, the Contractor may be subject to remedies imposed by the Contracting Officer, which may include termination of this Contract.

(f) The Contractor shall be liable for any response action or corrective measure necessary to protect public health and the environment or to restore Federal Project lands, Project Waters, or project works that are adversely affected as a result of such violation, and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State, local, or Tribal laws and regulations concerning hazardous material. At the discretion of the Contracting Officer, the United States may also terminate this Contract, as a result of such violation.

(g) The Contractor shall defend, indemnify, protect and save the United States harmless from and against any costs, expenses, claims, damages, demands, or other liability arising from or relating to Contractor's violation of this Article.

(h) The Bureau of Reclamation agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provisions of this Article.

#### CLEAN AIR AND WATER

19. (a) The Contractor agrees as follows:

(1) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. § 7414), and Section 308 of the Clean Water Act (33 U.S.C. § 1318), relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in those sections, and all applicable regulations and guidelines issued thereunder.

(2) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was executed unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility where the contract work is being performed.

1191 (4) To insert the substance of the provisions of this article into any  
1192 nonexempt subcontract, including this subparagraph (a)(4).

1193 (b) The following definitions apply for purposes of this article:

1194 (1) The term "Clean Air Act" means the Act enacted by Pub. L. 88-  
1195 206 of Dec. 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

1196 (2) The term "Clean Water Act" means the Act enacted by Pub. L. 92-  
1197 500 of Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

1198 (3) The term "clean air standards" refers to all enforceable rules,  
1199 regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other  
1200 requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean  
1201 Air Act or Executive Order 11738, an applicable implementation plan as described in Section  
1202 110 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or plan  
1203 under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or (d)),  
1204 or an approved implementation procedure under subsection 112(d) of the Clean Air Act (42  
1205 U.S.C. § 7412(d)).

1206 (4) The term "clean water standards" refers to all enforceable  
1207 limitations, controls, conditions, prohibitions, standards, and other requirements which are  
1208 promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by  
1209 the Environmental Protection Agency or by a state under an approved program, as authorized by  
1210 Section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure  
1211 compliance with pretreatment regulations as required by Section 307 of the Clean Water Act (33  
1212 U.S.C. § 1317).

1213 (5) The term "comply" refers to compliance with clean air or water  
1214 standards. It also refers to compliance with a schedule or plan ordered or approved by a court of  
1215 competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control  
1216 agency in accordance with the requirements of the Clean Air Act or Clean Water Act and  
1217 regulations issued pursuant thereto.

1218 (6) The term "facility" means any building, plant, installation,  
1219 structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or  
1220 supervised by a contractor or subcontractor to be utilized in the performance of a contract or  
1221 subcontract. Where a location or site of operations contains or includes more than one building,  
1222 plant, installation, or structure, the entire location or site shall be deemed to be a facility except  
1223 where the Director, Office of Federal Activities, Environmental Protection Agency, determines  
1224 that independent facilities are collocated in one geographical area.

1225 OPERATION AND MAINTENANCE BY SANTA CLARA VALLEY WATER DISTRICT

1226 20. (a) The O&M of Reach 1 Division Facilities have been transferred to Santa  
1227 Clara Valley Water District by separate agreement (Contract No. 6-07-20-X0290) between the

1228 United States and the existing San Felipe Division Contractors. Unless otherwise expressly set  
1229 forth herein, nothing in this Contract is intended to affect the rights and obligations set forth in  
1230 Contract No. 6-07-20-X0290. The United States and the Contractor agree that this Contract, and  
1231 any amendments or renewals thereto, shall be considered to be within the definition of  
1232 "Contract" as provided in Contract No. 6-07-20-X0290, so that the execution of this Contract  
1233 shall not impact the effectiveness of Contract No. 6-07-20-X0290, and Contract No. 6-07-20-  
1234 X0290 is hereby deemed to so provide.

1235 (b) The Contractor is authorized under Contract No. 6-07-20-X0290 and this  
1236 Contract to undertake activities necessary for the complete care, operation, maintenance and  
1237 replacement of Reach 1 Facilities, Reach 2 Facilities and Reach 3 Facilities, to maintain efficient  
1238 and reliable operating condition and fulfillment of authorized San Felipe Division purposes. The  
1239 Contracting Officer shall use its best efforts to promptly review proposals for work to be  
1240 undertaken by the Contractor pursuant to said agreement, and to promptly coordinate and  
1241 facilitate such work. To the extent that the approval or determination of the Contracting Officer  
1242 is required in connection with any such activities, such approval or determination shall not be  
1243 unreasonably withheld.

1244 RIGHT TO RECOVER COSTS INCURRED BY SANTA CLARA VALLEY WATER  
1245 DISTRICT

1246 21. (a) Subject to Articles 21(b) and (c) of this Contract, the Contractor, as the  
1247 Operating Non-Federal Entity, has the right to require any entity or individual to pay the  
1248 Contractor an amount(s) to recover costs incurred by the Contractor for Reach 1 Facilities, Reach  
1249 2 Facilities and Reach 3 Facilities, in addition to O&M costs, provided that such amount(s) are  
1250 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.

#### PEST MANAGEMENT

22. (a) The Contractor is responsible for complying with applicable Federal, State, and local laws, rules, and regulations related to pest management in performing its responsibilities under this Contract.

(b) The Contractor is responsible for effectively avoiding the introduction and spread of, and for otherwise controlling, undesirable plants and animals, as defined by the Contracting Officer, on or in Federal Project lands, Federal Project Waters, and Federal project works for which and to the extent that the Contractor has Operation and Maintenance responsibility. The Contractor is responsible for exercising the level of precaution necessary in meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for reproductive and vegetative parts, foreign soil, mud, or other debris that may cause the spread of weeds, invasive species and other pests, and removing such materials before moving its vehicles,

watercraft, and equipment onto any Federal land, into any Federal Project facility waters, or out of any area on Federal Project land where work is performed.

(c) Where decontamination of the Contractor's vehicles, watercraft, or equipment is required prior to entering Federal Project land or waters, the decontamination shall be performed by the Contractor at the point of prior use, or at an approved offsite facility able to process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the completion of work, the Contractor will perform any required decontamination within the work area before moving the vehicles, watercraft, and equipment from Federal Project lands and waters.

