

AGREEMENT FOR PURCHASE OF WATER FROM THE
WOODBRIDGE IRRIGATION DISTRICT BY THE CITY OF STOCKTON

This Agreement is made and entered into between Woodbridge Irrigation District and the City of Stockton, adjoining public entities located within the County of San Joaquin, State of California, this 22 day of January, 2008.

Background Recitals

a. The City of Stockton obtains a portion of its municipal water supply from wells located within the City, extracting the water from the underground aquifer, which is replenished in part by flows of the Mokelumne River. Stockton desires to acquire a supplemental surface water supply to offset current groundwater pumping as part of its overall conjunctive use program.

b. Because of substantial population growth and increasing water demands in the Stockton metropolitan area, the City is also developing its Delta Water Supply Project to divert surface water from the San Joaquin River, and has obtained Permit 21176 from the State to divert water for that Project. The City needs to supplement that surface water supply in the periods of each year when the diversion of water from that source is restricted by the terms of the City's Water Permit.

c. Woodbridge Irrigation District (District or WID) is an irrigation district that is organized and existing under Division 11 of the California Water Code (Sections 20500 et seq). The District is located immediately west of the City of Lodi and immediately north of the City of Stockton. The District diverts water from the Mokelumne River at Woodbridge Dam, located in the NE 1/4 of the SE 1/4 of Section 34, Township 4 N, Range 6 E, MDBM, for irrigation of a net area of 19,370.3 acres within a gross area of 40,441.77 acres and that are located within Townships 2 N, 3 N, 4 N and 5 N, Ranges 5 E, 6 E and 7 E, MDBM.

d. The District diverts its water supply from the Mokelumne River under pre-1914 appropriative rights for the diversion of water up to 300 cubic feet per second (cfs). The District's pre-1914 rights are overlapped by the District License No. 5945 for the appropriation of 300 cfs per annum from February 1 to October 31 for irrigation use, supplemented by License No. 8214 for the diversion of an additional 114.4 cfs from May 1 to August 31 of each year and from November 1 of each year to January 31 of the succeeding year. The combined rights under the two Licenses together with the District's pre-1914 rights are limited to a maximum diversion of 414.4 cfs.

e. The District, following the East Bay Municipal Utility District's (EBMUD) building of the Pardee and Camanche Reservoirs on the Upper Mokelumne River, entered into Agreements with EBMUD in 1938 after Pardee's completion and again in 1965 after the completion of Camanche, which acknowledged the priority of some of the District rights to the EBMUD rights, and under which agreements EBMUD releases a Regulated Base Supply of water each year from Camanche Reservoir for diversion by the District at Woodbridge Dam for irrigation use.

f. The District's demand for water from the Mokelumne River under its water rights has begun to diminish by reason of the District's water conservation programs, including the conversion of field furrow and flood irrigation methods of application to water applied by drip irrigation and micro-sprinklers, which reduce the amount of applied water for crops. Reductions in the delivery of irrigation water have also occurred and are continuing to occur by reason of the number of irrigated acres being reduced as a result of urbanization of lands in the southern part of the District which are being annexed by the City of Stockton.

g. By reason of the anticipated reductions in water usage within the District, the District has determined that it will have surplus water in certain amounts available under its water entitlements from the Mokelumne River, and the water that would be delivered to the City by this Agreement will be surplus to the needs of the landowners and water users within the District as required by Section 22259 of the Water Code. The District's conveyance facilities traverse the northerly portion of the City of Stockton, and the District could deliver water diverted from the Mokelumne River under its water rights to Stockton at a location along the District's canal system indicated in this Agreement.

h. The City of Stockton desires to contract with the District for the purchase of water from the District for use within the City service area, for which the City will pay on the basis and pursuant to the conditions hereinafter set forth.

