

ORIGINAL

JPA

W/D.O.C

DATED: 12/30/1985

RESOLUTION NO. 85- 39

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVENAL ENTERING INTO A JOINT POWERS AGREEMENT WITH THE DEPARTMENT OF CORRECTIONS.

WHEREAS, the City of Avenal is desirous of expanding its water and wastewater treatment facilities; and

WHEREAS, the Department of Corrections will need to develop such facilities in order to service the Correctional Facility at Avenal; and

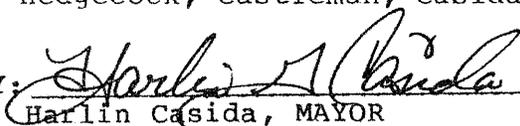
WHEREAS, the City and the Department of Corrections can fulfill both of their needs through a co-operative effort by establishing a Joint Powers Agreement; and

WHEREAS, this agreement will allow the development of facilities satisfactory to both the City and the Department of Corrections:

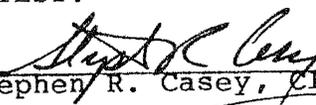
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Avenal hereby enters into a Joint Powers Agreement, as outlined on Attachment A, with the California Department of Corrections.

PASSED AND ADOPTED at a regular meeting of the Avenal City Council on the 24th day of October , 1985 by the following vote:

AYES: Etchison, Dauber, Hedgecock, Castleman, Casida.
NOES: None.
ABSENT: None.

BY: 
Harlin Casida, MAYOR

ATTEST:


Stephen R. Casey, CITY CLERK

DEPARTMENT OF CORRECTIONS

P.O. Box 714
Sacramento, CA 95803



November 6, 1985

Mr. Steve Casey
City Manager
City of Avenal
919 Skyline Boulevard
Avenal, CA 93204

Dear Steve:

Enclosed for your review is a final copy of the Joint Powers Agreement between the City of Avenal and the California Department of Corrections. Within about two weeks I expect to have a signed copy of the agreement forwarded to you for execution by the City.

Thank you for your cooperation in this effort. If you have any questions, please call me at 324-8572.

Sincerely,

A handwritten signature in cursive script that reads "Don Saylor".

DON SAYLOR
Project Director
Construction Operations
Planning and Construction Division

Attachment

cc: Mr. James L. Miller

JOINT POWERS AGREEMENT

This agreement is made and entered into as of December 30, 1985, 1985, ^{file} by and between the City of Avenal, a municipal corporation (hereby "Avenal") and the State of California, acting by and through its Department of Corrections (hereafter "CDC").

WITNESSES

WHEREAS, CDC is authorized and proposes to develop the California State Prison-Kings County-Avenal and to locate the prison complex on Section 34, Township 22 South, Range 17 East, Mount Diablo Base and Meridian in Kings County and within the water service area of Avenal; and

WHEREAS, development and operation of said prison will require provisions (a) of a water supply for domestic, municipal and industrial purposes for said prison, including facilities ancillary thereto such as prison industries and landscaping and (b) of means to dispose of wastewater generated by the prison; and

WHEREAS, existing water treatment and distribution and wastewater treatment and disposal facilities owned and operated by Avenal are totally inadequate to serve the combined needs of Avenal and of CDC's proposed prison operation, with the exception of the City being able to provide treated water during and for construction of water and wastewater system improvements and to temporarily serve initial and partial occupancy of the prison by not to exceed 1,000 inmates plus staff, with no water for use of industries; and

WHEREAS, if additional treatment, distribution and collection facilities are made available, (a) Avenal can and is willing to supply potable water for domestic, municipal and industrial uses and to treat and dispose of wastewater generated at the prison in the volumes and at rates described in the fashion set forth herein, and (b) Avenal desires, is willing to, and can make available treated wastewater generated by both the prison and other municipal customers for use to irrigate prison agriculture on Section 34 and/or additional lands; and

WHEREAS, Avenal desires that facilities required for CDC's use be enlarged beyond the size necessary for CDC, and that the cost of expansion beyond CDC's needs shall be at Avenal's cost; and

WHEREAS, each party is authorized to procure and provide for (a) treatment, transmission and supply of water for domestic, municipal and industrial purposes and (b) to treat, transport and dispose of wastewater generated by it or its inhabitants; and

WHEREAS, the parties have each determined that it is in their common interests to jointly provide for potable water supply and wastewater treatment and disposal on the terms and conditions herein set forth;

NOW THEREFORE, Avenal and CDC do promise and agree as follows, to wit:

I. CDC promises and agrees:

1. To design, engineer, manage construction of and construct the facilities which are identified below in this paragraph and in document entitled

"Outline Specifications California State Prison-Kings County-Avenal," dated July 1985, to wit:

a. Water filtration and treatment plant with capacity of 2.8 million gallons per day located adjacent to the existing City water plant near the San Luis Canal.

b. Transmission pipeline over the Kettleman Hills to Avenal to be constructed on existing City owned pipeline easements. Cathodic protection on the new line will include the City's existing pipeline in order to prevent corrosion of both lines. Transmission line will include surge tanks and booster pumps necessary to carry water to Avenal.

The City will provide pipeline rights-of-way through the existing built area of the City from the water treatment plant location to the intersection of 7th Avenue and State Route 33.

c. Potable water storage tank to be located on Section 4 Township 23 South, Range 17 East, with a capacity of approximately 2.0 million gallons. This tank will serve as a reservoir for the prison. The City will be able to utilize this tank for emergency and maintenance purposes.

d. Distribution line to the prison from the intersection of 7th Avenue and State Route 33 within easements to be acquired by CDC.

e. Interconnections between new and existing water and wastewater systems to mutually serve the City and the prison, including extension of the City's wastewater line to the new wastewater treatment plant.

f. Wastewater treatment plant with capacity for 1.63 million gallons per day to be located on Section 34, northeast of Highway 33 on property to be acquired by the CDC.

g. Treatment and storage ponds for wastewater treatment to be designed by CDC and located on Section 34.

In the event of any conflict between the provisions of this agreement and the document entitled "Outline Specifications California State Prison-Kings County-Avenal, the terms of this agreement shall prevail.

If City makes the deposits within the times provided for in Section II, paragraph 8, then CDC shall let contracts for construction of water system and wastewater treatment system improvements sized in accord with the provisions of Section I, paragraph 11, subparagraphs "(a)2'" and "(b)2'" below; if either of said deposits is not made or made within the time allowed therefor by Avenal, CDC shall at its sole and exclusive option have the right to and shall build improvements sized as provided in subparagraph "(a)1'" and sized as provided in subparagraph "(b)1'" of paragraph 11 of Section I below.

2. To acquire right-of-way for, design and to construct the distribution line identified in paragraph 1d at such time as to make the same available to Avenal so that Avenal may use the same as a means to provide water to CDC during and for construction of water and wastewater system improvements and extensions, construction of prison facilities, and for use, temporarily, by not to exceed 1,000 inmates during initial occupancy of the prison; the first two of which items are currently anticipated will occur and be required by January 1, 1986.