(d) Programs for the control of undesirable plants and animals on Federal Project lands, and in Federal Project Waters and Federal project works for which the Contractor has Operation and Maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Contractor will adhere to applicable Federal and State laws and regulations and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals, including but not limited to, the Department of the Interior Manual, Part 517 Integrated Pest Management Policy and Part 609 Weed Control Program, the Plant Protection Act of June 20, 2000 (Pub. L. 106 224), and Executive Order 13112 of February 3, 1999.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO  
TRANSFERRED WORKS

23. During the time the transferred works are operated and maintained by the Contractor, in addition to all other payments to be made by the Contractor under this Contract, the Contractor shall pay to the United States within 60 days following the receipt of a detailed cost statement such specific items of direct cost incurred by the United States for work associated with this Contract as are normally charged by the United States to water users and properly and equitably chargeable to the Contractor plus a percentage of direct costs for administrative and general overhead in accordance with the procedures approved by the Contracting Officer, Provided, That costs incurred by the United States as a result of disaster or obsolescence in accordance with subdivision (b) of Article 15 are not considered to be costs within the meaning of this Article.

1311 EMERGENCY RESERVE FUND

1312 24. (a) Commencing with the year following the transfer of Operation and  
1313 Maintenance of the transferred works to the Contractor, the Contractor shall accumulate and  
1314 maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other  
1315 funds are available for use as an emergency reserve fund. The Contractor shall establish and  
1316 maintain that emergency reserve fund to meet costs incurred during periods of special stress  
1317 caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or  
1318 causing interruption of water service.

1319 (b) The Contractor shall accumulate the reserve fund with annual deposits or  
1320 investments of not less than \$500,000 to a Federally insured, interest- or dividend-bearing  
1321 account or in securities guaranteed by the Federal Government: Provided, That money in the  
1322 reserve fund, including accrued interest, shall be available within a reasonable time to meet  
1323 expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and  
1324 the accumulation of interest to the reserve fund shall continue until the basic amount of  
1325 \$1,500,000 is accumulated. Following an emergency expenditure from the fund, the annual  
1326 deposits shall continue from the year following the emergency expenditure until the previous  
1327 balance is restored. After the initial amount is accumulated or after the previous balance is  
1328 restored, the annual deposits may be discontinued, and the interest earnings shall continue to  
1329 accumulate and be retained as part of the reserve fund.

1330 (1) The reserve fund balance described in subsection (b) of this Article  
1331 is inclusive of those reserve funds described in Article 16(b) of Contract No. 6-07-20-X0290.

1332 (c) Upon mutual written agreement between the Contractor and the  
1333 Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to  
1334 account for risk and uncertainty stemming from the size and complexity of the Project; the size  
1335 of the annual Operation and Maintenance budget; additions to, deletions from, or changes in  
1336 project works; and Operation and Maintenance costs not contemplated when this Contract was  
1337 executed.

1338 (d) The Contractor may make expenditures from the reserve fund only for  
1339 meeting routine or recurring Operation and Maintenance costs incurred during periods of special  
1340 stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary Operation  
1341 and Maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or  
1342 for meeting betterment costs (in situations where recurrence of severe problems can be  
1343 eliminated) during periods of special stress. Proposed expenditures from the fund shall be  
1344 submitted to the Contracting Officer in writing for review and written approval prior to  
1345 disbursement. Whenever the reserve fund is reduced below the current balance by expenditures  
1346 therefrom, the Contractor shall restore that balance by the accumulation of annual deposits as  
1347 specified in paragraph (b) herein.

1348 (e) During any period in which any of the project works are operated and  
1349 maintained by the United States, the Contractor agrees the reserve fund shall be available for like  
1350 use by the United States.

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

#### PROTECTION OF WATER AND AIR QUALITY

25. (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.

#### DRAINAGE STUDIES AND FACILITIES

26. To aid in determining the source and solution of future potential drainage problems, the Contractor shall initiate and maintain, in a manner satisfactory to the Contracting Officer, a program of groundwater observation in order to delineate shallow water-table areas and furnish annually to the Contracting Officer, during the term of this Contract and any renewal thereof, records, and analyses of such observations as they relate to potential drainage problems.

#### RIGHT TO RETURN FLOWS

27. The United States reserves the right to all waste, seepage, and return-flow waters derived from water furnished to the Contractor which escapes or is discharged beyond the Contractor's Service Area. Nothing herein shall be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this Contract for

surface irrigation or underground storage within the Contractor's Service Area by the Contractor, or those claiming by or through the Contractor.

REPEAL OF AMENDMENT OF FEDERAL RECLAMATION LAWS

28. In the event that the Congress of the United States amends the excess land provisions or other provisions of the Federal reclamation laws, the United States agrees, at the option of the Contractor, to negotiate amendments of appropriate Articles of this Contract, all consistent with the provisions of such amendment.

GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

CHANGES IN THE CONTRACTOR'S ORGANIZATION OR SERVICE AREA

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

BOOKS, RECORDS, AND REPORTS

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

1417 and make copies of the other party's books and records relating to matters covered by this  
1418 Contract.

1419 (b) Nothing in this Article 31 shall be construed to limit or constrain the  
1420 ability of the Bureau of Reclamation to conduct contract compliance reviews of this Contract in  
1421 accordance with Reclamation Manual Directives and Standards PEC 05-08, last revised October  
1422 11, 2019, as may be further revised, amended, modified, or superseded.

1423 RULES, REGULATIONS, AND DETERMINATIONS

1424 32. (a) The parties agree that the delivery of water or the use of Federal facilities  
1425 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,  
1426 and the rules and regulations promulgated by the Secretary of the Interior under Federal  
1427 Reclamation law.

1428 (b) The Contracting Officer shall have the right to make determinations  
1429 necessary to administer this Contract that are consistent with its provisions, the laws of the  
1430 United States, and the State of California and the rules and regulations promulgated by the  
1431 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

1432 (c) Except as provided by the San Felipe Division Act of August 28, 1967 (81  
1433 Stat. 173), the parties agree that the delivery of Agricultural Water or use of Federal facilities  
1434 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the  
1435 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and  
1436 the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation  
1437 law.

