

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

5 AGREEMENT BETWEEN THE UNITED STATES
6 AND
7 SANTA CLARA VALLEY WATER DISTRICT
8 FOR THE ADVANCE PAYMENT OF OPERATION AND MAINTENANCE COSTS

9 THIS AGREEMENT, entered into this 11th day of December, 2014, in
10 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof
11 and supplementary thereto, including but not limited to the Act of January 12, 1927
12 (44 Stat. 957), the Act of August 26, 1937 (50 Stat. 844), as amended and supplemented, the Act
13 of August 4, 1939 (53 Stat. 1187), as amended and supplemented, and Title XXXIV of the Act
14 of October 30, 1992 (106 Stat. 4706), all collectively referred to as Federal Reclamation law,
15 between the UNITED STATES OF AMERICA, acting by and through the Department of the
16 Interior, Bureau of Reclamation, hereinafter referred to as Reclamation, and SANTA CLARA
17 VALLEY WATER DISTRICT, hereinafter referred to as the Contractor, a duly organized public
18 entity of the State of California, existing and acting pursuant to the laws thereof;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

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

ORIGINAL

27 WHEREAS, Reclamation and the Contractor entered into Contract
28 No. 7-07-02-W0023, hereinafter referred to as the Water Service Contract, dated June 7, 1977, as
29 amended, to provide for continued water service from the Project to the Contractor through
30 December 31, 2027; and

31 WHEREAS, subarticle (c) of Article 11 of the Water Service Contract requires
32 the Contractor to make and maintain a two month advance payment of Operation and
33 Maintenance and related costs that are paid by the Contractor through its water Rate; and

34 WHEREAS, the Act of January 12, 1927 allows Reclamation to direct advanced
35 O&M funds to the specific project and purpose for which advanced; and

36 WHEREAS, subarticle (i) of Article 11 of the Water Service Contract specifically
37 allows for the execution of separate agreements for the purpose of modifying the mechanisms,
38 policies and procedures used for establishing Rates and Charges and/or for making and
39 allocating payments pursuant to the Water Service Contract; and

40 WHEREAS, Reclamation and the Contractor entered into Agreement
41 No. 09-WC-20-3802, dated April 9, 2009, to provide for advance payments of O&M Activities
42 payable to Reclamation on a different scheduled than provided for under the Water Service
43 Contract; and

44 WHEREAS, the above referenced Agreement was replaced with Agreement
45 No. 12-WC-20-4351, dated September 6, 2012, which provided for the continued advance
46 payment of O&M Activities on a different schedule; and

47 WHEREAS, the above referenced Agreement was replaced with Agreement
48 No. 13-WC-20-4452, dated August 30, 2013, which provided for the continued advance payment
49 of O&M Activities on a different schedule; and

50 WHEREAS, Reclamation and the Contractor desire to enter into this Agreement
51 to replace Agreement No. 13-WC-20-4452, to further provide for advance payments of O&M
52 Activities payable to Reclamation on a different schedule than provided under the Water Service
53 Contract; and

54 WHEREAS, Reclamation and the Contractor agree that the administration and
55 application of the terms and conditions of this Agreement shall not interfere or conflict with the
56 administration of the Water Service Contract; and

57 WHEREAS, it is Reclamation's intent to execute similar agreements with other
58 CVP contractors for the advance payment of O&M Activities under the same terms and
59 conditions set forth in this Agreement; and

60 WHEREAS, Reclamation has determined that the Contractor is in compliance
61 with all of its obligations under the Water Service Contract, and appropriate environmental
62 review has been completed for this Agreement; and

63 WHEREAS, Reclamation and the Contractor are willing to enter into this
64 Agreement pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

67 DEFINITIONS

68 1. When used herein unless otherwise distinctly expressed, or manifestly
69 incompatible with the intent of the parties as expressed in this Agreement, the term:

70 (a) "Advanced Funds" shall mean funds provided to Reclamation to pay the
71 costs for the O&M Activities;

72 (b) "Calendar Year" shall mean the period January 1 through December 31,
73 both dates inclusive;

74 (c) "Contracting Officer" shall mean the Secretary of the Interior's duly
75 authorized representative acting pursuant to this Agreement or applicable Federal Reclamation
76 law or regulation;

77 (d) "CVP Delta and Miscellaneous Project Divisions" shall mean those
78 Divisions of the CVP identified in the budget, and shall have the same meaning as those terms
79 are used in the budget process;

80 (e) "Fiscal Year" shall mean the period from and including October 1 of each
81 Calendar Year through the last day of September of the following Calendar Year;

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

85 (g) "O&M Activities" shall mean reimbursable administration and
86 compliance work performed by Reclamation under the CVP Delta and Miscellaneous Project
87 Division activities;

88 (h) "O&M Costs" shall mean all costs incurred by Reclamation for O&M of
89 CVP facilities;

90 (i) "O&M Component" shall mean that portion of the total Rate that is
91 allocated based on the total reimbursable O&M and related costs of the Project;

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

94 (k) "Project Water" shall mean water that is developed, diverted, stored, or
95 delivered by the Secretary in accordance with the statutes authorizing the Project, and in
96 accordance with the terms and conditions of water rights acquired pursuant to California law;

97 (l) "Rate" shall mean the amounts to recover costs determined annually by
98 the Contracting Officer in accordance with the then-current applicable water ratesetting policies
99 for the Project that are charged by the Contracting Officer to recover the reimbursable costs of
100 the Project; and

101 (m) "Year" shall mean the period from and including March 1 of each
102 Calendar Year through the last day of February of the following Calendar Year.