3. To use its good offices, to the extent and by such means as it deems appropriate, to assist Avenal to apply for grants, loans or other funding from existing State resources to fund improvements to Avenal parks, Skyline Boulevard, and water and wastewater treatment plant facilities.

4. The design called for in paragraph 1 above shall include alternate cost estimates or design and engineering for:

(a) Construction of water system improvements having a:

1.' Capacity sufficient to serve prison needs only, 1.5 mgd; and

2.' Capacity sufficient to serve prison needs, 1.5 mgd, plus an additional capacity of 1.3 mgd or a total of 2.8 mgd; and

(b) Construction of wastewater treatment and disposal system improvements having a:

1.' Capacity sufficient to serve prison needs only, .87 mgd; and

2.' Capacity sufficient to serve prison needs, .87 mgd, plus an additional capacity of .76 mgd, or a total of 1.63 mgd.

5. Provided city is current as to performance of all obligations under this contract and upon the completion and acceptance of any water and/or wastewater contract facilities developed by it, to transfer its interest therein and in any right-of-way or property interest in land upon which the same are located to Avenal; excluded from this obligation shall be all facilities located within that portion of Section 34 which lies southwest of State Highway 33.

6. At the time when the first 444 inmates first occupy the prison to pay Avenal a tie in fee of \$94,000 as and which is agreed to be reasonable compensation to Avenal for the temporary use of water treatment and distribution facilities, provided for in Section II, paragraph 3 below. The tie in fee is separate from and in addition to prison water consumption costs based on metered usage. In the event that water supply facilities and improvements which are to be developed by CDC as herein provided are not completed before the prison is occupied by in excess of 1,000 inmates, then for each housing unit thereafter occupied before completion of said facilities and improvements, CDC shall pay to Avenal a fee of \$43,000 for each 500 bed facility as and for reasonable compensation to Avenal for continued temporary use of water treatment and distribution facilities required to permit the occupancy of the prison by such additional number of inmates. Provision of water for more than 1,000 inmates prior to completion of system improvements described in paragraph 1 above shall be provided only upon a mutual determination by CDC and the City that the system can provide this service.

7. Following the completion of construction and transfer of improvements by CDC to Avenal, to pay monthly to Avenal reasonable, customary and non-discriminatory charges designed to reimburse Avenal for CDC's pro rata and equitable share of the cost incurred by Avenal for water supply and operation, maintenance and repair of water system and wastewater treatment and disposal system facilities, not including any capital cost component or increment for prior capital investment or capital facilities replacment, enlargement or extension. The charges for water supplied and wastewater treated

shall be based on volume and/or B.O.D. loading where applicable. The payments required of CDC for water and/or wastewater treatment and disposal shall in no event exceed the proportion or ratio of total applicable water and wastewater costs as the total water and wastewater volumes used by CDC bears to the total water and wastewater volumes of all users supplied and/or served by Avenal.

8. To do everything which is reasonably possible to limit its need for and use of water supplied by Avenal to not exceed 1.5 mgd.

9. In consideration of the rights provided it under Section II, paragraph 6 and Section III, paragraph 4, to pay to Avenal a one-time lump-sum payment in the amount of \$400,000.00. Such payment will be made to the City upon startup operation of the new wastewater treatment plant. This payment will not be awarded to Avenal if Avenal does not provide the deposit for expansion of the wastewater treatment plant described under Section I, paragraph 11 (b)(2).

10. To acquire all rights-of-way and adequate property interests required to construct and maintain the facilities identified in paragraph 1a-h above, excluding only rights-of-way and property interests to be provided by Avenal as provided in Section II, paragraph 7 below.

11. To advertise for and receive alternate bids for construction of:

(a) First, water supply system improvements as described in paragraph 1 (a, b, c and d) consisting of:

1.' A system having a capacity sufficient to supply CDC's proposed needs only, 1.5 mgd; and

2.' An alternate system having a capacity sufficient to supply additional Avenal needs of 1.3 mgd for a total of 2.8 mgd; and

(b) Second, a wastewater treatment system as described in paragraph 1 (e) and (f) having:

1.' A capacity sufficient to serve CDC's proposed prison needs only, .87 mgd; and

2.' An alternate having capacity sufficient to serve additional Avenal needs of .76 mgd for a total of 1.63 mgd.

12. In not to exceed six (6) months of acceptance of the constructed improvements provided for in Section I, paragraphs 4 and 11, to provide to Avenal an itemized statement showing the bids received by CDC, as provided for in subparagraph 2' of paragraphs (a) and/or (b), CDC's actual cost of construction thereof, together with its then best estimate of yet unresolved costs of construction as for example claims of construction contractors. CDC's costs of design and construction shall include, in accord with standard State accounting practice, its direct costs of design and construction as well as its direct overhead.

13. To enforce on behalf of and for the benefit of Avenal any guarantees provided by construction contractors covering any and/or all parts of work, equipment, etc. supplied by them covering facilities transferred by CDC to Avenal.

II. Avenal promises and agrees:

1. On completion and acceptance by CDC of the water and wastewater system facilities provided for herein and which are developed by CDC, to accept transfers thereof and to thereafter operate, maintain, repair and replace the

same in accord with generally accepted practice of owners and operators of similar facilities to the end that such facilities shall continue to serve the purposes for which they were designed and developed, to wit, the purposes specified in Section III, paragraph 2 below.

2. To create a utilities advisory committee or commission which shall study and from time to time, as may be appropriate, but not less frequently than once each calendar year, report to the City Council of Avenal and to the Superintendent of the prison at Avenal on policies concerning the condition and operation of Avenal owned, operated or managed utility facilities which provide services which directly or indirectly serve CDC's prison operation as well as on rates to be charged to fund the operation, maintenance, repair and replacement of said facilities. Said committee or commission shall include as a voting member the Superintendent of CDC's prison or such other CDC representative as the Director of CDC may from time to time, in writing, designate.

3. To provide a temporary water supply to CDC as provided and for the purposes specified in Section I, paragraph 2 above and for considerations specified in Section 1, paragraph 6.

4. Following completion and transfer by CDC to Avenal of improvements and right-of-way therefor, to make available at all times to meet the domestic and industrial needs of CDC's prison operation 1,500,000 gallons of potable water per day (1.5 mgd). In the event of fire or other calamity, it shall use its best efforts to make such additional volumes of water available to CDC as it is reasonably able. Should CDC's average and normal water supply needs exceed or increase to in excess of 1.5 mgd, Avenal, on written notice

thereof from CDC, shall take such measures as are reasonably available to it to supply, and to the extent it is able so to do, it shall supply such additional volumes and do so in consideration of payment by CDC to Avenal of Avenal's direct costs of increasing its ability to supply water so as to be able to serve such increased need of CDC, plus normal, customary and non-discriminatory monthly or other periodic payments to cover CDC's pro rata and equitable share of the costs of operation and maintenance of required additional facilities.

5. To receive, treat and dispose of wastewater and/or sewage generated in CDC's prison operation, not exceeding a maximum rate of flow of .87 mgd.