1438 DETERMINATION OF FINDINGS OF FACTS

1439 33. Where the terms of this Contract provide for action to be based upon the opinion  
1440 or determination of either party to this Contract, said terms shall not be construed as permitting  
1441 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
1442 determination, whether or not stated to be conclusive. If the Contractor questions any  
1443 determination made by the Contracting Officer, the findings of facts shall be made by the  
1444 Secretary of Interior after consultation with the Contractor and shall be binding upon the parties.

1445 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1446 34. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
1447 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
1448 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
1449 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.  
1450 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
1451 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
1452 Interior and/or Bureau of Reclamation.

1453 (b) These statutes prohibit any person in the United States from being  
1454 excluded from participation in, being denied the benefits of, or being otherwise subjected to  
1455 discrimination under any program or activity receiving financial assistance from the Bureau of  
1456 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this  
1457 Contract, the Contractor agrees to immediately take any measures necessary to implement this  
1458 obligation, including permitting officials of the United States to inspect premises, programs, and  
1459 documents.

1460 (c) The Contractor makes this Contract in consideration of and for the  
1461 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
1462 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
1463 Reclamation, including installment payments after such date on account of arrangements for  
1464 Federal financial assistance which were approved before such date. The Contractor recognizes  
1465 and agrees that such Federal assistance will be extended in reliance on the representations and  
1466 agreements made in this Article and that the United States reserves the right to seek judicial  
1467 enforcement thereof.

1468 (d) Complaints of discrimination against the Contractor shall be investigated  
1469 by the Contracting Officer's Office of Civil Rights.

1470 EQUAL EMPLOYMENT OPPORTUNITY

1471 35. During the performance of this Contract, the Contractor agrees as follows:

1472 (a) The Contractor will not discriminate against any employee or applicant for  
1473 employment because of race, color, religion, sex, sexual orientation, gender identity, or national  
1474 origin. The Contractor will take affirmative action to ensure that applicants are employed, and  
1475 that employees are treated during employment, without regard to their race, color, religion, sex,  
1476 sexual orientation, gender identity, or national origin. Such action shall include, but not be  
1477 limited to the following: employment, upgrading, demotion, or transfer; recruitment or  
1478 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and  
1479 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous  
1480 places, available to employees and applicants for employment, notices to be provided by the  
1481 Contracting Officer setting forth the provisions of this nondiscrimination clause.

1482 (b) The Contractor will, in all solicitations or advertisements for employees  
1483 placed by or on behalf of the Contractor, state that all qualified applicants will receive

1484 consideration for employment without regard to race, color, religion, sex, sexual orientation,  
1485 gender identity, or national origin.

1486 (c) The Contractor will not discharge or in any other manner discriminate  
1487 against any employee or applicant for employment because such employee or applicant has  
1488 inquired about, discussed, or disclosed the compensation of the employee or applicant or another  
1489 employee or applicant. This provision shall not apply to instances in which an employee who  
1490 has access to the compensation information of other employees or applicants as part of such  
1491 employee's essential job functions discloses the compensation of such other employees or  
1492 applicants to individuals who do not otherwise have access to such information, unless such  
1493 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,  
1494 proceeding, hearing, or action, including an investigation conducted by the employer, or is  
1495 consistent with the Contractor's legal duty to furnish information.

1496 (d) The Contractor will send to each labor union or representative of workers  
1497 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
1498 to be provided by the Contracting Officer, advising the labor union or workers' representative of  
1499 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,  
1500 1965, and shall post copies of the notice in conspicuous places available to employees and  
1501 applicants for employment.

1502 (e) The Contractor will comply with all provisions of Executive Order No.  
1503 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary  
1504 of Labor.

1505 (f) The Contractor will furnish all information and reports required by  
1506 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the  
1507 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
1508 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
1509 ascertain compliance with such rules, regulations, and orders.

1510 (g) In the event of the Contractor's noncompliance with the nondiscrimination  
1511 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be  
1512 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
1513 ineligible for further Government Contracts in accordance with procedures authorized in  
1514 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and  
1515 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,  
1516 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1517 (h) The Contractor will include the provisions of paragraphs (a) through (g) in  
1518 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
1519 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,  
1520 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor  
1521 will take such action with respect to any subcontract or purchase order as may be directed by the  
1522 Secretary of Labor as a means of enforcing such provisions, including sanctions for  
1523 noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is  
1524 threatened with, litigation with a subcontractor or vendor as a result of such direction, the



1525 Contractor may request the United States to enter into such litigation to protect the interests of  
1526 the United States.

1527 CONTRACTOR'S RIGHTS TO WATER

1528 36. (a) The right to the beneficial use of water furnished to the Contractor  
1529 pursuant to this Contract shall not be disturbed so long as the Contractor fulfills all of its  
1530 obligations under this Contract.

1531 (b) Except as provided by Section 14 of the Reclamation Project Act of 1939,  
1532 or as otherwise provided by law, the Contracting Officer shall not furnish water to other  
1533 contractors or water users for use within the County of Santa Clara without the prior written  
1534 approval of the Contractor unless the Contractor determines that it is unable or unwilling to  
1535 furnish such water.

1536 (c) The provisions of this Contract shall not be applicable to or affect water or  
1537 water rights now owned or hereafter acquired by the Contractor or any landowner therein other  
1538 than from the United States.

1539 RENEGOTIATION

1540 37. If hereafter the United States enters into, renews, or amends any contract for  
1541 water from the Project which, because of a change in general Reclamation law or generally  
1542 applicable policy, contains terms and conditions which would be substantially more favorable to  
1543 the Contractor with respect to matters similar to those contained in this Contract, the United  
1544 States upon the Contractor's request, may renegotiate this Contract for the purpose of providing  
1545 comparable terms in accordance with the new law or policy.

1546 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1547 38. The expenditure or advance of any money or the performance of any obligation of  
1548 the United States under this Contract shall be contingent upon appropriation or allotment of  
1549 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any

1550 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1551 not appropriated or allotted.