NOW, THEREFORE, WOODBRIDGE IRRIGATION DISTRICT (DISTRICT)
AND THE CITY OF STOCKTON (CITY) AGREE AS FOLLOWS:

1. Water to be Made Available to City and Payment. Beginning on January 1, 2009, and continuing through the term of this Agreement, the District shall make available to the City out of District's Regulated Base Supply, 6,500 acre-feet per annum under the terms and conditions herein set forth. In consideration thereof, the City will pay the District annually the sum of \$200 per acre-foot for such water or \$1,300,000 (ONE MILLION THREE HUNDRED THOUSAND DOLLARS) annually. Payments thereon of \$325,000 (THREE HUNDRED TWENTY FIVE THOUSAND DOLLARS) quarterly are due and payable in advance beginning on the first day of each calendar quarter, commencing on January 2, 2009. Said payments shall be made irrespective of whether the City takes the water made available to it under this Agreement and irrespective of whether the District has water available to it under this Agreement for delivery to the City, provided that the District shall make its best efforts to provide to the City the amounts of water provided for in this Agreement.

In lieu of delivering water in 2009, the quarterly payments made to the District in 2009 shall be used by the District for the improvements to be made by the District to the Wilkerson Canal as provided in paragraph 2 below, and any right of way costs that may be incurred, in order to deliver the water to the City. Any funds remaining after the completion of such capital improvements shall be refunded to the City.

After 2009, for each quarter-year payment made by the City prior to the completion and commencement of operation of the City's initial phase of the DWSP (not to exceed a total of

eight calendar quarters), the City shall be entitled to one-fourth of its annual water entitlement that year (1,625 acre-feet) as a carryover credit, to be delivered thereafter at not to exceed a total of 2,000 acre-feet per year, to be provided in years when District has the additional water available to make such deliveries, as provided in paragraph 6.a. hereof.

2. Point of Delivery and Times and Amounts of Delivery. The District agrees to deliver the water to the City from the District's Wilkerson Lateral canal, at the northwest corner of the City's parcel located in the East ½ of the NE ¼ of Section 33, T 3 N, R 6 E, MDB&M (APN 059-030-02, formerly owned by Rodao), as shown in Exhibit A attached hereto. The water will be delivered during the period from March 1 through July 31 of each year, at a uniform rate of delivery, 24 hours per day, throughout the month. The District shall make needed capacity improvements to the Wilkerson lateral, using therefore the proceeds of the payments by the City to the District during the initial year (2009) under the Agreement, as set forth in Section 1 above. The improvements to be made and the schedule for the improvements shall be prepared by the District and shall be approved by the City. The cost of the improvements needed to the Wilkerson Lateral in order to deliver the water to the City shall be at the cost of the City.

The City shall construct at its sole cost and expense the facilities needed to measure and take delivery of water from the District Canal system at a mutually agreed-upon location at the above-described point of delivery, and the design, construction and operation thereof shall be approved by the District. The City will be responsible for all costs of operation, repair, maintenance and replacement of such facilities. The measurement facilities shall be recalibrated annually at the City's expense as requested by the District and the District shall have a continuing right to test the accuracy of such facilities.

a. The City shall provide the District, as soon as possible after January 1 of each year, and in any event not later than February 15 of each year, an estimate of the amount of water anticipated to be needed by the City during each month of that year from March 1 through July 31, which scheduling will be subject to the District's approval. The District will supply such water on said approved monthly schedule pursuant to and as limited by the terms, conditions and limitations of this Agreement; provided that the City shall to the extent that its operations will permit, schedule the taking of as much of its entitlement to water from the District that year prior to July 1 as is feasible, but in any event not less than 3,000 acre feet. The delivery of 6,500 acre-feet of water will be made each year in approximately the following amounts each month. The parties may jointly agree to variations in the monthly delivery schedule amounts subject to the availability of water.

