

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

5 SECOND AMENDMENT TO
6 CONTRACT BETWEEN
7 THE UNITED STATES AND SAN BENITO COUNTY WATER DISTRICT
8 FOR WATER SERVICE
9 AND FOR OPERATION AND MAINTENANCE
10 OF CERTAIN WORKS OF THE SAN FELIPE DIVISION

11 THIS SECOND AMENDMENT TO CONTRACT No. 8-07-20-W0130, is made this
12 ____ day of _____, 2006 in pursuance generally of the Act of June 17, 1902 (32 Stat.
13 388), and acts amendatory and supplementary thereto, including but not limited to, the Acts of
14 August 26, 1937 (50 Stat. 844), as amended and supplemented; August 4, 1939 (53 Stat. 1187),
15 as amended and supplemented; July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68),
16 August 27, 1967 (81 Stat. 173), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
17 3050), as amended, and Title XXXIV of the Act of October 30, 1992, (106 Stat 4706), all
18 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
19 OF AMERICA, hereinafter referred to as the United States, and THE SAN BENITO COUNTY
20 WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
21 California, duly organized, existing, and acting pursuant to the laws thereof;

22 WITNESSETH, That:

23 EXPLANATORY RECITALS

24 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
25 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
26 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
27 and restoration, generation and distribution of electric energy, salinity control, navigation and
28 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
29 and the San Joaquin River and their tributaries; and

30 [2nd] WHEREAS, the Contractor and the United States entered into a contract for
31 delivery of Central Valley Project water to the Contractor, Contract No. 8-07-20-W0130, dated
32 April 15, 1978, which established terms for the delivery to the Contractor of Central Valley
33 Project Water from June 1, 1987 through February 29, 2028 and was subsequently amended on
34 February 28, 1992, (hereinafter referred to as the “Existing Contract”); and

35 [3rd] WHEREAS, in 1992, Congress enacted the Central Valley Project Improvement
36 Act (CVPIA) (106 Stat. 4706), which addressed the renewal of existing long-term water service
37 contracts and established that certain terms should be included in contracts renewed or amended
38 after January 1, 1988; and

39 [4th] WHEREAS, to promote compliance with the CVPIA, consistent with the goal of
40 ensuring a reliable long-term water supply for the Contractor, the parties desire to amend the
41 Existing Contract pursuant to Federal Reclamation law on the terms and conditions set forth
42 below;

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

45 MODIFICATION TO EXISTING CONTRACT

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

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

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

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

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

62 iii) “Reach 3” shall mean the facilities from, but not including, the
63 Watsonville Turnout facility to and including the Coyote Pumping Plant, including but not

64 limited to, the Santa Clara Tunnel and Conduit, Coyote Pumping Plant, Coyote Pumping Plant
65 Substation and Coyote Pumping Plant 115 kv Line;

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

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

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

73 (m) “Contract” shall mean the Existing Contract as amended hereby;

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

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

80 (p) “Full Cost Rate” shall mean an annual rate, as determined by the
81 Contracting Officer, that shall amortize the expenditures for construction properly allocable to
82 the Project irrigation or M&I functions, as appropriate, or facilities in service including all O&M
83 deficits funded, less payments, over such periods as may be required under Federal Reclamation
84 law or applicable contract provisions. Interest will accrue on both the construction expenditures

85 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
86 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
87 in accordance with subsections 202(3)(b) and (3)(C) of the RRA. The Full Cost Rate includes
88 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules
89 and Regulations of the RRA;

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

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

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

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

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

108 “In the event that reduced deliveries within the Division are necessary, Project water furnished
109 under this Contract will be allocated in accordance with the Central Valley Project M&I Water
110 Shortage Policy. Such policy shall be amended, modified, or superseded only through a public
111 notice and comment procedure.”