1552 OFFICIALS NOT TO BENEFIT

1553 39. (a) No Member of or Delegate to the Congress, Resident Commissioner, or  
1554 official of the Contractor shall benefit from this Contract other than as a water user or landowner  
1555 in the same manner as other water users or landowners.

1556 (b) No official of the Contractor shall receive any benefit that may arise by  
1557 reason of this Contract other than as a landowner within the Project and in the same manner as  
1558 other landowners within the Contractor's Service Area.

1559 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

1560 40. The provisions of this Contract shall apply to and bind the successors and assigns  
1561 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein  
1562 by either party shall be valid until approved in writing by the other party.

1563 NOTICES

1564 41. Any notice, demand, or request authorized or required by this Contract shall be  
1565 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1566 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,  
1567 California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered  
1568 to Valley Water District, 5750 Almaden Expressway, San Jose, California 95118. The  
1569 designation of the addressee or the address may be changed by notice given in the same manner  
1570 as provided in this Article for other notices.

1571 CONFIRMATION OF CONTRACT

1572 42. Promptly after the execution of this Contract, the Contractor will provide  
1573 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the  
1574 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the  
1575 Contractor. This Contract will not be binding on the United States until the Contractor provides  
1576 evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet  
1577 the requirements of this Article, the Contractor may provide or the Contracting Officer may  
1578 require a certified copy of a final decree of a court of competent jurisdiction in the State of  
1579 California, confirming the proceedings on the part of the Contractor for the authorization of the  
1580 execution of this Contract.

1581 WATER CONSERVATION

1582 43. (a) Prior to the delivery of water provided from or conveyed through federally  
1583 constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop

1584 a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of  
1585 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

1586 Additionally, an effective water conservation and efficiency program shall be based on the  
1587 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
1588 the conservation and efficiency criteria for evaluating water conservation plans established under  
1589 Federal law. The water conservation and efficiency program shall contain definite water  
1590 conservation objectives, appropriate economically feasible water conservation measures, and  
1591 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1592 Contract shall be contingent upon the Contractor's continued implementation of such water  
1593 conservation program. In the event the Contractor's water conservation plan or any revised water  
1594 conservation plan completed pursuant to this Contract have not yet been determined by the  
1595 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer  
1596 determines are beyond the control of the Contractor, water deliveries shall be made under this  
1597 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such  
1598 determination at the earliest practicable date, and thereafter the Contractor immediately begins  
1599 implementing its water conservation and efficiency program in accordance with the time  
1600 schedules therein.

1601 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1602 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall  
1603 implement the Best Management Practices identified by the time frames issued by the California  
1604 Urban Water Conservation Council for such M&I Water unless any such practice is determined  
1605 by the Contracting Officer to be inappropriate for the Contractor.

1606 (c) The Contractor shall submit to the Contracting Officer a report on the  
1607 status of its implementation of the water conservation plan on the reporting dates specified in the  
1608 then existing conservation and efficiency criteria established under Federal law.

1609 (d) At 5-year intervals, the Contractor shall revise its water conservation plan  
1610 to reflect the then current conservation and efficiency criteria for evaluating water conservation  
1611 plans established under Federal law and submit such revised water management plan to the  
1612 Contracting Officer for review and evaluation. The Contracting Officer will then determine if  
1613 the water conservation plan meets Reclamation's then current conservation and efficiency criteria  
1614 for evaluating water conservation plans established under Federal law.

1615 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1616 shall be described in the Contractor's water conservation plan.

1617 RECLAMATION REFORM ACT OF 1982

1618 44. (a) Upon a Contractor's compliance with and discharge of the San Felipe  
1619 Division Repayment Obligation and the WIIN Repayment Obligation pursuant to this Contract,  
1620 subsections (a) and (b) of Section 213 of the Reclamation Reform Act of 1982 (96 Stat. 1269)  
1621 shall apply to affected lands.

1622 (b) The obligation of a Contractor to pay the Additional Capital Obligation  
1623 shall not affect the Contractor's status as having repaid all of the construction costs assignable to  
1624 the Contractor or the applicability of subsections (a) and (b) of Section 213 of the Reclamation  
1625 Reform Act of 1982 (96 Stat. 1269) once the Repayment Obligation is paid.

1626 PRIVACY ACT COMPLIANCE

1627 45. (a) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act) 5  
1628 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act  
1629 (43 C.F.R. § 2.45, et seq.) in maintaining landholder certification and reporting records required  
1630 to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the

1631 Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43  
1632 C.F.R. § 426.18.

1633 (b) With respect to the application and administration of the criminal penalty  
1634 provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's  
1635 employees who are responsible for maintaining the certification and reporting records referenced  
1636 in paragraph (a) above are considered to be employees of the Department of the Interior. See 5  
1637 U.S.C. § 552a(m).

1638 (c) The Contracting Officer or a designated representative shall provide the  
1639 Contractor with current copies of the Department of the Interior Privacy Act regulations and the  
1640 Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-  
1641 31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of  
1642 information contained in the landholders' certification and reporting records.

1643 (d) The Contracting Officer shall designate a full-time employee of the  
1644 Bureau of Reclamation to be the System Manager responsible for making decisions on denials  
1645 pursuant to 43 C.F.R. §§ 2.61 and 2.64 and amendment requests pursuant to 43 C.F.R. § 2.72.  
1646 The Contractor is authorized to grant requests by individuals for access to their own records.

1647 (e) The Contractor shall forward promptly to the System Manager each  
1648 proposed denial of access under 43 C.F.R. § 2.64 and each request for amendment of records  
1649 filed under 43 C.F.R. § 2.71; notify the requester accordingly of such referral; and provide the  
1650 System Manager with information and records necessary to prepare an appropriate response to  
1651 the requester. These requirements do not apply to individuals seeking access to their own  
1652 certification and reporting forms filed with the Contractor pursuant to 43 C.F.R. § 426.18 unless  
1653 the requester elects to cite the Privacy Act as authority for the request.

1654 MEDIUM FOR TRANSMITTING PAYMENTS

1655 46. (a) All payments from the Contractor to the United States under this Contract  
1656 shall be by the medium requested by the United States on or before the date payment is due. The  
1657 required method of payment may include checks, wire transfers, or other types of payment  
1658 specified by the United States.