6. In consideration of the payment provided in Section I, paragraph 9, supra, to deliver to CDC at storage ponds to be located southwest of State Highway 33, for use in agricultural or otherwise, treated wastewater and sewage generated within the City of Avenal and by CDC's prison operation and treated in the wastewater treatment plant provided for in Section I, paragraph 1f. In the event that the wastewater treatment plant is sized based on Section I, paragraph 11 b (2), the City will deliver only the treated effluent generated by CDC.

7. To (a) provide in a timely manner rights-of-way or easements adequate for construction by CDC and subsequent maintenance and operation by Avenal of the transmission pipeline and distribution line identified in Section I, paragraph 1, subparagraph "b"; (b) consent to use of any street or other easements owned by Avenal by CDC for such purposes as are incidental to CDC's prison operation and as may not unreasonably interfere with the basic use previously being made thereof by Avenal or on behalf of its residents; and (c) as to any other property interests owned by Avenal, to consider requests of CDC

for the use thereof and where such use will not unreasonably interfere with Avenal's needs, to consent to such use thereof on appropriate terms and conditions.

8. To deposit with CDC, the full amounts of cost attributable to Avenal under Section III, paragraph 5 or provide financing plans and commitments to CDC within ten (10) days after CDC opens construction bids for the alternate water system improvements described in Section I, paragraphs 4(a) and 11(a), which is now estimated to occur February 14, 1986 and for the alternate wastewater treatment and disposal system improvements described in Section I, paragraphs 4(b) and 11(b), which is now estimated to occur by March 14, 1986. If the financing plans are agreeable to both CDC and the City then construction of the facilities agreed to will proceed. Upon completion and acceptance of construction by CDC of each of the two improvements, the water system and wastewater treatment system improvements, and within thirty (30) days after receipt by it from CDC of the statement or statements provided for in Section I, paragraph 12, supra, to pay to CDC any difference between the amounts previously deposited by Avenal and the total of its share of the total cost of design of the alternates and/or construction of the larger alternate, as provided in Section I, paragraph 4, less the agreed sum of \$20,000.00 as provided in Section III, paragraph 6.

9. To pay to CDC or subtract from amounts otherwise due to Avenal from CDC under the terms of this agreement, up to \$50,000 in design and engineering fees related to preparation of specifications and other bid documents for the alternatives described in Section I, paragraph 11 (a)(2) and (b)(2).

III. It is mutually understood and agreed:

1. Avenal shall have the right and reasonable opportunity to promptly

review all designs and engineering performed by CDC to develop the water supply and wastewater system improvements provided for by this agreement, to offer to CDC comments and criticisms thereon, and that CDC shall consider such before final adoption by it of a design or engineering plan, provided such comments are provided by Avenal to CDC in a timely fashion, within 10 days of provision thereof by CDC to Avenal.

2. The purposes of the parties in making and performing this agreement are to thereby jointly and economically enhance the current ability of Avenal to provide for its purposes and to provide for the CDC prison operation, water supply and treatment and wastewater treatment and disposal systems. In executing their respective responsibilities under this agreement, each party shall follow procedures and comply with conditions applicable to it.

3. The addition or subtraction of any facilities or improvements to the water and/or wastewater facilities and/or improvements listed in Section I, paragraph 1 above may be made only pursuant to written consent of both Avenal and CDC. This limitation shall not limit either party's ability or authority to make changes to system facilities which do not directly or indirectly affect the other party nor changes which are incidental to design or construction change orders.

4. As to the treated wastewater or sewage to be provided by Avenal to CDC pursuant to Section II, paragraph 6, CDC shall have the right from time to time to temporarily transfer and/or permanently sell all or any part of such right to other parties and/or to abandon or surrender such to Avenal not sooner than 120 days after written notice without penalty or further payment by CDC.

5. In the event that either or both water or wastewater system improvements are built so as to be sized to provide added capacities for the benefit of Avenal in accord with Section I, paragraph 11, subparagraphs "(a)2'" and/or "(b)2'", Avenal's shares of the costs incurred by CDC in design of the two alternates and of construction of the larger alternate built shall be the portion of the total cost of such design and construction which is derived by subtraction of the low bids, respectively, for alternates as described in subparagraphs "(a)2'" and "(b)2'"; from each of the low bids received for alternates as described in subparagraphs "(a)1'" and "(b)1'"; Avenal's share of the costs of the water and wastewater treatment systems improvements on this basis is currently estimated to be \$1,679,416. The maximum of construction costs to be borne by Avenal under this agreement shall be \$1,847,350.

6. In consideration of the provision of property interests as provided in Section II, paragraph 7, Avenal shall be entitled to a credit on its obligations identified in preceding paragraph 5 of this Section III of the agreed and lump-sum of \$20,000.00.

7. The common powers which the parties respectively possess and propose be exercised in the implementation of this joint powers agreement are to provide for water supplies and for treatment and disposal of wastewater.

8. Except with respect to lump and specifically agreed-to payments provided for herein, each party shall keep strict account of and report all receipts and disbursements which are relevant to the ascertainment of their respective obligations to each other hereunder.

9. CDC and Avenal shall each follow previously and/or newly established requirements for custody of property acquired incidental to this

agreement and require of them and their officers and employees such bonds and/or security as may by law, otherwise, be applicable to each of them.

10. As authorized by Government Code sections 895-895.5, as between CDC and Avenal, neither party nor its officers, agents or employees shall be responsible for any damage or liability resulting or occurring by reason of anything done or omitted to be done by the "other party" under, incidental to or in connection with any work, act, authority or jurisdiction which is the responsibility of such "other party." Such "other party" shall defend, indemnify, and hold harmless the party, its officers, agents and employees, whose actions or inactions did not result in the damage or liability claimed.

11. This agreement shall become effective upon execution of both parties. This agreement shall be binding upon, and the heirs, successors and assigns of the parties shall be entitled to, all of the rights and privileges and be subject to all of the obligations and responsibilities of their predecessors. The term of this agreement shall be indefinite and it shall continue until terminated by agreement of the parties or pursuant to applicable statutory authority. On termination of this agreement, all surplus monies and properties, if any, developed or originated pursuant thereto shall be disposed of in accord with the then agreement of the parties, applicable statutes or a final decree of a court of competent jurisdiction.

12. Pursuant to the provisions of Government Code Section 10532, the parties hereto shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment is made under this Agreement, concerning matters connected with the performance of this Agreement.

13. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

14. The use of either party of any remedies specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

15. This Agreement constitutes the entire agreement of the parties, which may be modified only upon mutual written consent.

16. The obligations of each of the parties under this agreement are and shall be subject to the availability of necessary appropriations of funds and to all legally applicable conditions precedent and approvals.

In witness of the foregoing, the parties, by and through their duly authorized representatives, have made and entered into this agreement as of the date first set forth above.