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

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

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

121 (d)(1)(i) The Contractor has established a measuring program satisfactory to the
122 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
123 purposes to the Contractor’s customers within the Contractor’s Service Area is measured at each
124 agricultural turnout and such water delivered for M&I purposes to the Contractor’s customers is
125 measured at each M&I service connection. The water measuring devices or water measuring

126 methods of comparable effectiveness must be acceptable to the Contracting Officer. The
127 Contractor shall be responsible for ensuring that its retail customers are installing, operating, and
128 maintaining and repairing all measuring devices and implementing all water measuring methods
129 at no cost to the United States. The Contractor shall use the information obtained from such
130 water measuring devices or water measuring methods to ensure its proper management of the
131 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water
132 delivered for M&I purposes by customer class as defined in the Contractor's water conservation
133 plan provided for in Article 43 of this Contract. Nothing herein contained, however, shall
134 preclude the Contractor from establishing and collecting any charges, assessments, or other
135 revenues authorized by California law. The Contractor shall include a summary of all its annual
136 surface water deliveries in the annual report described in subdivision (c) of Article 43.

137 (d)(1)(ii) To the extent the information has not otherwise been provided,
138 upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written
139 report describing the measurement devices or water measuring methods being used or to be used
140 to implement subdivision (d)(1)(i) of this Article and identifying the agricultural turnouts and the
141 M&I service connections or alternative measurement programs approved by the Contracting
142 Officer, at which such measurement devices or water measuring methods are being used, and, if
143 applicable, identifying the locations at which such devices and/or methods are not yet being used
144 including a time schedule for implementation at such locations. The Contracting Officer shall
145 advise the Contractor in writing within 60 days as to the adequacy, and necessary modifications,
146 if any, of the measuring devices or water measuring methods identified in the Contractor's report

147 and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If
148 the Contracting Officer notifies the Contractor that the measuring devices or methods are
149 inadequate, the parties shall within 60 days following the Contracting Officer's response,
150 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
151 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
152 compliance with subdivision (d)(1)(i) of this Article.

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

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

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

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

165 RATES AND METHOD OF PAYMENT FOR WATER

166 11. (a) The Contractor shall pay the United States as provided in this Article for
167 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
168 accordance with: (i) the Secretary of the Interior’s Irrigation Ratesetting Policy and the
169 Secretary’s then-existing ratesetting policy for M&I water. Such ratesetting policies shall be
170 amended, modified, or superseded only through a public notice and comment procedure; (ii)
171 applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii)
172 other applicable provisions of this Contract. Payments shall be made by cash transaction,
173 electronic funds transfer, or any other mechanism as may be agreed to in writing by the
174 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component
175 applicable to the Contractor upon execution of this Contract are set forth in Exhibit “B,” which
176 shall be attached hereto, as may be revised annually.

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

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

185 period October 1 of the current calendar year, through September 30, of the following calendar
186 year, and such notification shall revise Exhibit "B."

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

194 (c) At the time the Contractor submits the initial schedule for the delivery of
195 Project water for each year pursuant to Article 4 of this Contract, the Contractor shall make an
196 advance payment to the United States equal to the total amount payable pursuant to the
197 applicable Rate(s) set under subdivision (a) of this Article, for the Project water scheduled to be
198 delivered pursuant to this Contract during the first two calendar months of the year. Before the
199 end of the first month and before the end of each calendar month thereafter, the Contractor shall
200 make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this
201 Article, for the water scheduled to be delivered pursuant to this Contract during the second
202 month immediately following. Adjustments between advance payments for water scheduled and
203 payments at Rates due for Water Delivered shall be made before the end of the following month;
204 Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this

205 Contract which increases the amount of Water Delivered pursuant to this contract during any
206 month shall be accompanied with appropriate advance payment, at the Rates then in effect, to
207 assure that Project water is not delivered to the Contractor in advance of such payment. In any
208 month in which the quantity of Water Delivered to the Contractor pursuant to this Contract
209 equals the quantity of water scheduled and paid for by the Contractor, no additional Project water
210 shall be delivered to the Contractor unless and until an advance payment at the Rates then in
211 effect for such additional Project water is made. Final adjustment between the advance
212 payments for the water scheduled and payments for the quantities of Water Delivered during
213 each year pursuant to this Contract shall be made as soon as practicable but no later than April
214 30th of the following year.

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

225 shall be made through the adjustment of payments due to the United States for Charges for the
226 next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing
227 Component shall be computed pursuant to Article 14 of this Contract.