1659 (b) Upon execution of the Contract, the Contractor shall furnish the  
1660 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1661 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1662 out of the Contractor's relationship with the United States.

1663 CONTRACT DRAFTING CONSIDERATIONS

1664 47. This Contract has been, negotiated and reviewed by the parties hereto,  
1665 each of whom is sophisticated in the matters to which this Contract pertains. The double spaced  
1666 Articles of this Contract have been drafted, negotiated, and reviewed by the parties, and no one

- 1667 party shall be considered to have drafted the stated Articles. Single-spaced Articles are standard
- 1668 Articles pursuant to Bureau of Reclamation policy.

1669 IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 7-07-20-  
1670 W0023AB-P on the day and year first above written.

1671 THE UNITED STATES OF AMERICA

1672 By: \_\_\_\_\_  
1673 Regional Director  
1674 Interior Region 10: California-Great Basin  
1675 Bureau of Reclamation

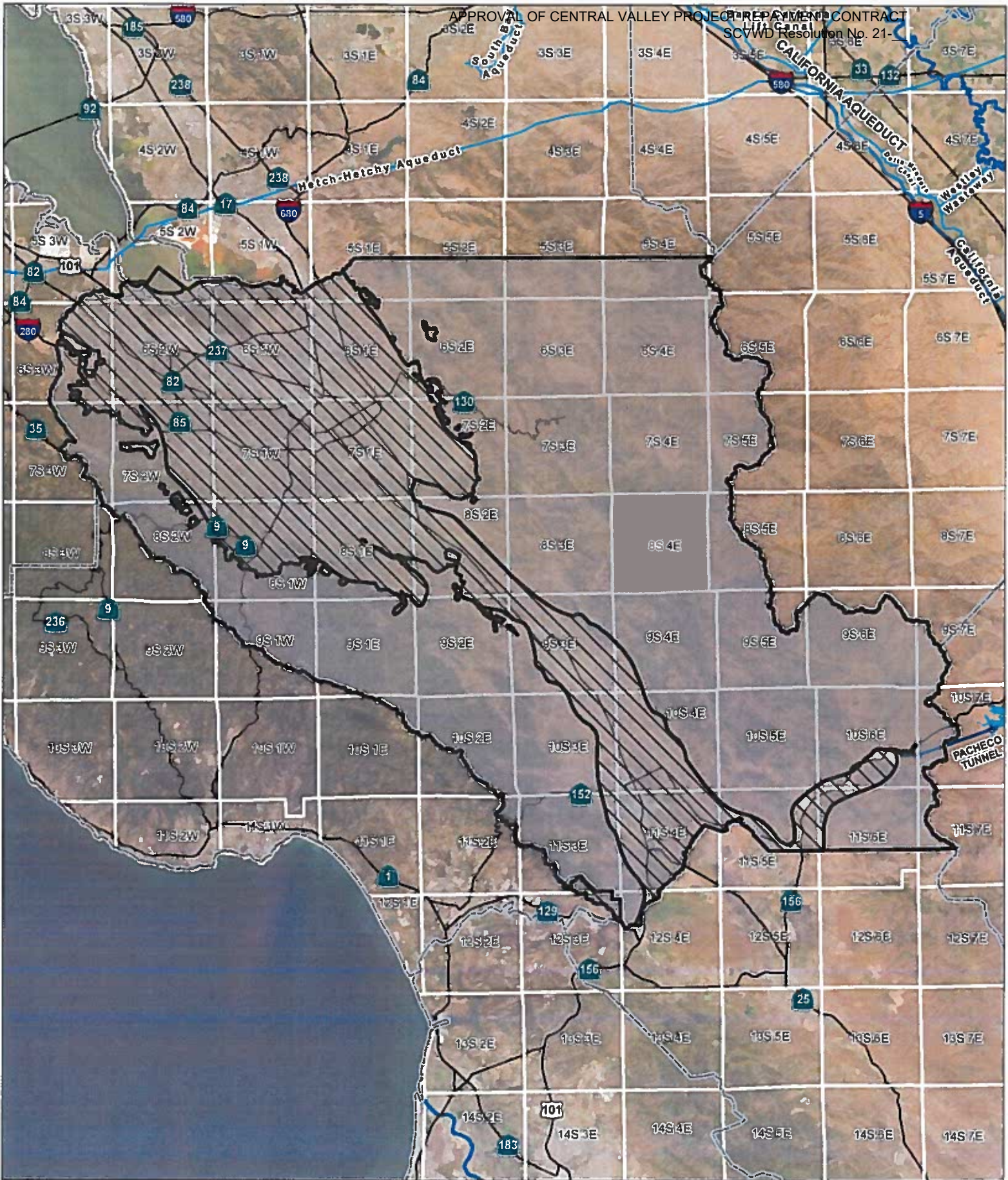
1676 SANTA CLARA VALLEY WATER DISTRICT



1677 By: \_\_\_\_\_  
1678 Chair, Board of Directors

1679 ATTEST:

1680 By: \_\_\_\_\_  
1681 Clerk/Board of Directors





-  District Boundary
-  Contractor's Service Area

## Santa Clara Valley Water District

Contract No. 7-07-20-W0023AB-P  
 Exhibit A



BUREAU OF  
 RECLAMATION



**EXHIBIT B**  
**SANTA CLARA VALLEY WATER DISTRICT**  
**2021 Rates and Charges**  
**(Per Acre-Foot)**

	Irrigation Water	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>		
Construction Costs		
DMC Aqueduct Intertie		
O&M Components		
Water Marketing	\$11.68	\$8.97
Storage	\$15.97	\$23.89
Credit for other PUE Remittance	(\$6.06)	(\$5.33)
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>\$21.59</b>	<b>\$27.53</b>
<b>IRRIGATION FULL COST RATE (RRA)</b>		
Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited	TBD	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	TBD	
<b>Project Use Energy Payment<sup>1</sup></b>		
Direct Pumping	22.59	\$22.59
Other PUE Remittance	6.06	\$5.33
<b>M&amp;I FULL COST RATE</b>		<b>TBD</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)	TBD	
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)	TBD	
<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)		TBD
Tier 3 Rate: >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to be Added to Tier 1 Rate)		TBD
<b>CHARGES AND ASSESSMENTS (Payments in addition to Rates)</b>		
[Section 3407(d)(2)(A)]	\$11.11	\$22.23
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.15	\$0.15

