

**Appendix 1010**

**WATER: CALIFORNIA  
SAN DIEGO, OCTOBER 17, 1945**

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NOy-13300

**[CONTRACT]**

THIS NEGOTIATED CONTRACT made this 17th day of October, 1945, between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the CHIEF OF THE BUREAU OF YARDS AND DOCKS, NAVY DEPARTMENT (hereinafter called the "Contracting Officer") and the CITY OF SAN DIEGO (hereinafter called the "City"), a municipal corporation organized and existing under and by virtue of the laws of the State of California,

Witnesseth:

Whereas it is recognized that the deficiency of the water supply in San Diego County, California, has become of emergency importance to the Government, owing to the large Naval, other military, Federal housing, and other Government installations in the area; and

Whereas, as a result of extended studies by the interested parties, a joint program has been formulated as hereinafter provided which it is anticipated will effectively eliminate such water-supply deficiency; and

Whereas the Contracting Officer has determined that the accomplishment of the provisions of this contract, including the furnishing by the Government of extensive facilities on the terms provided, is necessary in the interest of the national defense;

Now, therefore, it is mutually agreed as follows:

**ARTICLE 1. FACILITIES TO BE FURNISHED BY GOVERNMENT AND LEASE  
THEREOF**

(a) The Government, at its own expense, shall diligently prosecute to completion a steel and concrete Aqueduct running from a connection with the Colorado River aqueduct of the Metropolitan Water District of Southern California near the west portal of San Jacinto tunnel in Riverside County, to San Vicente Reservoir, in San Diego County, which undertaken project is hereinafter referred to in its entirety as the "Aqueduct," and includes the entire structure and appurtenances thereto together with those rights in real property acquired by the

Government for its construction or operation. The Aqueduct shall be constructed in accordance with the presently existing Government specifications therefor (such specifications being generally identified as Bureau of Yards and Docks Specifications numbered 16713, 16781, 17270, 16954, 17383, 16998, 16254, and likewise the specifications contained in Bureau of Supplies and Accounts Contract N5sy 3213, and also including such additional specifications as the Contracting Officer may deem desirable for the completion of the work), which specifications are by this reference made a part hereof. The Government may make such changes in such specifications as it may deem proper, provided, however, that no fundamental changes therein will be made without first consulting with the City. The estimated cost of the Aqueduct is \$14,500,000 and the estimated completion date is May 1947, but neither party guarantees such amount or date nor sponsors either of them as a material representation hereunder.

(b) Upon completion of the Aqueduct as determined by the Contracting Officer, the Government shall deliver the possession thereof to the City for use in its water system and upon the following lease basis:

(i) After the date of delivery of possession to it the City shall thereafter repair, maintain, and operate such Aqueduct and shall be responsible for the safekeeping thereof regardless of the cause of loss or damage thereto and for all charges and assessments of whatsoever type or nature thereafter accruing against the same, it being intended that after the date of such delivery of possession under this lease the Government shall be without financial obligation or liability with respect to such property and that such property shall be maintained intact and free of encumbrance. The City shall hold the Government, its officers, agents, and employees, harmless from any claims or liabilities arising out of the City's operations or other activities under this lease and shall not permit of the attachment of any encumbrance whatsoever to such Government property. The Government shall have access to the premises leased hereunder at all reasonable times for inspection or other proper purposes. Should the City fail in any of its undertakings under this paragraph, the Government, at its option and without prejudice to such other rights as it may have, may enter the premises and remedy such default or any part thereof and charge the actual cost thereof to the City plus 15% to cover overhead and general expense, which total amount together with interest at the rate of 4% per annum from the date of expenditure to the date of payment shall be paid to the Government by the City on June 1 immediately succeeding the date when the Government completes or discontinues the remedying of such default or part thereof.

(ii) Title to the Aqueduct shall remain in, and title to all replacements and improvements thereto made during the life of this lease shall vest in, the Government.

(iii) The annual rental under this lease shall be \$500,000. The lease period shall commence to run from the date the Government delivers possession of the Aqueduct to the City. Such annual payment shall be divided into quarterly payments of \$125,000 each, the first of such payments to be made within three months of said date of delivery of the Aqueduct and the remainder quarterly thereafter.