CITY OF AVENAL,
a municipal corporation

By: *Harling Canada*

Its: _____
(Attach certified copy of City
Council resolution authorizing)

Approved as to form and legality:

City Attorney for the
City of Avenal

STATE OF CALIFORNIA

By: *Michelle Helms*

JTS
Assistant Deputy Director
Financial Management & Support Svcs.
of the Department of Corrections

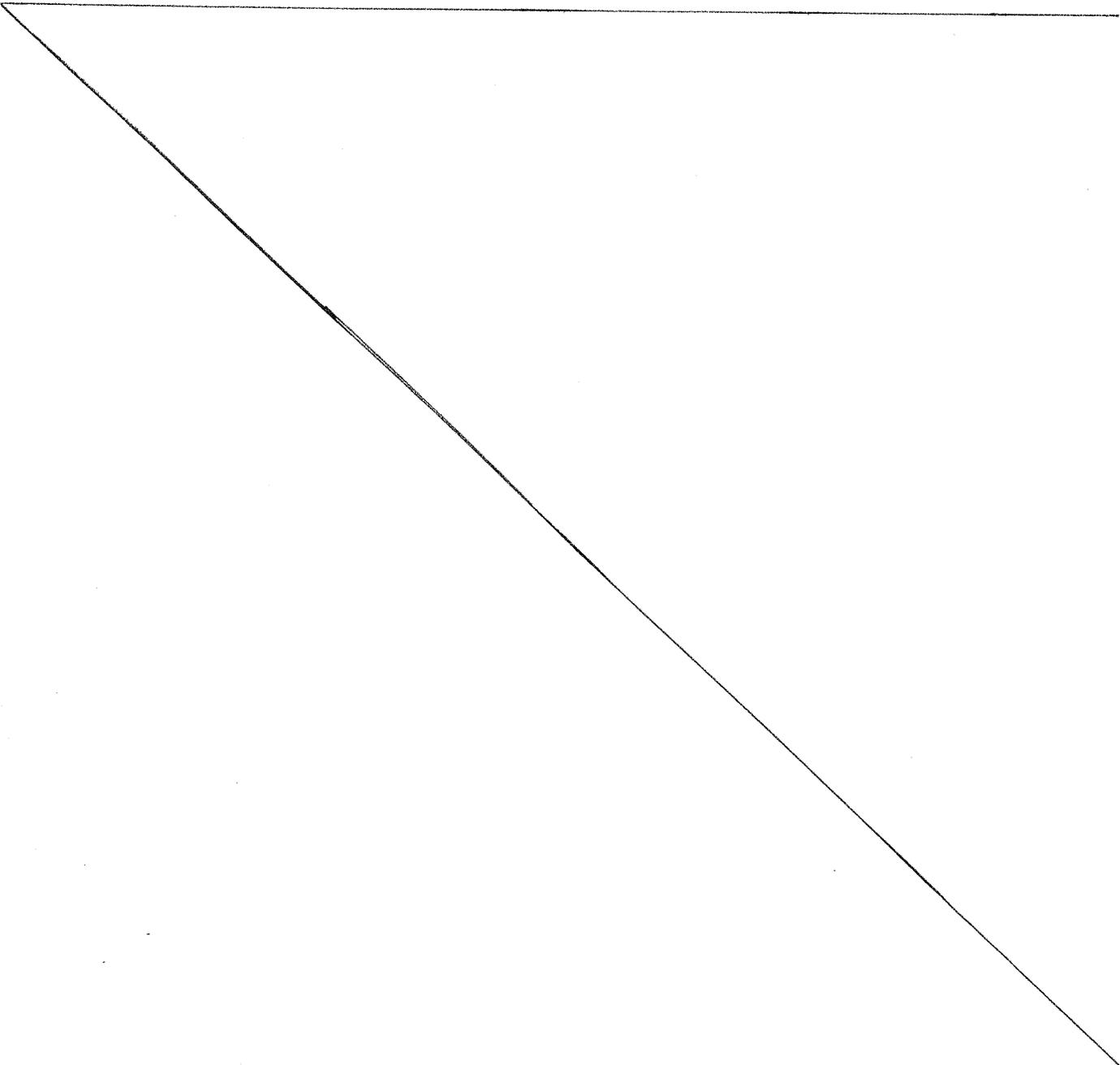
This agreement is hereby
approved as provided and
required by Public Contract
Code section 10295, Penal Code
sections 7001 and Government Code
sections 6501 and 11005.2

Department of Corrections

By: *Royce Brown*

Its: *Manager, Construction Contracts*

Dated: *12/30/85*



| | | | | | | |
|---|---|--|---------------------|---------|--------------------------|-------------|
| Department of General Services Use ONLY | AMOUNT ENCUMBERED | | APPROPRIATION | | FUND | |
| | \$ 666,000.00 | | Capital Outlay | | 1984 Prison Construction | |
| | UNENCUMBERED BALANCE | | ITEM | CHAPTER | STATUTES | FISCAL YEAR |
| | \$ | | 5240-811-724 | 932 | 85 | 85/86 |
| | ADJ. INCREASING ENCUMBRANCE | | FUNCTION | | | |
| | \$ | | | | | |
| | ADJ. DECREASING ENCUMBRANCE | | LINE ITEM ALLOTMENT | | | |
| | \$ | | 842.10 Construction | | | |
| | I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above. | | | | T.B.A. NO. | B.R. NO. |
| | SIGNATURE OF ACCOUNTING OFFICER | | | | DATE | |
| I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1209 have been complied with, and this document is exempt from review by the Department of Finance. | | | | | | |
| SIGNATURE OF OFFICER SIGNING ON BEHALF OF THE AGENCY | | | | DATE | | |
| [Signature: Robert Brown] | | | | 12/5/85 | | |

1ST
AMENDMENT
TO
JPA

DATED: 08/14/1986

RESOLUTION NO. 86-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVENAL AMENDING THE JOINT POWERS AGREEMENT WITH THE DEPARTMENT OF CORRECTIONS.

WHEREAS, The City of Avenal is desirous of expanding its water and wastewater treatment facilities; and

WHEREAS, The Department of Correction will need to develop such facilities in order to service the facility needs; and

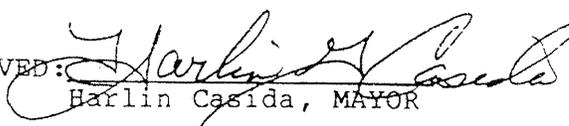
WHEREAS, The two parties entered into a Joint Powers Agreement for the development of those facilities; and

WHEREAS, Certain aspects of that agreement needs to be amended to reflect existing conditions.

NOW, THEREFORE BE IT RESOLVED, that City Council of the City of Avenal adopts this amended agreement attached as the functional Joint Powers Agreement with the Department of Corrections.

PASSED AND ADOPTED at a regular meeting of the Avenal City Council on the 14th day of August , 1986 by the following roll call vote:

AYES: Hedgecock, Etchison, Baldwin, Casida.
NOES: None.
ABSENT: Dauber.