**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/water/rates/ratebooks/index.html>

slf 3/4/2021

No. 7-07-02-W0023AB-P

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 Repayment Contract Repayment Schedule

### In Compliance with Federal Accounting Guidance

1. Annual Accounting for years prior to Amendment Contract are to be reconciled for payments and charges

2. Each Annual Period includes interest from October through September

Payment Due Date	Pmt #	Payment Total	Current Year		Total Current		Payment Application, Repayment Order Per FIN 08-30			
			M&I	Unpaid Cap Int	Year Interest	1. CY Interest	2. Unpaid Cap Int	3. M&I Cap	4. Irrigation	
Originally Provided to Contractor (Interest through September 2004)										
Due to Interest Adjustment through September 2004										
Interest for October 2004 through September 2006										
Update to Construction Balances										
Updated Balance										
2007 January 1	1 1/	8,578,029.79	3,024,700.59	1,464,963.36	4,489,363.95	4,489,363.95	4,489,363.95	4,088,665.84	-	-
2007 July 1	2 2/	14,633,792.60	3,024,700.59	1,393,111.71	4,417,812.30	4,417,812.30	4,417,812.30	10,215,980.30	-	-
2008 January 1	3	7,466,866.79	3,024,700.59	1,214,332.05	4,239,032.65	4,239,032.65	4,239,032.65	3,227,834.14	-	-
2008 July 1	4	7,466,866.79	3,024,700.59	1,157,844.96	4,182,545.55	4,182,545.55	4,182,545.55	3,284,321.24	-	-
2009 January 1	5	7,466,866.79	3,024,700.59	1,100,369.33	4,125,069.93	4,125,069.93	4,125,069.93	3,341,798.86	-	-
2009 July 1	6	7,466,866.79	3,024,700.59	1,041,887.89	4,066,588.48	4,066,588.48	4,066,588.48	3,400,278.31	-	-
2010 January 1	7	7,466,866.79	3,024,700.59	982,393.02	4,007,083.61	4,007,083.61	4,007,083.61	3,459,783.18	-	-
2010 July 1	8	7,466,866.79	3,024,700.59	921,836.81	3,946,537.41	3,946,537.41	3,946,537.41	3,520,329.38	-	-
2011 January 1	9	7,466,866.79	3,024,700.59	860,231.05	3,884,931.64	3,884,931.64	3,884,931.64	3,581,935.15	-	-
2011 July 1	10	7,466,866.79	3,024,700.59	797,547.18	3,822,247.78	3,822,247.78	3,822,247.78	3,644,619.01	-	-
2012 January 1	11	7,466,866.79	3,024,700.59	733,766.35	3,758,466.94	3,758,466.94	3,758,466.94	3,708,399.85	-	-
2012 July 1	12	7,466,866.79	3,024,700.59	668,969.35	3,693,569.95	3,693,569.95	3,693,569.95	3,773,286.84	-	-
2013 January 1	13	7,466,866.79	3,024,700.59	602,836.66	3,627,537.25	3,627,537.25	3,627,537.25	3,839,328.54	-	-
2013 July 1	14	7,466,866.79	3,024,700.59	535,648.39	3,560,348.99	3,560,348.99	3,560,348.99	3,906,517.80	-	-
2014 January 1	15	7,466,866.79	3,024,700.59	467,284.33	3,491,984.92	3,491,984.92	3,491,984.92	3,974,881.87	-	-
2014 July 1	16	7,466,866.79	3,024,700.59	397,723.90	3,422,424.49	3,422,424.49	3,422,424.49	4,044,442.30	-	-
2015 January 1	17 3/	7,566,469.58	3,024,700.59	326,946.16	3,351,646.75	3,351,646.75	3,351,646.75	4,214,822.83	-	-
2015 July 1	18	7,466,866.79	3,024,700.59	253,166.76	3,277,887.35	3,277,887.35	3,277,887.35	4,198,979.44	-	-
2016 January 1	19 4/	7,602,063.11	3,024,700.59	179,879.62	3,204,580.21	3,204,580.21	3,204,580.21	4,397,512.90	0.00	0.00
2016 July 1	20 5/	7,978,677.66	3,024,700.59	102,923.14	3,127,623.74	3,127,623.74	3,127,623.74	4,851,053.94	0.00	0.00
2017 January 1	21 6/	9,694,106.66	3,024,700.59	18,029.70	3,042,730.29	3,042,730.29	3,042,730.29	1,030,268.48	5,621,107.88	-
2017 July 1	22	7,742,284.98	2,926,685.34	-	2,926,685.34	2,926,685.34	2,926,685.34	-	4,815,599.64	-
2018 January 1	23	7,742,284.98	2,842,715.72	-	2,842,715.72	2,842,715.72	2,842,715.72	-	4,899,569.26	-
2018 July 1	24	7,742,284.98	2,757,281.94	-	2,757,281.94	2,757,281.94	2,757,281.94	-	4,985,003.04	-
2019 January 1	25	7,742,284.98	2,670,358.44	-	2,670,358.44	2,670,358.44	2,670,358.44	-	5,071,926.54	-
2019 July 1	26	7,742,284.98	2,581,919.25	-	2,581,919.25	2,581,919.25	2,581,919.25	-	5,160,365.73	-
2020 January 1	27	7,742,284.98	2,491,937.96	-	2,491,937.96	2,491,937.96	2,491,937.96	-	5,250,347.02	-
2020 July 1	28	7,742,284.98	2,400,387.66	-	2,400,387.66	2,400,387.66	2,400,387.66	-	5,341,897.32	-
2021 January 1	29	7,742,284.98	2,307,240.99	-	2,307,240.99	2,307,240.99	2,307,240.99	-	5,435,043.99	-