103 TERM OF AGREEMENT

104 2. This Agreement shall be effective on the date written above, after execution by
105 the Contracting Officer and the Contractor, and shall remain in effect through September 30, 2015.
106 If at any time during the term of this Agreement, the Contracting Officer determines that the
107 Contractor is not complying with any of the terms and conditions of this Agreement, including
108 non-compliance with payment due dates identified in Article 3(b), the Contracting Officer may
109 terminate this Agreement upon 30 days' written notice to the Contractor. The Contractor may
110 terminate this Agreement at any time while this Agreement is in effect upon 30 days prior
111 written notice to the Contracting Officer; *Provided*, That funds advanced under this Agreement
112 prior to the Contractor providing such written notice will not be refunded to the Contractor but
113 will continue to be credited consistent with Article 3(c) of this Agreement.

114 ADVANCEMENT OF O&M FUNDS BY THE CONTRACTOR

115 3. (a) Notwithstanding the requirements of subarticle (c) of Article 11 of the
116 Water Service Contract, the Contractor may make and maintain more than a two month advance

117 payment schedule for water scheduled to be delivered during the Year. This Agreement allows
118 the Contractor to make and maintain an advance payment schedule that is longer than two
119 months for O&M Activities that are payable to Reclamation pursuant to the existing Water
120 Service Contract.

121 (b) As of the date of this Agreement, Reclamation has advised the Contractor
122 of the amount of budgeted costs for O&M Activities as provided in the President's Fiscal Year
123 2015 Budget. On or before December 11, 2014 the Contractor will pay to Reclamation the
124 Contractor's desired amount of Advanced Funds which will be used to perform Reclamation
125 O&M Activities; *Provided*, That in no event shall the amount of Advanced Funds be less than
126 the amount payable under the Water Service Contract. If Advanced Funds are not received by
127 Reclamation by December 11, 2014, this Agreement shall be terminated, and payment for O&M
128 will be collected consistent with the Water Service Contract. Reclamation can only accept
129 Advanced Funds on or before December 11, 2014 pursuant to this Agreement. Advanced Funds
130 paid by the Contractor after December 11, 2014 or on any other payment schedule will not be
131 accepted under this Agreement.

132 (c.1) Reclamation will establish an advance account in the U.S. Treasury for
133 Advanced Funds paid by the Contractor under this Agreement. Contractor Advanced Funds
134 along with remaining funds appropriated for CVP O&M Activities will be utilized to fund CVP
135 O&M Activities for the Fiscal Year. As funds are expended from the advance account for O&M
136 Activities, these amounts will be tracked to be applied to the Contractor's allocable O&M Costs
137 for that Year during the preparation of the final accountings. Upon issuing water Rates
138 applicable for the Year pursuant to the Water Service Contract, the Contractor's O&M
139 Component rate will be modified to reflect projected O&M charges based on the amount of

140 Advanced Funds. If the amount advanced by the Contractor is insufficient to cover its projected
141 allocated O&M Costs for the Year, then an appropriate O&M Component will be added to the
142 Contractor's Rate for that Year. At the conclusion of the Year, if Advanced Funds are
143 insufficient to cover actual O&M Activities for the Year, the deficit will be carried forward to
144 the following Year pursuant to appropriate Reclamation ratesetting policy.

145 (c.2) Under Agreement No. 13-WC-20-4452, the Contractor provided
146 Reclamation Advanced Funds that may have exceeded the Contractor's actual allocable O&M
147 Costs. If so, pursuant to Article 3(c.1), Reclamation will carry forward the excess into the
148 appropriate year whether Calendar Year, Fiscal Year, or Year as the terms are defined in this
149 Agreement. Reclamation will carry forward that excess into each appropriate year, until that
150 excess amount has been fully applied to allocable O&M Costs.

151 (d) No refund will be made of any amounts advanced pursuant to this
152 Agreement.

153 (e) The provisions of subarticles (c.1), (c.2), and (d) above shall survive
154 termination of this Agreement.

155 UNITED STATES NOT LIABLE

156 4. (a) Reclamation will assume no liability whatsoever under this Agreement for
157 any changes in Federal appropriations, law, or policy that in any way limits or eliminates any
158 appropriated funds being made available to fund O&M Activities in the future.

159 (b) Advanced Funds paid by the Contractor will remain in an advance account
160 and will continue to be available pursuant to the terms and conditions of this Agreement for
161 eligible O&M Activities until fully expended.

162 (c) The provisions of subarticle (b) above shall survive termination of this
163 Agreement.

164 PRESERVATION OF EXISTING WATER SERVICE CONTRACT

165 5. Except for the provisions that require the Contractor to pay its share of annual
166 Project O&M Costs two months in advance of the delivery of Project Water to the Contractor, all
167 other terms and conditions of the Water Service Contract will remain in full force and effect and
168 will continue to be administered in the same manner as was done prior to execution of this
169 Agreement. If a dispute arises under this Agreement, resolution of the dispute will be governed
170 by the terms and conditions of the Water Service Contract.

171 REPORTS

172 6. Reclamation will provide a quarterly report to participating CVP contractors that
173 displays:

174 (a) The Advanced Funds provided to Reclamation by all participating CVP
175 contractors that executed agreements similar to this Agreement; and

176 (b) The amount of Advanced Funds expended to date; and

177 (c) Outstanding unliquidated obligations for O&M Activities; and

178 (d) Remaining balance in the Advance Fund.

179 The Contractor's execution of this Agreement authorizes Reclamation to share this
180 information with all participating CVP contractors.

181 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of
182 the day and year first above written.

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APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
Steph R. Baker
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

UNITED STATES OF AMERICA

ACTING FOR

By: *Pablo R. Arroyave*
Regional Director, Mid-Pacific Region
Bureau of Reclamation

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SANTA CLARA VALLEY
WATER DISTRICT

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By: *[Signature]*
Chief Executive Officer, Beau Goldie