APPROVED: 
Harlin Casida, MAYOR

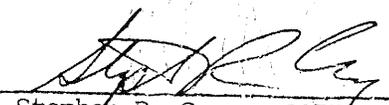
ATTEST:


Stephen R. Casey, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF KINGS)
CITY OF AVENAL)

I, STEPHEN R. CASEY, City Clerk of the City of Avenal, do hereby certify the foregoing Resolution was duly passed and adopted at a regular meeting of the City Council of the City of Avenal duly called and held on August 14, 1986.

DATED: August 14, 1986


Stephen R. Casey, CITY CLERK

C85-542-0-01
Amend. #1

AMENDED
JOINT POWERS AGREEMENT

This Agreement is made and entered into December 30, 1985 and amended as of August 14, 1986, by and between the City of Avenal, a municipal corporation (hereby "Avenal") and the State of California, acting by and through its Department of Corrections (hereafter "CDC").

WITNESSES

WHEREAS, CDC is authorized and proposes to develop the California State Prison-Kings County-Avenal and to locate the prison complex on Section 34, Township 22 South, Range 17 East, Mount Diablo Base and Meridian in Kings County and within the water service area of Avenal; and

WHEREAS, development and operation of said prison will require provision (a) of a water supply for domestic, municipal and industrial purposes for said prison, including facilities ancillary thereto such as prison industries and landscaping and (b) of means to dispose of wastewater generated by the prison; and

WHEREAS, existing water treatment and distribution and wastewater treatment and disposal facilities owned and operated by Avenal are inadequate to serve the combined needs of Avenal and of CDC's proposed prison operation, with the exception of the City being able to provide treated water during and for construction of water and wastewater system improvements and to temporarily serve initial and partial occupancy of the prison by not to exceed 1,000 inmates plus staff, with no water for use of industries; and

WHEREAS, if additional treatment, distribution and collection facilities are made available, (a) Avenal can and is willing to supply potable water for domestic, municipal and industrial uses and to treat and dispose of wastewater generated at the prison in the volumes and at rates described in the fashion set forth herein, and (b) Avenal desires, is willing to, and can make available treated wastewater generated by both the prison and other municipal customers for use to irrigate prison agriculture on Section 34 and/or additional lands; and

WHEREAS, Avenal desires that facilities required for CDC's use be enlarged beyond the size necessary for CDC, and that the cost of expansion beyond CDC's needs shall be at Avenal's cost; and

WHEREAS, each party is authorized to procure and provide for (a) treatment, transmission and supply of water for domestic, municipal and industrial purposes and (b) to treat, transport and dispose of wastewater generated by it or its inhabitants; and

WHEREAS, the parties have each determined that it is in their common interests to jointly provide for potable water supply and wastewater treatment and disposal on the terms and conditions herein set forth;

NOW THEREFORE, Avenal and CDC do promise and agree as follows, to wit:

I. CDC promises and agrees:

1. To design, engineer, manage construction of and construct the facilities which are identified below in this paragraph and in document entitled "Outline Specifications California State Prison-Kings County-Avenal," dated July 1985, to wit:

a. Water filtration and treatment plant with capacity of 2.8 million gallons per day located adjacent to the existing City water plant near the San Luis Canal.

b. Transmission pipeline over the Kettleman Hills to Avenal to be constructed on existing City owned pipeline easements. Cathodic protection on the new line will include the City's existing pipeline in order to prevent corrosion of both lines. Transmission line will include surge tanks and booster pumps necessary to carry water to Avenal. The City will provide pipeline rights-of-way through the existing built area of the City from the water treatment plant location to the intersection of 7th Avenue and State Route 33.

c. Potable water storage tank to be located on Section 4 Township 23 South, Range 17 East, with a capacity of approximately 2.0 million gallons. This tank will serve as a reservoir for the prison. The City will be able to utilize this tank for emergency and maintenance purposes.

d. Distribution line to the prison from the intersection of 7th Avenue and State Route 33 within easements to be acquired by CDC.

e. Interconnections between new and existing water and wastewater systems to mutually serve the City and the prison, including extension of the City's wastewater line to the new wastewater treatment plant.

f. Wastewater treatment plant with capacity for 1.63 million gallons per day to be located on Section 34, northeast of Highway 33 on property to be acquired by the CDC.

g. Treatment and storage ponds for wastewater treatment to be designed by CDC and located on Section 34.

In the event of any conflict between the provisions of this Agreement and the document entitled "Outline Specifications California State Prison-Kings County-Avenal, the terms of this Agreement shall prevail.

If City makes the deposits or provides an acceptable financial plan within the times provided for in Section II, paragraph 8, then CDC shall let contracts for construction of water system and wastewater treatment system improvements sized in accord with the provisions of Section I, paragraph 11 below; if either of said deposits is not made or made within the time allowed therefor by Avenal, CDC shall at its sole and exclusive option have the right to and shall build improvements sized exclusively for its needs only.

2. To acquire right-of-way for, design and to construct the distribution line identified in paragraph 1d at such time as to make the same available to Avenal so that Avenal may use the same as a means to provide water to CDC during and for construction of water and wastewater system improvements and extensions, construction of prison facilities, and for use, temporarily, by not to exceed 1,000 inmates during initial occupancy of the prison; the first two of which items are currently anticipated will occur and be required by January 1, 1986.

3. To use its good offices, to the extent and by such means as it deems appropriate, to assist Avenal to apply for grants, loans or other funding from existing State resources to fund improvements to Avenal parks, Skyline Boulevard, and water and wastewater treatment plant facilities.

4. The design package called for in paragraph 1 above shall include incremental cost estimates for design and construction for:

a. Construction of water system improvements having a capacity sufficient to serve prison needs of 1.5 mgd, plus an additional capacity of 1.3 mgd for the City of Avenal or a total of 2.8 mgd; and

b. Construction of wastewater treatment and disposal system improvements having a capacity sufficient to serve prison needs of .87 mgd, plus an additional capacity of .76 mgd for the City of Avenal or a total of 1.63 mgd.

5. Provided City is current as to performance of all obligations under this contract and upon the completion and acceptance of any water and/or wastewater contract facilities developed by it, to transfer its interest therein and in any right-of-way or property interest in land upon which the same are located to Avenal; excluded from this obligation shall be all facilities located within that portion of Section 34 which lies southwest of State Highway 33.

6. At the time when the first 444 inmates first occupy the prison to pay Avenal a tie in fee of \$94,000 as and which is agreed to be reasonable compensation to Avenal for the temporary use of water treatment and distribution facilities, provided for in Section II, paragraph 3 below. The tie in fee is separate from and in addition to prison water consumption costs based on metered usage. In the event that water supply facilities and improvements which are to be developed by CDC as herein provided are not completed before the prison is occupied by in excess of 1,000 inmates, then for

each housing unit thereafter occupied before completion of said facilities and improvements, CDC shall pay to Avenal a fee of \$43,000 for each 500 bed facility as and for reasonable compensation to Avenal for continued temporary use of water treatment and distribution facilities required to permit the occupancy of the prison by such additional number of inmates. Provision of water for more than 1,000 inmates prior to completion of system improvements described in paragraph 1 above shall be provided only upon a mutual determination by CDC and the City that the system can provide this service.