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

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

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

240 (h) The Contracting Officer shall keep its accounts pertaining to the
241 administration of the financial terms and conditions of its long-term contracts, in accordance
242 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
243 The Contracting Officer shall, each year upon request of the Contractor, provide to the

244 Contractor a detailed accounting of all Project and Contractor expense allocations, the
245 disposition of all Project and Contractor revenues, and a summary of all water delivery
246 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
247 to resolve any discrepancies or disputes relating to accountings, reports, or information.

248 (i) The parties acknowledge and agree that the efficient administration of this
249 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
250 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,
251 and/or for making and allocating payments, other than those set forth in this Article may be in
252 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
253 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
254 this Contract is in effect without amending this Contract.

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

264 pursuant to the Contract shall equal the difference between (i) the Rate established under
265 subdivision (a) of this Article and (ii) the Full Cost Rate for agricultural water or Full Cost Rate
266 for M&I water, whichever is applicable.

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

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

280 (k) For the term of this Contract, Rates applied under the respective
281 ratesetting policies will be established to recover only reimbursable O&M (including any
282 deficits) and capital costs of the Project, as those terms are used in the then-current Project

283 ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is
284 applicable in accordance with the relevant Project ratesetting policy. Changes of significance in
285 practices which implement the Contracting Officer's ratesetting policies will not be implemented
286 until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,
287 need, and impact of the proposed change.

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

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

298 REPAYMENT OBLIGATION

299 The Contractor's repayment obligation is described below:

300 12. (a) Repayment of San Felipe Division Facilities. The Contractor and Santa
301 Clara Valley Water District are each entering into contracts with the United States committing to
302 repay their separate, individual share of the total reimbursable capital costs for the San Felipe

303 Division Facilities. These contracts collectively will provide for repayment of the unpaid
304 reimbursable capital costs as of September 30, 2006. Until the final accounting of such costs is
305 available, the Contractor's and Santa Clara Valley Water District's interim repayment terms will
306 be based on the September 30, 2004, reimbursable capital costs for San Felipe Division
307 Facilities, which totaled \$319,417,648, as shown on Exhibit C, which exhibit may be revised by
308 mutual agreement of the parties and Santa Clara Valley Water District without amending this
309 Contract. These reimbursable capital costs for the San Felipe Division are summarized below:

310 (1) Reach 1 Facilities. The total reimbursable capital cost of Reach 1
311 Facilities including allocated interest during construction as of September 30, 2004, is
312 \$154,488,043.

313 (2) Reach 2 Facilities and Reach 3 Facilities. The total reimbursable
314 capital cost of Reach 2 Facilities and Reach 3 Facilities including allocated interest during
315 construction as of September 30, 2004, is \$101,192,916.

316 (3) San Benito Facilities. The total reimbursable capital costs of the
317 San Benito Facilities including allocated interest during construction as of September 30, 2004,
318 is \$63,736,689.

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

321 (b) Final Accounting for San Felipe Division Facilities. In the event that the
322 September 30, 2006, final accounting of the unpaid reimbursable capital costs for the San Felipe
323 Division Facilities is not available by December 31, 2007, the Contractor's and Santa Clara

324 Valley Water District's repayment obligations will be based on the most recent total
325 reimbursable capital costs available, and include all payments through December 31, 2007.

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

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

340 (e) Repayment Obligation and Annual Payment Schedule.

341 (1) Interim Repayment Obligation. The Contractor's interim
342 repayment obligation will be computed by totaling its separate, individual share of reimbursable
343 capital costs for Reach 1 Facilities and San Benito Facilities, as of September 30, 2004, shown
344 on Exhibit C, plus its unpaid capital interest, minus its accumulated repayment as of

345 September 30, 2004. The Contractor's annual payment schedule shown on Exhibit D reflects an
346 allocation of Reach 1 Facilities cost to the Contractor of 22 percent, and a stepped repayment
347 structure.

348 (2) Final Repayment Obligation. Using the same allocation of Reach
349 1 Facilities cost to the Contractor and the same stepped repayment structure as in subparagraph
350 (e)(1), the Contractor's final repayment obligation for San Felipe Division Facilities will be
351 computed by totaling its separate, individual share of reimbursable capital costs for Reach 1
352 Facilities, and San Benito Facilities, as of September 30, 2006, plus its final balance of unpaid
353 capital interest, minus its final accumulated repayment. The reimbursable San Felipe Division
354 capital costs shown on Exhibit C, and the Contractor's annual payment schedule on Exhibit D
355 will be revised in a manner consistent with the above, without amending this Contract.