Estimated Deliveries

<u>Month</u>	<u>Amount (af)</u>
March	1,000 ±
April	1,000 ±
May	3,000 ±
June	1,500±
July	1,000 ±
Total (not to exceed)	6,500

Orders for water deliveries and changes thereto must be made upon a 72-hour notice placed in person or by phone with the District on any business day (Monday-Friday) and between the hours of 8 AM to 12 PM and 1 PM to 5 PM. No water orders to turn water on or off or change the rate of delivery shall be left with an answering machine or faxed to the District. Delivery of water shall be at a constant rate until changed by proper notice.

b. At such times as it is possible for the District to deliver any of the 6,500 acre-feet of water to the City during the period from August 1 to October 15, and also at such times as the District has additional water available and can deliver water in excess of 6,500 acre feet during the period from March 1 through October 15, then by mutual agreement of the parties, delivery of such water to the City may be made by the District. The City shall pay the District \$100 per acre foot for any such additional water delivered to the City in excess of 6,500 acre-feet.

c. The determination of whether any such water is available for delivery to the City shall be made solely by the District. In the event that both the City of Stockton and the City of Lodi under their respective Agreements request additional water during the same period(s) that additional water is available for delivery, the water shall be apportioned between them if necessary in the manner and times that they shall agree upon. In the event they do not agree, such water shall be apportioned between them by the District 50/50, i.e., one-half to Lodi and one-half to Stockton; provided that, if such apportionment would result in either party losing any deficiency curtailment water banked to the credit of that party because of non-use within the required eight-year period under Section 6.b., that party shall have a first right to such portion of the available water that will avoid such loss.

d. The water furnished by the District under this Agreement shall be used or furnished by the City only for domestic, municipal, industrial, irrigation and other beneficial uses. The City shall have no right to sell or transfer any of its entitlement to water from the District under the Agreement, permanently or on interim basis, or to use any of said water outside of the City, without the District's prior approval.

e. The District further agrees that it will, during the term of this Agreement at the City's request, divert from the Mokelumne River at the District's Woodbridge Dam and wheel and convey through the District's canal system to the City's delivery point any non-District water acquired by or available to the City, subject to the District having available capacity for that purpose and subject to the City paying a per-acre-foot charge in an amount which the District determines to be its costs for such service. The District's cost for such service in year 2007 would be \$20 per acre-foot. There would be no wheeling charge for District water in the event the City purchases some of the District water that is under the purchase contract of the City of Lodi.

f. Commencing on January 1 of 2010, and on January 1 of each year thereafter, the amounts payable to the District under paragraph 1, and the amounts payable to the District under subparagraphs 2.b. and 2.e., shall be increased by two percent per year above the amounts payable during the preceding calendar year. In the event that the annual change in the Consumer Price Index (CPI-W, unadjusted U.S. average) published in December of each year by the United

States Bureau of Labor Statistics, commencing in December of the preceding year, has increased more than two (2) percent above the December Index of the prior year, the increases in the amounts payable in the ensuing year shall be in the percentage of that increase; provided that any such annual increase shall not exceed five percent (5%).

g. The payments by the City to the District under this Agreement shall be deemed to include the payment during the term of the Agreement of all District groundwater recharge fees on parcels within the City of Stockton which are also located within the boundary of the District.

3. Term of Agreement and Right to Purchase Additional Water.

a. This Agreement shall be effective from the date of execution hereof, and shall remain in effect for a term of forty (40) years from said date.

b. Upon receipt by the District of written notice and request for renewal from the City at least two years in advance of the termination of the Agreement, the District agrees to negotiate with the City for a renewal of this Agreement for an additional forty (40) year term, on terms and conditions that are reasonable and equitable and which are satisfactory to the District.

c. Right to Purchase Additional Water. The City shall have the further right during the initial term of this Agreement to buy up to an additional 6,500 acre-feet of water from the District based upon the annexation of additional lands within the District to the City of Stockton after the completion and commencement of operation of the initial phase of the City's Delta Water Treatment Plant, and which as a result of such annexation will be taken out of agricultural production, as follows. For each acre of land so annexed after such date which is now zoned agricultural and which has been irrigated with District water:

- and for which a tentative subdivision map is approved for such acreage for use other than agriculture,
- and which is to be served a water supply by the utility water system now serving lands within City of Stockton,

the City will be entitled to purchase an additional 3.0 acre-feet of water per such acre from the District, on the same terms and subject to the same conditions herein applicable to the 6,500 acre-feet under this Agreement.