7. Following the completion of construction and transfer of improvements by CDC to Avenal, to pay monthly to Avenal reasonable, customary and nondiscriminatory charges designed to reimburse Avenal for CDC's pro rata and equitable share of the cost incurred by Avenal for water supply and operation, maintenance and repair of water system and wastewater treatment and disposal system facilities, not including any capital cost component or increment for prior capital investment or capital facilities replacement, enlargement or extension. The charges for water supplied and wastewater treated shall be based on volume and/or B.O.D. loading where applicable. The payments required of CDC for water and/or wastewater treatment and disposal shall in no event exceed the proportion or ratio of total applicable water and wastewater costs as the total water and wastewater volumes used by CDC bears to the total water and wastewater volumes of all users supplied and/or served by Avenal.

8. To do everything which is reasonably possible to limit its need for and use of water supplied by Avenal to not exceed 1.5 mgd.

9. In consideration of the rights provided it under Section II, paragraph 6 and Section III, paragraph 4, to pay to Avenal a one-time lump-sum payment in the amount of \$400,000.00. Such payment will be made to the City upon startup operation of the new wastewater treatment plant. This payment will not be awarded to Avenal if Avenal does not provide the deposit for expansion of the wastewater treatment plant described under Section I, paragraph 11b.

10. To acquire all rights-of-way and adequate property interests required to construct and maintain the facilities identified in paragraphs 1a-g above, excluding only rights-of-way and property interests to be provided by Avenal as provided in Section II, paragraph 7 below.

11. To advertise for and receive bids for construction of:

a. First, water supply system improvements as described in paragraphs 1a-d consisting of a system having a capacity sufficient to supply 2.8 mgd.

b. Second, a wastewater treatment system as described in paragraphs 1e and f having a capacity sufficient to serve 1.63 mgd.

12. In not to exceed six (6) months of acceptance of the constructed improvements provided for in Section I, paragraphs 4 and 11, to provide to Avenal an itemized statement showing the bids received by CDC, as provided for in paragraphs 11a and b, CDC's actual cost of construction thereof, together with its then best estimate of yet unresolved costs of construction as for example claims of construction contractors. CDC's costs

of design and construction shall include, in accord with standard State accounting practice, its direct costs of design and construction as well as its direct overhead.

13. To enforce on behalf of and for the benefit of Avenal any guarantees provided by construction contractors covering any and/or all parts of work, equipment, etc. supplied by them covering facilities transferred by CDC to Avenal.

II. Avenal promises and agrees:

1. On completion and acceptance by CDC of the water and wastewater system facilities provided for herein and which are developed by CDC, to accept transfers thereof and to thereafter operate, maintain, repair and replace the same in accord with generally accepted practice of owners and operators of similar facilities to the end that such facilities shall continue to serve the purposes for which they were designed and developed, to wit, the purposes specified in Section III, paragraph 2 below.

2. To create a utilities advisory committee or commission which shall study and from time to time, as may be appropriate, but not less frequently than once each calendar year, report to the City Council of Avenal and to the Superintendent of the prison at Avenal on policies concerning the condition and operation of Avenal owned, operated or managed utility facilities which provide services which directly or indirectly serve CDC's prison operation as well as on rates to be charged to fund the operation, maintenance, repair and replacement of said facilities. Said committee or commission shall

include as a voting member the Superintendent of CDC's prison or such other CDC representative as the Director of CDC may from time to time, in writing, designate.

3. To provide a temporary water supply to CDC as provided and for the purposes specified in Section I, paragraph 2 above and for considerations specified in Section I, paragraph 6.

4. Following completion and transfer by CDC to Avenal of improvements and right-of-way therefor, to make available at all times to meet the domestic and industrial needs of CDC's prison operation 1,500,000 gallons of potable water per day (1.5 mgd). In the event of fire or other calamity, it shall use its best efforts to make such additional volumes of water available to CDC as it is reasonably able. Should CDC's average and normal water supply needs exceed or increase to in excess of 1.5 mgd, Avenal, on written notice thereof from CDC, shall take such measures as are reasonably available to it to supply, and to the extent it is able so to do, it shall supply such additional volumes and do so in consideration of payment by CDC to Avenal of Avenal's direct costs of increasing its ability to supply water so as to be able to serve such increased need of CDC, plus normal, customary and nondiscriminatory monthly or other periodic payments to cover CDC's pro rata and equitable share of the costs of operation and maintenance of required additional facilities.

5. To receive, treat and dispose of wastewater and/or sewage generated in CDC's prison operation, not exceeding a maximum rate of flow of .87 mgd.

6. In consideration of the payment provided in Section I, paragraph 9, supra, to deliver to CDC at storage ponds to be located southwest of State Highway 33, for use in agricultural or otherwise, treated wastewater and sewage generated within the City of Avenal and by CDC's prison operation and treated in the wastewater treatment plant provided for in Section I, paragraph 1f. In the event that the wastewater treatment plant is constructed with capacity to serve the prison only and not the City and the prison, the City will deliver only the treated effluent generated by CDC.

7. To (a) provide in a timely manner rights-of-way or easements adequate for construction by CDC and subsequent maintenance and operation by Avenal of the transmission pipeline and distribution line identified in Section I, paragraph 1, subparagraph "b"; (b) consent to use of any street or other easements owned by Avenal by CDC for such purposes as are incidental to CDC's prison operation and as may not unreasonably interfere with the basic use previously being made thereof by Avenal or on behalf of its residents; and (c) as to any other property interests owned by Avenal, to consider requests of CDC for the use thereof and where such use will not unreasonably interfere with Avenal's needs, to consent to such use thereof on appropriate terms and conditions.

8. To deposit with CDC, the full amounts of cost attributable to Avenal under Section III, paragraph 5 or provide financing plans and commitments to CDC within ten (10) days after CDC opens construction bids for the water system improvements described in Section I, paragraphs 4a and 11a and for the wastewater treatment and disposal system improvements

described in Section I, paragraphs 4b and 11b. If the financing plans are agreeable to both CDC and the City then construction of the facilities agreed to will proceed. Upon completion and acceptance of construction by CDC of each of the two improvements, the water system and wastewater treatment system improvements, and within thirty (30) days after receipt by it from CDC of the statement or statements provided for in Section I, paragraph 12, supra, to pay to CDC any difference between the amounts previously deposited by Avenal and the total of its share of the total cost of design less the agreed sum of \$20,000.00 as provided in Section III, paragraph 6.

9. To pay to CDC or subtract from amounts otherwise due to Avenal from CDC under the terms of this agreement, up to \$50,000 in design and engineering fees related to preparation of specifications and other bid documents for providing bid alternates should funding not be available.

10. To accept treat and dispose of wastewater generated by the prison during the period of December 1986 to June 1987. The maximum flow during this period is expected to be 88,000 gpd. CDC shall be responsible for transporting this wastewater from the prison to the existing City wastewater treatment plant. The CDC will pay reasonable and customary fees for this service but will not be subject to any hookup fees. The City will be responsible for securing all permits.