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

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

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

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

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

372 **CHARGES FOR DELINQUENT PAYMENTS**

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

382 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
383 in the Federal Register by the Department of the Treasury for application to overdue payments,
384 or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the
385 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
386 determined as of the due date and remain fixed for the duration of the delinquent period.

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

390 7. **Subdivision (5) of Article 16 of the Existing Contract entitled**
391 **CONVEYANCE OF NON-PROJECT WATER** is hereby amended by deleting the words:
392 “the provisions of Articles 24, 25 and 26” and substituting therefore the words “the provisions of
393 subdivision (b) of Article 31 of this Contract.”

394 8. **Article 17 of the Existing Contract entitled TRANSFER OF CARE,**
395 **OPERATION, AND MAINTENANCE OF SAN BENITO FACILITIES TO THE**
396 **CONTRACTOR** is hereby amended by changing its designation as article 17, to article
397 “17.1”, and the following is added as article 17:

398 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

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

406 (b) The Contracting Officer has previously notified the Contractor in writing
407 that the Operation and Maintenance of a portion of the Project facilities which serve the
408 Contractor has been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota

409 Water Authority, and therefore, the Contractor shall pay directly to the Operating Non-Federal
410 Entity San Luis & Delta-Mendota Water Authority, or to any successor approved by the
411 Contracting Officer under the terms and conditions of the separate agreement between the United
412 States and the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
413 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind,
414 including any assessment for reserve funds, which the Operating Non-Federal Entity San Luis &
415 Delta-Mendota Water Authority or such successor determines, sets, or establishes for the O&M
416 of the portion of the Project facilities operated and maintained by the Operating Non-Federal
417 Entity San Luis & Delta-Mendota Water Authority or such successor. Such direct payments to
418 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor
419 shall not relieve the Contractor of its obligation to pay directly to the United States the
420 Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the
421 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
422 payments on behalf of the United States in accordance with the separate agreement identified in
423 subdivision (a) of this Article.

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

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

439 9. Article 18 of the Existing Contract entitled **CARE, OPERATION, AND**
440 **MAINTENANCE OF TRANSFERRED AND OTHER DIVISION WORKS** is hereby
441 **amended as follows:**

442 **A new subdivision (c) is added as follows, and the remaining subdivisions are redesignated**
443 **(d) – (r) accordingly:**

444 (c) The Contractor is authorized under this Contract to undertake activities
445 necessary for the complete care, operation, maintenance and replacement of the San Benito
446 Facilities, to ensure efficient and reliable operating condition and fulfillment of authorized
447 San Felipe Division purposes. The Contracting Officer shall use its best efforts to promptly
448 review proposals for work to be undertaken by the Contractor pursuant to said agreement, and to
449 promptly coordinate and facilitate such work. To the extent that the approval or determination of

450 the Contracting Officer is required in connection with any such activities, such approval or
451 determination shall not be unreasonably withheld.

452 10. **The Existing Contract is hereby amended to add Articles 18.1 and 18.2**
453 **entitled RIGHT TO RECOVER COSTS INCURRED BY SAN BENITO COUNTY**
454 **WATER DISTRICT; and RIGHT TO RECOVER COSTS INCURRED BY SANTA**
455 **CLARA VALLEY WATER DISTRICT:**

456 RIGHT TO RECOVER COSTS INCURRED BY SAN BENITO COUNTY WATER
457 DISTRICT

458 18.1 (a) In addition to operation and maintenance charges, the Contractor, as the
459 Operating Non-Federal Entity for the San Benito Facilities, has the right to impose upon any
460 entity a charge to recover costs incurred by the Contractor in accordance with this Contract,
461 provided such charges are just and reasonable.

462 (b) In any contract with an entity or individual to deliver Project water or non-
463 Project water through the San Benito Facilities, the Contracting Officer shall require that such
464 entity or individual enter into an agreement with the Contractor to pay such charges as are just
465 and reasonable for use of the San Benito Facilities.