4. City Payments to be Made from City's Water System Revenues. The City shall make payments under this Agreement solely from the Revenues of the Stockton Municipal Water System. The City hereby pledges the Revenues to the payments required hereunder. Nothing herein shall be construed as prohibiting the City from using any other funds and revenues for purposes of satisfying any provisions of this Agreement. So long as the City is in compliance with all of its obligations hereunder, such pledge shall not prevent its application of Revenues to other operating expenses of the Stockton Municipal Water System or, subject to the payment of such operating expenses, to other lawful purposes, or impair the rights of any recipient of Revenues lawfully so applied. District agrees that it will subordinate the pledge of Revenues hereunder to any bond or bonds issued for the purpose of financing capital improvements to the

City's Municipal Water System for a period not to exceed three years from the effective date of this Agreement.

“Revenues” means “all gross income and revenue received or receivable by the City from the ownership and operation of the Stockton Municipal Water System, which gross income and revenue shall be calculated in accordance with generally accepted accounting principles, including all rates, fees, and charges received by the City for water service and connection and hook-up fees and all other income and revenue howsoever derived by the City from the ownership and operation of or arising from the Stockton Municipal Water System, but excluding in all cases any proceeds or taxes and any refundable deposits made to establish credit, federal or state grants, or advances or contributions in aid of construction.”

“Stockton Municipal Water System” means “the municipal water system of the City existing on the effective date of this Agreement and all additions, betterments, extensions and improvements thereto hereafter acquired or constructed.”

5. No Permanent Water Right, and Dry Year Curtailments. The District has determined that the water to be made available annually for delivery to the District pursuant to this Agreement will be surplus to the needs of the District during the term of this Agreement. The parties further agree that no permanent right to the water supplied by the District shall accrue to the City except pursuant to and as limited by the terms of this Agreement.

a. The District agrees that it will deliver up to 6,500 acre-feet per annum to the City under this Agreement except in years when forecasted runoffs in the Mokelumne Watershed by DWR and EBMUD, beginning with the February 1 forecast by DWR and EBMUD indicates that the inflow to Pardee Reservoir as of July 1 may be less than a total quantity of 375,000 acre-feet (in which case the District's Regulated Base Supply of 60,000 acre feet under its Agreements with East Bay Municipal Utility District is reduced by thirty-five percent (35%)). In such years, the District may reduce the amount of water to be provided under this Agreement by up to fifty percent (50%), as follows. Beginning in March and in each ensuing month through July when the forecasts in those months continue to indicate that the July 1 inflow may be less than 375,000 acre-feet, the District may reduce the amount of water to be provided during those months under paragraph 2.a. by up to fifty percent (50%). In the event that any ensuing monthly forecast indicates that the estimated July 1 inflow will not be less than 375,000 acre-feet, City will be entitled to have the amount of its delivery under paragraph 2.a. for that month. The remainder of any undelivered amount under paragraph 2.a., by reason of the curtailments for that year shall be included as makeup deficiency water under paragraph 6.a. unless it was delivered later in that deficiency year. There shall be no reduction in the amount of the City's annual payment to the District in such years under paragraph 1.

b. The City shall have no claim for damages for breach arising from the unavailability of water from the District or for the District's inability to deliver water to the City due to failure of facilities, intervening acts, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce or modify operations and quantities of water otherwise available to District, and any legal action, legislation, ruling or determination adverse to the

District affecting the agreement and beyond the reasonable control of the District. District shall make good faith efforts to vigorously oppose such reductions.

6. Carryover of Entitlements. Unused water may not be carried over by the City from year to year except that the right to receive water may be “banked” for later use, as follows:

a. For each calendar quarter beginning January 1, 2010 in which payments to District are made under paragraph 1 of this Agreement but in which the City is unable to take water deliveries under the Agreement because the commencement of operations of the initial phase of the City’s DWSP has not begun, the City may carry over and have credit for one-fourth of its annual water entitlement, not to exceed a total of 13,000 acre-feet. The District will make this water available for later delivery during the initial 40-year term of this Agreement, not to exceed 2,000 acre-feet per year, at such times as the District has extra water available as determined solely by the District. There will be no additional charge for the delivery of such banked water.