(iv) This lease shall continue until such time as the City has paid to the Government in rentals the full amount of the true cost to the Government, as defined in Article 3, of the Aqueduct. During the term of this lease the City shall have the right and option to purchase said Aqueduct from the Government upon the terms and conditions contained in either of the following subparagraphs (1) and (2), the option in each being deemed independent of the option in the other:

(1) At intervals of five years the City may in writing request the Contracting Officer to name and fix a purchase price of said Aqueduct; and thereafter the City may purchase said Aqueduct for the price so named, and thus terminate the lease; provided that if the City is unable to pay the price so fixed out of the annual revenues of said City for the year in which said option is exercised, then said purchase by said City must be first authorized by a vote of two-thirds of the qualified electors of said City voting at an election held for that purpose. The ratification of said purchase shall be authorized by said electors within one year following the notice by said City that it desires to exercise the option. This right or option on the part of the City to purchase said Aqueduct shall inure to the benefit of any assignee of the City under an assignment pursuant to the provisions of Article 5.

(2) Upon receipt in writing from said City the Contracting Officer shall furnish to said City in writing the true cost to the Government of said Aqueduct. Thereupon the City shall have the right and option to purchase said Aqueduct by paying to said Government said true cost of said Aqueduct, provided that the purchase has been first authorized by a vote of two-thirds of the qualified electors of said City voting at an election held for that purpose, if the City is unable to pay said price out of the annual revenue for said year. In event that said purchase is so authorized by said electors at said election the Government shall convey to said

City all of its right, title, and interest in and to said Aqueduct and appurtenances, upon payment to said Government of the full and true cost of said Aqueduct, minus any rentals theretofore paid by said City under the terms and provisions of this lease-contract.

(v) Notwithstanding any of the foregoing provisions, this lease shall not continue for a period of more than thirty-two (32) years from date of delivery to the City. Should this lease terminate by reason of the expiration of such period, except such termination as may be occasioned by the City exercising the option to purchase, as hereinabove provided, then the Aqueduct, together with all replacements and improvements, shall be redelivered to the Government, free of encumbrance, and in as good condition as when delivered to the City, reasonable wear and tear excepted.

#### ARTICLE 2. FACILITIES AND SERVICE TO BE FURNISHED BY CITY

(a) The City, at its own expense, shall diligently prosecute to completion that water treatment plant and additions to the water transportation system and connections to the distribution system as contemplated by the City Bond Issue approved at the election held in said City on the 17th day of April 1945.

(b) The City shall diligently pursue and the Council of said City shall forthwith take such legal steps as may be necessary and authorized by law to secure an adequate supply of water from the Metropolitan Water District of Southern California to be supplied through said Aqueduct.

(c) The City shall exert every reasonable effort to supply all Government agencies and establishments within the area with an adequate supply of fresh, clear, and potable water at applicable and nondiscriminatory rates, provided, however, that this agreement shall in no way estop the Government from taking appropriate action with respect to any rates or service which it may deem unreasonable or otherwise improper. This stated obligation of service shall not be limited to any particular source of water.

#### ARTICLE 3. TRUE COST TO GOVERNMENT OF AQUEDUCT

(a) The true cost to the Government of the Aqueduct is herein defined as the sum of (i) the cost of acquisition of all rights in real property acquired for either the construction or operation of the Aqueduct, including incidental costs such as appraisals, surveys, maps, title evidence, court costs, and the like, (ii) the cost of construction contracts utilized in the accomplishment of the Aqueduct plus the reasonable value of Government-furnished material and equipment furnished with respect thereto, and (iii) those costs incurred in the

field for Government or other employees (exclusive of naval officers) and equipment in connection with the work on the Aqueduct (excluding that required in the preparation of presently existing specifications) which the Contracting Officer finds to be in excess of those costs which would have been incident to the ordinary maintenance of Government establishments in the absence of such work.