III. It is mutually understood and agreed:

1. Avenal shall have the right and reasonable opportunity to promptly review all designs and engineering performed by CDC to develop the

water supply and wastewater system improvements provided for by this Agreement, to offer to CDC comments and criticisms thereon, and that CDC shall consider such before final adoption by it of a design or engineering plan, provided such comments are provided by Avenal to CDC in a timely fashion, within 10 days of provision thereof by CDC to Avenal.

2. The purposes of the parties in making and performing this Agreement are to thereby jointly and economically enhance the current ability of Avenal to provide for its purposes and to provide for the CDC prison operation, water supply and treatment and wastewater treatment and disposal systems. In executing their respective responsibilities under this Agreement, each party shall follow procedures and comply with conditions applicable to it.

3. The addition or subtraction of any facilities or improvements to the water and/or wastewater facilities and/or improvements listed in Section I, paragraph 1 above may be made only pursuant to written consent of both Avenal and CDC. This limitation shall not limit either party's ability or authority to make changes to system facilities which do not directly or indirectly affect the other party nor changes which are incidental to design or construction change orders.

4. As to the treated wastewater or sewage to be provided by Avenal to CDC pursuant to Section II, paragraph 6, CDC shall have the right from time to time to temporarily transfer and/or permanently sell all or any part of such right to other parties and/or to abandon or surrender such to Avenal not sooner than 120 days after written notice without penalty or further payment by CDC.

5. In the event that either or both water or wastewater system improvements are built so as to be sized to provide added capacities for the benefit of Avenal in accord with Section I, paragraph 4, Avenal's share of the costs incurred by CDC in design and construction of the larger capacity built shall be the portion of the total cost of such design and construction which is derived by the incremental cost estimate prepared pursuant to Section I, paragraph 4. Avenal's share of the costs of the water and wastewater treatment systems improvements on this basis is currently estimated to be \$1,679,416. The maximum of construction costs to be borne by Avenal under this Agreement shall be \$1,847,350.

6. In consideration of the provision of property interests as provided in Section II, paragraph 7, Avenal shall be entitled to a credit on its obligations identified in preceding paragraph 5 of this Section III of the agreed and lump-sum of \$20,000.00.

7. The common powers which the parties respectively possess and propose be exercised in the implementation of this Joint Powers Agreement are to provide for water supplies and for treatment and disposal of wastewater.

8. Except with respect to lump and specifically agreed-to payments provided for herein, each party shall keep strict account of and report all receipts and disbursements which are relevant to the ascertainment of their respective obligations to each other hereunder.

9. CDC and Avenal shall each follow previously and/or newly established requirements for custody of property acquired incidental to this Agreement and require of them and their officers and employees such bonds and/or security as may by law, otherwise, be applicable to each of them.

10. As authorized by Government Code Sections 895-895.5, as between CDC and Avenal, neither party nor its officers, agents or employees shall be responsible for any damage or liability resulting or occurring by reason of anything done or omitted to be done by the "other party" under, incidental to or in connection with any work, act, authority or jurisdiction which is the responsibility of such "other party." Such "other party" shall defend, indemnify, and hold harmless the party, its officers, agents and employees, whose actions or inactions did not result in the damage or liability claimed.

11. This Agreement shall become effective upon execution of both parties. This Agreement shall be binding upon, and the heirs, successors and assigns of the parties shall be entitled to, all of the rights and privileges and be subject to all of the obligations and responsibilities of their predecessors. The term of this Agreement shall be indefinite and it shall continue until terminated by agreement of the parties or pursuant to applicable statutory authority. On termination of this Agreement, all surplus monies and properties, if any, developed or originated pursuant thereto shall be disposed of in accord with the Agreement of the parties, applicable statutes or a final decree of a court of competent jurisdiction.

12. Pursuant to the provisions of Government Code Section 10532, the parties hereto shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment is made under this Agreement, concerning matters connected with the performance of this Agreement.

13. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

14. The use of either party of any remedies specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

15. This Agreement constitutes the entire Agreement of the parties, which may be modified only upon mutual written consent.

16. The obligations of each of the parties under this Agreement are and shall be subject to the availability of necessary appropriations of funds and to all legally applicable conditions precedent and approvals.

In witness of the foregoing, the parties, by and through their duly authorized representatives, have made and entered into this Agreement as of the date first set forth above.

JOINT POWERS AGREEMENT

C85.542.0.01
Amend. #1

Whereas, this agreement, made and entered into this 14th day of August, 1986, by and between CDC and the City of Avenal is amended as follows:

Page 5, Section I, paragraph 4 is revised to read:

4. The design package called for in paragraph 1 above shall include incremental cost estimates for design and construction for:
 - a. Construction of water system improvements having a capacity sufficient to serve prison needs of 1.5 mgd, plus and additional capacity of 1.3 mgd for the City of Avenal or a total of 2.8 mgd; and
 - b. Construction of wastewater treatment and disposal system improvements having a capacity sufficient to serve prison needs of .87 mgd, plus an additional capacity of .76 mgd for the City of Avenal or a total of 1.63 mgd.

Page 7, Section I, paragraph 9, last sentence is revised to read:

This payment will not be awarded to Avenal if Avenal does not provide the deposit for expansion of the wastewater treatment plant described under Section I, paragraph 11b.

Pages 7 and 8, Section I, paragraphs 11.a and b are revised to read:

11. To advertise for and receive bids for construction of:
 - a. First, water supply system improvements as described in paragraphs 1a-d consisting of a system having a capacity sufficient to supply 2.8 mgd.
 - b. Second, a wastewater treatment system as described in paragraph 1e and f having a capacity sufficient to serve 1.63 mgd.

Page 8, Section I, paragraph 12 is revised to read:

12. In not to exceed six (6) months of acceptance of the constructed improvements provided for in Section I, paragraph 4 and 11, to provide to Avenal an itemized statement showing the bid received by CDC, as provided for in paragraphs 11a and b, CDC's actual cost of construction thereof, together with its then best estimate of yet unresolved costs of construction as for example claims of construction contractors. CDC's costs of design and construction shall include, in accord with standard State accounting practice, its direct costs of design and construction as well as its direct overhead.

Page 10, Section II, paragraph 6, last sentence, is revised to read:

In the event that the wastewater treatment plant is constructed with capacity to serve the prison only and not the City and the prison, the City will deliver only the treated effluent generated by CDC.

Page 11, Section II, paragraph 8 is revised to read:

8. To deposit with CDC, the full amounts of cost attributable to Avenal under Section III, paragraph 5 or provide financing plans and commitments to CDC within ten (10) days after CDC opens construction bids for the water system improvements described in Section I, paragraph 4a and 11a and for wastewater treatment and disposal system improvements described in Section I, paragraphs 4b 11b. If the financial plans are agreeable to both CDC and the City then construction of the facilities agreed to will proceed. Upon completion and acceptance of construction by CDC of each of the two improvements, the water system and wastewater treatment system improvements, and within thirty (30) days after receipt by it from CDC of the statement or statements provided for in Section I, paragraph 12, supra, to pay to CDC any difference between the amounts previously deposited by Avenal and the total of its share of the total cost design less the agreed sum of \$20,000.00 as provided in Section III, paragraph 6.