b. If delivery of water to the City is curtailed by District’s maintenance or other District activities or by reason of a dry year condition as provided in paragraph 5.a. and is not used later in that year, then the City may carry over and have credit for the amount of such curtailment for later delivery at such time(s) as the District has extra water available as determined solely by the District. Any City credits for curtailed segments of carryover water shall expire at the end of eight (8) years from the end of the period in which the curtailment for the segment of curtailed water occurred. Such credits for the delivery of curtailed carryover water which accrue less than eight years immediately preceding the termination date of this Agreement, may extend beyond the termination of this Agreement and be utilized within eight years from the year of their accrual at such time(s) as the District has extra water available as determined solely by the District. There will be no additional charge for the delivery of such banked water.

c. The determination of whether any such banked water or curtailment water is available for delivery shall be made solely by the District, and shall be taken by the City in the years that the District determines that it is available, at the times and in the amounts determined by the District after consulting with the City on the times and amounts that is most convenient to the City.

d. In the event that both the City of Stockton and the City of Lodi request water banked to their respective credits during the same period(s) that the water is available for delivery, the water shall be apportioned between them if necessary in the manner and times that they shall agree upon. In the event they do not agree, the available water shall be apportioned between them 50/50 by the District, or one-half to each; provided that, if such apportionment would result in either party losing any deficiency curtailment water banked to the credit of that party because of non-use within the required eight-year period under Section 6.b above, that party shall have a first right to such portion of the available water that will avoid such loss.

e. Except as provided in subparagraph a, no credits shall accrue for water that is available to but is unused by the City.

7. Water Quality, Temporary Interruptions, and Responsibility for the Water Beyond Point of Delivery.

a. The water being supplied to the City is raw water diverted from the Mokelumne River, and the character or quality of the water furnished hereunder may vary from time to time. District does not guarantee in any respect the character or quality of the water furnished pursuant to this Agreement, provided that the District shall not apply or use any chemicals within the Canal section used to deliver water to the City that the City determines to be deleterious to the quality of the water for the uses made by the City of such water.

b. It is agreed that there may be, in addition to shortages of water, temporary discontinuance or reduction of water to be furnished for the City as herein provided, for purposes of investigation, inspection, maintenance, repair or replacement as may be necessary of any of the facilities used by the District for furnishing water to the City. The District agrees to provide the City notice of such temporary discontinuance or reduction of water as soon as such information is available to the District.

c. The City shall hold the District harmless from and defend the District from all claims or expenses on account of damage or claim of damage of any nature whatsoever from which there is legal responsibility, including property damage, personal injury or death, arising out of or connected with the delivery, control, carriage, handing, use, or disposal or distribution of water furnished hereunder beyond the point of delivery of water into the City's system from the District's Canal System.

8. Arrearage in Payments. No water shall be furnished to the City during any period in which the City may be in arrears in payment of charges accruing hereunder after the determination on the amount thereof as above provided. Interest on arrearage in payment shall be charges at a rate of 1-1/2% per month and compounded monthly, commencing 45 days after the due date of the payment.

9. Assignment. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties hereto; but no assignment or transfer of this contract or any part thereof or interest therein by the City shall be valid unless and until approved in writing by the District; and no assignment of the obligation to provide or deliver the water shall be assignable by the District without the consent of the City.

10. CEQA and Validation of Agreement.

a. The parties agree that the District will be Lead Agency for purposes of compliance with any requirements of the California Environmental Quality Act pertaining to the execution of this Agreement by each party. District and City acknowledge and agree that the obligations of the parties under this Agreement are conditioned on District and City completing, proceedings under CEQA in connection with the Agreement and the expiration of the applicable period for any challenge to the adequacy of District's and City's compliance with CEQA without any challenge being filed. District and City shall select a qualified environmental consultant acceptable to both to prepare the underlying documentation for District's review and

consideration as may be required by CEQA and applicable law. City shall direct the qualified environmental consultant and both City and the environmental consultant shall coordinate the preparation of the environmental analysis with District to ensure an adequate and complete consideration of potential environmental impacts. Any documentation submitted by City shall be sufficient for District to make a fair decision in accordance with applicable law. Neither party shall be bound hereby unless and until District's compliance with CEQA is completed and there is no possibility of a challenge pursuant to CEQA. The obligations of each party shall be conditioned upon the result of CEQA compliance not imposing any obligations or conditions upon that party's performance that are unacceptable to that party. District and City acknowledge that any modifications to the proposed project resulting from District's compliance with CEQA may necessitate amendments to this Agreement in a mutually acceptable manner.