(b) It is anticipated that the City and the Contracting Officer will be able to agree upon all items of such true cost. To the extent agreement is reached, such agreement shall, in the absence of fraud, supersede for the items covered the application of the above-stated definition of true cost. To the extent that agreement is not reached, the determination of whether disputed items are a part of true cost within said definition shall be deemed a question of fact within the meaning of Article 9 hereof.

#### ARTICLE 4. RIGHT OF REENTRY UPON DEFAULT

Should the City, after the delivery to it of possession of the Aqueduct as hereinabove provided, default or continue in default in any of the rental payments to be made by it to the Government or in any of its other undertakings hereunder, whether included in the lease arrangement or otherwise, and remain in such default after sixty (60) days from written notice to it from the Contracting Officer to remedy such default, then the Government at its option and without prejudice to such other rights as it may have, may reenter and take exclusive possession of such Aqueduct, with or without process of law, and free and clear of any obligation in respect thereto to the City or anyone claiming through the City. Rental payments made by the City prior to the date of such reentry shall be retained by the Government and any rental payments accrued but unpaid on such date (and for this purpose rent shall be deemed to accrue pro rata from date to day) shall be forthwith paid to the Government, all such payments being deemed to be compensation for the use of the Aqueduct during the period of the City's possession.

#### ARTICLE 5. ASSIGNMENT

Neither this contract, nor any interest therein, nor any claim arising thereunder, shall be transferred by the City to any party or parties without the written approval thereto of the Government; provided, however, that the Government will consent to the assignment of the City's rights and interests herein to either the Metropolitan Water District of Southern California and/or the San Diego County Water Authority, upon such terms and conditions as may then be deemed reasonable by the Contracting Officer for the purpose of preserving the intent of this agreement and the protection of the Government's interests therein.

ARTICLE 6. FAILURE TO INSIST ON COMPLIANCE—REMEDIES NOT  
EXCLUSIVE

Failure of the Government in any one or more instances to insist upon strict performance of any of the terms of this contract or to exercise any provided right or option herein conferred, shall not be construed as a waiver or relinquishment for the future of any such terms, options, or rights. Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

ARTICLE 7. COVENANT AGAINST CONTINGENT FEES

The City warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees.

ARTICLE 8. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 9. DISPUTES

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the City within 30 days to the Secretary of the Navy or his duly authorized representative, whose decision shall be final and conclusive. Pending decision, the City shall diligently proceed with performance.

ARTICLE 10. NONDISCRIMINATION IN EMPLOYMENT

The City in performing work under this contract shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The City shall include an identical provision in all of its subcontracts. For the purposes of this article, subcontracts shall include all purchase orders and agreements to perform all or any part of the work, or to make or furnish

any article required for the performance of this contract, except purchase orders or agreements for the furnishing of standard commercial articles or raw materials.

#### ARTICLE 11. LABOR PROVISIONS

In the event the City accomplishes any of its undertakings hereunder by private contract, such contract or contracts shall contain appropriate provisions to assure compliance with the following acts to the extent the same are applicable:

Davis Bacon Act (40 U. S. C. 276 a as amended);  
Copeland Act (40 U. S. C. 276 b and 276 c); and  
The Eight Hour Law (40 U. S. C. 321, 324-6, as in part modified by Section 303 of Pub. Act. No. 781, 76th Congress, approved Sept. 9, 1940).

#### ARTICLE 12. CONTRACTING OFFICER

The designation "Contracting Officer" means the Chief of the Bureau of Yards and Docks or any one authorized to act for him.

This negotiated contract is made pursuant to the provisions of the First War Powers Act, 1941, the Second War Powers Act, 1942, and the Act of July 2, 1940 (54 Stat. 712).

In witness whereof the parties hereto have executed this contract the day and year first above written.

UNITED STATES OF AMERICA,

By /s/ B. MOREELL,

*Chief of the Bureau of Yards and Docks, Navy Department.*

THE CITY OF SAN DIEGO,

By /s/ F. A. RHODES,

*City Manager.*

Witnesses:

/s/ KIRBY SMITH.

/s/ FRED A. HEILBRON.

I hereby approve the form and legality of the foregoing Contract, this 17th day of October 1945.

/s/ J. F. DuPAUL,

*City Attorney.*

NAVDOCKS  
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