2021 July 1	30	7,742,284.98	2,212,470.13	-	2,212,470.13	2,212,470.13	2,212,470.13	-	5,528,814.85	-
2022 January 1	31	7,742,284.98	2,116,046.75	-	2,116,046.75	2,116,046.75	2,116,046.75	-	5,626,238.23	-
2022 July 1	32	7,742,284.98	2,017,942.03	-	2,017,942.03	2,017,942.03	2,017,942.03	-	5,724,342.95	-
2023 January 1	33	7,742,284.98	1,916,126.66	-	1,916,126.66	1,916,126.66	1,916,126.66	-	5,824,158.32	-
2023 July 1	34	7,742,284.98	1,816,570.82	-	1,816,570.82	1,816,570.82	1,816,570.82	-	5,925,714.16	-
2024 January 1	35	7,742,284.98	1,713,244.14	-	1,713,244.14	1,713,244.14	1,713,244.14	-	6,029,040.84	-
2024 July 1	36	7,742,284.98	1,608,115.75	-	1,608,115.75	1,608,115.75	1,608,115.75	-	6,134,169.23	-
2025 January 1	37	7,742,284.98	1,501,154.24	-	1,501,154.24	1,501,154.24	1,501,154.24	-	6,241,130.74	-
2025 July 1	38	7,742,284.98	1,392,327.65	-	1,392,327.65	1,392,327.65	1,392,327.65	-	6,349,957.33	-
2026 January 1	39	7,742,284.98	1,281,603.44	-	1,281,603.44	1,281,603.44	1,281,603.44	-	6,460,681.54	-
2026 July 1	40	7,742,284.98	1,168,948.54	-	1,168,948.54	1,168,948.54	1,168,948.54	-	6,573,336.44	-
2027 January 1	41	7,742,284.98	1,054,329.27	-	1,054,329.27	1,054,329.27	1,054,329.27	-	6,687,955.71	-
2027 July 1	42	6,815,452.30	937,711.39	-	937,711.39	937,711.39	937,711.39	-	6,800,408.84	-
2028 January 1	43	6,815,452.30	835,221.22	-	835,221.22	835,221.22	835,221.22	-	6,919,133.40	-
2028 July 1	44	6,815,452.30	730,943.93	-	730,943.93	730,943.93	730,943.93	-	7,040,036.41	-
2029 January 1	45	6,815,452.30	624,848.36	-	624,848.36	624,848.36	624,848.36	-	7,168,814.85	-
2029 July 1	46	6,815,452.30	516,902.80	-	516,902.80	516,902.80	516,902.80	-	7,298,549.59	-
2030 January 1	47	6,815,452.30	407,074.99	-	407,074.99	407,074.99	407,074.99	-	7,430,387.54	-
2030 July 1	48	6,815,452.30	295,332.11	-	295,332.11	295,332.11	295,332.11	-	7,567,955.71	-
2031 January 1	49	6,815,452.30	181,640.78	-	181,640.78	181,640.78	181,640.78	-	7,710,336.44	-
2031 July 1	50	6,815,452.30	65,967.01	-	65,967.01	65,967.01	65,967.01	-	7,862,336.44	-
2032 January 1	51	6,815,452.30	-	-	-	-	-	-	7,999,384.48	-
2032 July 1	52	6,815,452.30	-	-	-	-	-	-	8,139,133.40	-
									8,284,649.26	-
									8,430,154.24	-
									8,573,336.44	-
									8,718,814.85	-
									8,866,549.59	-
									9,017,955.71	-
									9,173,384.48	-
									9,324,836.41	-
									9,480,307.54	-
									9,632,799.01	-
									9,791,314.85	-
									9,946,864.48	-
									10,109,455.71	-
									10,270,087.01	-
									10,430,759.26	-
									10,591,473.40	-
									10,753,224.54	-
									10,916,015.68	-
									11,080,847.82	-
									11,246,821.96	-
									11,413,939.10	-
									11,583,190.24	-
									11,754,585.38	-
									11,928,116.52	-
									12,103,732.66	-
									12,281,433.80	-
									12,462,219.94	-
									12,646,092.08	-
									12,833,051.22	-
									13,023,187.36	-
									13,216,500.50	-
									13,413,091.64	-
									13,613,960.78	-
									13,818,118.92	-
									14,026,467.06	-
									14,239,006.20	-
									14,455,736.34	-
									14,676,657.48	-
									14,901,769.62	-
									15,131,071.76	-
									15,364,563.90	-
									15,602,346.04	-
									15,844,518.18	-
									16,091,080.32	-
									16,342,132.46	-
									16,596,776.60	-
									16,855,010.74	-
									17,117,834.88	-
									17,384,249.02	-
									17,654,353.16	-
									17,928,157.30	-
									18,205,661.44	-
									18,486,865.58	-
									18,771,859.72	-
									19,061,643.86	-
									19,356,318.00	-
									19,655,882.14	-
									19,960,336.28	-
									20,269,680.42	-
									20,583,914.56	-
									20,903,028.70	-
									21,227,022.84	-
									21,555,907.98	-
									21,889,683.12	-
									22,228,348.26	-
									22,571,902.40	-
									22,920,346.54	-
									23,273,680.68	-
									23,631,904.82	-
									24,000,008.96	-
									24,372,993.10	-
									24,750,867.24	-
									25,133,731.38	-
									25,521,585.52	-
									25,914,429.66	-
									26,	