b. A validation action may be brought to determine the validity of this agreement pursuant to Section 22670 of the Water Code and Sections 860 et seq of the Code of Civil Procedure, within the 60-day time limit of Section 860. In the event any such action is brought, then the agreement and the parties' obligations hereunder shall be conditioned upon the entry of a judgment affirming the validity of the agreement. In the event the validation judgment contains conditions or restrictions which impose upon either party costs, requirements, obligations or limitations in their performance of the agreement or upon their operations or property interests which were not reasonably anticipated by that party as a consequence of this Agreement and which are in that party's judgment unacceptable or otherwise not in the best interests of that party, that party shall have the right to terminate this Agreement, and in that event neither party shall have any further liability or obligation to the other party hereunder.

11. Fees and Costs. Any fees, costs or expenses, including attorney fees, administrative costs, and consultant fees, incurred by the District to effect the sale of water to the City, together with CEQA and any other regulatory approval, shall be paid by District and City on a 50/50 basis. The City shall not be required to contribute to any fees or costs incurred by District relating to other issues or disputes that may arise in any of said proceedings not directly relating to City's use of District water. District shall provide to City invoices and accountings of said fees and expenses on a quarterly basis.

12. City Use of District Rights of Way. The District agrees to cooperate with City and to agree to the City's use of any District right of way along the District's Canal System needed by the City for the conveyance or distribution of water it obtains from the District. Nothing herein warrants or guarantees that the District has the ability or authority to allow such use under its interest in its rights of way.

13. Entire Agreement. This Agreement contains the full and entire Agreement of the parties and there are no other conditions, either explicit or implied, nor any warranties or promises other than those contained within the written terms of this Agreement.

14. Time of the Essence. Time is of the essence in the performance of this Agreement.

15. Nonwaiver. The failure of either party to enforce or abide by a term or condition of this Agreement shall not constitute a waiver of that term or condition unless a written Agreement

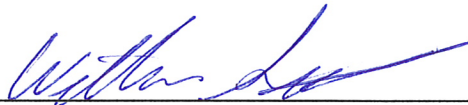
is prepared specifically providing for the waiver or forgiveness of that term and such Agreement is executed by each party hereto.

16. Date of Execution. The date of execution of this Agreement is the date of execution by the party last signing the Agreement. City shall execute this Agreement within sixty (60) days after its approval for execution by the District, and upon City's failure to do so, District shall not be obligated to enter into this Agreement.

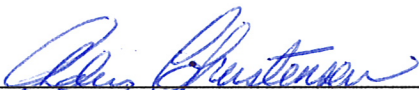
17. Lodi's Prior Rights. City acknowledges that District has an existing Agreement with the City of Lodi dated May 13, 2003, to sell 6,000 acre-feet of water per annum to Lodi, and the City acknowledges the receipt of said Agreement, as amended on JANUARY 16, 2006. City further acknowledges that by reason thereof, this Agreement to sell such water to the City of Stockton and the providing of water to Stockton hereunder is subordinate to the District's obligations to deliver such amount of water to Lodi under the Lodi Agreement as set forth in Section 4(c) of the Lodi Agreement, as amended. The District has offered the additional 6,500 acre-feet of water to be sold to Stockton, and Lodi has declined to exercise its right of first refusal to purchase the additional water.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the 22 day of JANUARY, 2008.

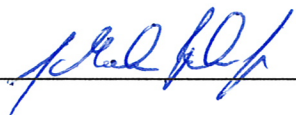
WOODBIDGE IRRIGATION DISTRICT

By 
William Stokes, President


Attest:


Andrus Christensen, Secretary

CITY OF STOCKTON, A MUNICIPAL CORPORATION

By 

Attest:


Katherine Gong Meissner, City Clerk



APPROVED AS TO FORM:

, City Attorney