466 RIGHT TO RECOVER COSTS INCURRED BY SANTA CLARA VALLEY WATER
467 DISTRICT

468 18.2 (a) Santa Clara Valley Water District, as the Operating Non-Federal Entity,
469 has the right to require any entity to pay Santa Clara Valley Water District an amount(s) to
470 recover costs incurred by Santa Clara Valley Water District for Reach 1 Facilities, Reach 2
471 Facilities, and Reach 3 Facilities, in addition to O&M costs, provided that such amount(s) are

472 just and reasonable. In any contract or approval by the Contracting Officer to deliver water
473 through such Facilities, the Contracting Officer shall require the entity to pay such amount(s) to
474 Santa Clara Valley Water District, upon presentation of Santa Clara Valley Water District's
475 invoice therefore;

476 (b) Unless otherwise agreed, Santa Clara Valley Water District's right to
477 recover capital costs from the Contractor is limited to such capital costs for its share of Reach 1
478 Facilities that are not paid directly to the United States by the Contractor under the terms of this
479 Contract as may be further amended or renewed. The Contractor's share of Reach 1 Facilities
480 shall be based on Article 3(b) of Contract No. 6-07-20-X0290 entitled Contract For The Transfer
481 Of The Operation And Maintenance Of Certain San Felipe Division Facilities between the
482 United States and Santa Clara Valley Water District dated September 8, 1986, or as otherwise
483 mutually agreed upon by the Contractor and Santa Clara Valley Water District in a separate
484 contract.

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

491 (b) Except as provided by the San Felipe Division Act of August 28,
492 1967 (81 Stat. 173), the parties agree that the delivery of agricultural water or use of Federal
493 facilities pursuant to this Contract is subject to Federal Reclamation law, including but not
494 limited to the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and
495 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under
496 Federal Reclamation law.

497 12. **The Existing Contract is hereby amended to add Article 43 entitled WATER**
498 **CONSERVATION:**

499 WATER CONSERVATION

500 43. (a) Prior to the delivery of water provided from or conveyed through
501 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
502 shall be implementing an effective water conservation and efficiency program based on the
503 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
504 the conservation and efficiency criteria for evaluating water conservation plans established under
505 Federal law. The water conservation and efficiency program shall contain definite water
506 conservation objectives, appropriate economically feasible water conservation measures, and
507 time schedules for meeting those objectives. Continued Project water delivery pursuant to this
508 Contract shall be contingent upon the Contractor's continued implementation of such water
509 conservation program. In the event the Contractor's water conservation plan or any revised water
510 conservation plan completed pursuant to this Contract have not yet been determined by the

511 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer
512 determines are beyond the control of the Contractor, water deliveries shall be made under this
513 Contract so long as the Contractor diligently works with the Contracting Officer to obtain such
514 determination at the earliest practicable date, and thereafter the Contractor immediately begins
515 implementing its water conservation and efficiency program in accordance with the time
516 schedules therein.

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

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

525 (d) At 5 year intervals, the Contractor shall revise its water conservation plan
526 to reflect the then current conservation and efficiency criteria for evaluating water conservation
527 plans established under Federal law and submit such revised water management plan to the
528 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
529 the water conservation plan meets Reclamation's then current conservation and efficiency
530 criteria for evaluating water conservation plans established under Federal law.

531 (e) If the Contractor is engaged in direct groundwater recharge, such activity
532 shall be described in the Contractor’s water conservation plan.

533 13. Except as expressly modified by the provisions hereof, the Existing Contract shall
534 remain in full force and effect.

535 IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to
536 Contract 8-7-20-W0130 on the day and year first above written.