2033	January 1	53	6,815,452.30	-	-	-	-	6,815,452.30	-	-	27,994,292.36
	July 1	54	6,815,452.30	-	-	-	-	6,815,452.30	-	-	21,178,840.06
2034	January 1	55	6,815,452.30	-	-	-	-	6,815,452.30	-	-	14,363,387.76
	July 1	56	6,815,452.30	-	-	-	-	6,815,452.30	-	-	7,547,935.46
2035	January 1	57	6,815,452.30	-	-	-	-	6,815,452.30	-	-	732,483.16
	July 1	58	732,483.16	-	-	-	-	732,483.16	-	-	0.00
2036	January 1	59	-	-	-	-	-	-	-	-	0.00
	July 1	60	-	-	-	-	-	-	-	-	0.00

Check Figure

108,893,761.76 15,221,301.73 124,115,063.49 124,115,063.49 83,685,048.19 173,464,508.15 51,406,972.00

- 1/ Includes Out of Basin payments of \$1,111,163 (from recaps dated 8/29/06 to 7/30/07) for the period Oct. 2006 thru Dec. 2006. This was \$1,922,143 short which you will see clear in 2015 to 2017 (footnotes 3 to 6). Beginning Unpaid Cap Int balance updated (Adjusted in 2011 thru Sep 2006 Santa Clara Valley WD - OB.xls).
- 2/ Includes voluntary payment (\$7,166,925.81) made August 13, 2007
- 3/ After FY2018, the contractor has transferred \$1,922,143 from their PUE O&M account to pay their Unused Out of Basin costs for December, 2006. An overpayment of \$9,602.79 existed for Water after FY2015. The contractor is being credited with an earlier period payment to save on interest because the money was available to use in January of 2015.
- 4/ After FY2018, the contractor has transferred \$1,922,143 from their PUE O&M account to pay their Unused Out of Basin costs for December, 2006. A Water overpayment of 135,226.32 existed for FY2016. The contractor is being credited with an earlier period payment to save on interest because the money was available to use in January of 2016.
- 5/ After FY2018, the contractor has transferred \$1,922,143 from their PUE O&M account to pay their Unused Out of Basin costs for December, 2006. A PUE overpayment of 511,810.89 existed for FY2016. The contractor is being credited with an earlier period payment to save on interest because the money was available to use in July of 2016.
- 6/ After FY2018, the contractor has transferred \$1,922,143 from their PUE O&M account to pay their Unused Out of Basin costs for December, 2006. A Water and PUE overpayment existed for FY2017 and therefore the remaining amount of the \$1,922,143 (\$1,175,503) can be used as a payment. The contractor is being credited with an earlier period payment to save on interest because the money was available to use in January of 2017. The contractor has also included \$776,318.68 of interest with their \$1,922,143 as the balance was higher for the years 2007 to 2017.

**EXHIBIT E**  
**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-W0023AB-P 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.

## Exhibit F<sup>@</sup>

### Repayment Obligation - Current Calculation under the WIIN Act, Section 4011 (a) (2)

#### Unpaid Construction Cost from the 2021 Water Rate Books\*

Contractor: Santa Clara Valley Water District (does not include Mercy Springs WD assignment)  
Facility: San Felipe Unit  
Contract: 7-07-20-W0023AB-P

Irrigation Construction Cost (2021 Irrigation Ratebook, Schedule A-2Ba)			
	Unpaid Cost		Discount
Construction Cost	\$	2,353,645	
2020 Repayment (Estimate) **	\$	384,740	
Adjusted Construction Cost	\$	1,968,905	\$ 1,851,825
Intertie Construction Cost (N/A):	\$	255,280	\$ 201,498
Total	\$	2,224,185	\$ 2,053,323
If Paid in Installments (Used 20 yr CMT)			
Due****			
Payment 1	7/1/2021		\$ 527,849
Payment 2	7/1/2022		\$ 527,849
Payment 3	7/1/2023		\$ 527,849
Payment 4	7/1/2024		\$ 527,849
Total Installment Payments			\$ 2,111,396
20 yr CMT Rates - 05/14/2021 (to be adjusted to effective date of contract)®			2.250%
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))			1.125%

M&I Construction Cost (2021 M&I Ratebook, Sch A-2Ba)		
	Unpaid Cost	
Construction Cost:	\$	11,264,094
2020 Repayment (Estimate) **	\$	142,802
Adjusted Construction Cost***:	\$	11,121,292

Calculation Support: Irrigation Lump Sum or First Payment\*\*\*\* 7/1/2021  
Days Until the End of the Fiscal Year 91

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
2021	\$ 1,968,905	\$ 196,891	\$ 194,158	\$ 255,280	\$ 5,937	\$ 5,854	\$ 200,012
2022	\$ 1,772,015	\$ 196,891	\$ 192,534	\$ 249,343	\$ 5,937	\$ 5,805	\$ 198,340
2023	\$ 1,575,124	\$ 196,891	\$ 190,392	\$ 243,407	\$ 5,937	\$ 5,741	\$ 196,133
2024	\$ 1,378,234	\$ 196,891	\$ 188,274	\$ 237,470	\$ 5,937	\$ 5,677	\$ 193,951
2025	\$ 1,181,343	\$ 196,891	\$ 186,180	\$ 231,533	\$ 5,937	\$ 5,614	\$ 191,793
2026	\$ 984,453	\$ 196,891	\$ 184,108	\$ 225,596	\$ 5,937	\$ 5,551	\$ 189,660
2027	\$ 787,562	\$ 196,891	\$ 182,060	\$ 219,660	\$ 5,937	\$ 5,490	\$ 187,550
2028	\$ 590,672	\$ 196,891	\$ 180,035	\$ 213,723	\$ 5,937	\$ 5,429	\$ 185,463
2029	\$ 393,781	\$ 196,891	\$ 178,032	\$ 207,786	\$ 5,937	\$ 5,368	\$ 183,400
2030	\$ 196,891	\$ 196,891	\$ 176,051	\$ 201,849	\$ 5,937	\$ 5,308	\$ 181,360
2031-63				\$ 195,913	\$ 195,913	\$ 145,661	\$ 145,661
Total, Lump Sum Payment		\$ 1,851,825				\$ 201,498	\$ 2,053,323

Amount of Reduction, Lump Sum \$ 117,080 \$ 53,782 \$ 170,862

\* Costs are assumed to be paid and all charges are assumed to be accurate. If at a later date charges are determined to need update, they are still required. Also, unpaid charges are still a requirement under contract.

\*\* 2020 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed.

\*\*\* Excludes Interest to payment date as interest will be computed as an annual expense as usual.

\*\*\*\* Contractor has 60 days from the effective date of the contract or installment dates to make payment.

® To be updated. The WIIN Act requires us to have a Constant Maturity Treasury rate based on the effective date of the contract.

Contract No.7-07-20-W0023AB-P

**EXHIBIT G**  
**LIST OF TRANSFERRED PROJECT FACILITIES**

- 1) Pacheco Bifurcation Structure
- 2) Watsonville Turnout
- 3) Santa Clara Tunnel
- 4) Santa Clara Conduit
- 5) Coyote Pumping Plant
- 6) Coyote Pumping Plant Substation
- 7) Coyote Pumping Plant 115 kV Line

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