537 THE UNITED STATES OF AMERICA

538
539
540
541 By: _____
542 Regional Director, Mid-Pacific Region
543 Bureau of Reclamation
544

545
546 SAN BENITO COUNTY WATER DISTRICT

547
548
549
550
551 By: _____
552 President of the Board of Directors
553

554
555 Attest:

556
557
558
559 By: _____
560 Secretary of the Board of Directors
561
562
563

EXHIBIT A
[San Benito County Water District Service Area Map]

EXHIBIT B
[RATES AND CHARGES]

EXHIBIT B

March 1, 2006 to February 28, 2007, Water Rates
for Second Amendment to Contract No. 8-07-20-W0130
San Benito County Water Conservation and Flood Control District

<u>BUREAU OF RECLAMATION</u> <u>O&M COST-OF-SERVICE RATES:</u>	<u>Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&I</u> <u>Water</u>
Capital Rate	\$8.90	\$15.02
O&M Rates:		
Water Marketing	6.09	4.36
Storage	6.42	8.18
Direct Pumping	<u>9.52</u>	9.52
TOTAL O&M RATES	\$22.03	\$22.06
CFO/PFR Adjustment Rate:	\$0.00	\$0.00
Deficit Rates:		
Non-Interest Bearing	N/A	N/A
Interest Bearing	<u>\$0.00</u>	<u>\$0.00</u>
TOTAL DEFICIT RATE	\$0.00	\$0.00
TOTAL COST-OF-SERVICE RATES (COS)	<u>\$30.93</u>	<u>\$37.08</u>

FULL COST RATES

Section 202(3) Rates is applicable to a Qualified Recipient
or to a Limited Recipient receiving irrigation
water
on or before October 1, 1981. **\$46.29**

Section 205(a)(3) Rate is applicable to a
Limited
Recipient that did not receive irrigation water

on
 or before October 1, 1981. **\$54.83**

TIERED PRICING RATES

Tier 1 Pricing Rate <= 80%
 of Contract total [COS Rate] **\$30.93** **\$37.08**

Tier 2 Pricing Rate > 80% <= 90%
 of Contract Total [Full Cost Rate [(202(3)) +
 (COS Rate)/2]¹ **\$38.61** **\$42.84**

Tier 3 Pricing Rate > 90%
 of Contract Total [Full Cost Rate [202(3)]¹ **\$46.29** **\$48.59**

¹ *When triggered, district must assess those irrigation users already subject to full cost rates. Greater rate will apply.*

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

Restoration Payments (3407 (d)(2)(A)) **\$8.24** **\$16.49**

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

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

M&I HISTORIC USE
FOR 2006 CONTRACT YEAR:

4,288 acre-feet

EXHIBIT C
SAN FELIPE DIVISION REIMBURSABLE CAPITAL COSTS

	Total	Reach 1 Facilities	Reach 2 Facilities	Reach 3 Facilities	SBCWD Facilities
Reclamation Facilities					
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		\$30,853,312	\$37,023,974	
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	\$5,840,252	\$7,008,303	\$2,303,536
San Felipe Division Permanent Operating Facilities	\$234,222	\$111,996	\$25,262	\$46,758	\$50,206
San Felipe Division Wildlife Mitigation Lands	\$301,445	\$144,140	\$32,512	\$60,178	\$64,615
Power System					
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	\$154,488,043	\$36,751,338	\$64,441,578	\$63,736,689

¹ Amounts listed for each facility include interest during construction.

**EXHIBIT D
SAN FELIPE DIVISION
ANNUAL REPAMENT SCHEDULE**

	Irrigation	M&I	Unpd Capital Int	
SCVWD & SBCWD	\$94,258,467	\$192,721,605	\$82,790,528	\$369,770,600
Excess Capacity	\$30,231,310			\$30,231,310
Total to be Repaid	\$124,489,777	\$192,721,605	\$82,790,528	\$400,001,910
	0%	3.4874%	3.5000%	

	Payment Due Date January	Year	Payment			Total
			Ag	M&I	Unpd Cap Int	
2007		1	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2008		2	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2009		3	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2010		4	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2011		5	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2012		6	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2013		7	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2014		8	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2015		9	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2016		10	\$256,774	\$10,109,670	\$5,901,050	\$16,267,494
2017		11	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2018		12	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2019		13	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2020		14	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2021		15	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2022		16	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2023		17	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2024		18	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2025		19	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2026		20	\$4,084,536	\$10,109,248	\$3,068,267	\$17,262,051
2027		21	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2028		22	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2029		23	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2030		24	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2031		25	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2032		26	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2033		27	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2034		28	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2035		29	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182
2036		30	\$8,107,667	\$10,109,248	\$3,068,267	\$21,285,182

* Final Exhibits will be Contractor-specific.