Page 11, Section II, paragraph 9 is revised to read:

9. To pay to CDC or subtract from amounts otherwise due to Avenal for CDC under the terms of this agreement, up to \$50,000 in design and engineering fees related to preparation of specifications and other bid documents for providing bid alternates should funding not be available.

Section II is revised to add:

10. To accept treat and dispose of wastewater generated by the prison during the period of December 1986 to June 1987. The maximum flow during this period is expected to be 88,000 gpd. CDC shall be responsible for transporting this wastewater from the prison to the existing City wastewater treatment plant. The CDC will pay reasonable and customary fees for this service but will not be subject to any hookup fees. The City will be responsible for securing all permits.

Page 13, Section II, paragraph 5 is revised to read:

5. In the event that either or both water or wastewater system improvements are built so as to be sized to provide added capacities for the benefit of Avenal in accord with Section I, paragraph 4, Avenal's share of the costs incurred by CDC in design and construction of the larger capacity built shall be the portion of the total cost of such design and construction which is derived by the incremental cost estimate prepared pursuant to Section I, paragraph 4. Avenal's share of the costs of the water and wastewater treatment systems improvements on this basis is currently estimated to be \$1,679,416. The maximum of construction costs to be borne by Avenal under this Agreement shall be \$1,847,350.

All other terms and conditions of the original agreement, as amended, remain the same in full effect.

In witness of the foregoing, the parties, by and through their duly authorized representatives, have made and entered into this amendment as of the date first set forth above.

CITY OF AVENAL,
a municipal corporation

By: Harlin A Casida

Its: Resolution 86-33
(Attach certified copy of City
Council resolution authorizing)

Approved as to form and legality:

City Attorney for the
City of Avenal

STATE OF CALIFORNIA

By: [Signature]

Its: _____
Assistant Deputy Director
Financial Management &
Support Services of the
Department of Corrections

This Agreement is hereby
approved as provided and
required by Public Contract
Code Section 10295, Penal Code
Section 7001 and Government
Code Sections 6501 and 11005.2

Department of Corrections

By: [Signature]

Its: _____

Dated: 9/14/86

I hereby certify that all conditions for
exemption set forth in State
Administrative Manual Section 1209
have been complied with and this
document is exempt from review by the
Department of Finance.

[Signature]

I hereby certify that all conditions for
exemption set forth in Chapter 11
(commencing with Section 7000) of Title
7 of Part 3 of the Penal Code have been
complied with and this contract is
exempt from the Department of General
Services.

By: _____

Date: _____

2nd
AMENDMENT
TO
JPA

DATED: 03/12/1987

RESOLUTION NO. 87 - 10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVENAL AMENDING THE JOINT POWERS AGREEMENT WITH THE DEPARTMENT OF CORRECTIONS.

WHEREAS, The City of Avenal is desirous of expanding its water and wastewater treatment facilities; and

WHEREAS, The Department of Correction will need to develop such facilities in order to service the facility needs; and

WHEREAS, The two parties entered into a Joint Powers Agreement for the development of those facilities; and

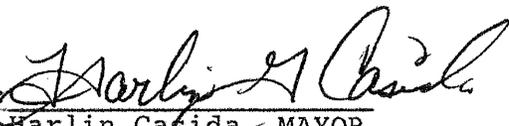
WHEREAS, Certain aspects of that agreement needs to be amended, from time to time to reflect existing conditions.

NOW, THEREFORE BE IT RESOLVED, that City Council of the City of Avenal adopts this amended agreement attached as and an Amendment to the Joint Powers Agreement with the Department of Corrections.

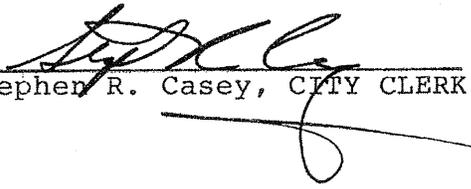
PASSED AND ADOPTED at a regular meeting of the Avenal City Council on the 12th day of March , 1987 by the following roll call vote:

AYES: Baldwin, Dauber, Hedgecock, Casida.
NOES: None.
ABSENT: Etchison.

APPROVED:


Harlin Casida, MAYOR

ATTEST:


Stephen R. Casey, CITY CLERK

DEPARTMENT OF CORRECTIONS
P. O. Box 942883
Sacramento, CA 94283-0001



City of Avenal
919 Skyline Blvd.
Avenal, CA 93204

April 2, 1987

Re: C85.542.0.01
Amend. # 2

1. _____ Please sign all copies of the attached contract in original signatures. Return all copies for further processing to the address shown below within 5 working days of receipt.* When fully approved, a copy will be returned to your office. Contracts are not effective until approved by the Department of General Services or the Department of Corrections as required by the State Administrative Manual. If contract is in excess of \$5,000, please enter your federal employer ID number _____.
2. _____ Please complete the attached Small Business Information Sheet and return with the contract.
3. _____ Attached are _____ copies of the above-referenced contract which has been signed on behalf of this Department. When fully approved, please return two fully executed copies to the office shown below.*
4. ~~_____~~ Attached for your files is the fully executed original of the above-referenced contract.
5. _____ To each copy of the attached contract; please attach a certified copy of the resolution, order, motion or ordinance of the local governing body by law having authority to enter into the proposed contract or authorizing execution by the official signing the contract.
6. _____ Other.

If further information is needed, please contact Robert Juka at (916) 323-8721 or ATSS 473-8721.

*Please return to: Department of Corrections
Contract Services Section
P.O. Box 942883
Sacramento, CA 94283-0001


CHARLES T. KJER
Chief, Contract Services Section

AMENDMENT TO THE AUGUST 14, 1986
AMENDED JOINT POWERS AGREEMENT
BETWEEN THE CITY OF AVENAL AND THE
CALIFORNIA DEPARTMENT OF CORRECTIONS

This amendment is made and entered into this 12th
day of March, 1987 by and between the City of Avenal
(hereinafter "Avenal") a municipal corporation, and the State of
California, acting by and through its Department of Corrections
(hereinafter "CDC").

WITNESS

Whereas, a Joint Powers Agreement was made and entered
into December 30, 1985 by and between the parties hereto and an
Amended Joint Powers Agreement was made and entered into by the
same parties on August 14, 1986; and

Whereas, the parties seek to amend, modify, or clarify
the Amended Joint Powers Agreement in certain particulars;

NOW THEREFORE, Avenal and CDC do hereby amend the
Amended Joint Powers Agreement of August 14, 1986, pursuant to
Paragraph III, 15, at page 15 of that Amended Joint Powers
Agreement, as follows:

1. Avenal agrees that its possession of and title to
the wastewater treatment plant, constructed pursuant to the
Amended Joint Powers Agreement, shall be subject to a mortgage in
favor of the U.S. Department of Commerce, Economic Development
Administration.

2. Avenal agrees that it shall not alienate (i.e. sell, rent, lease, or otherwise transfer) control or ownership of the wastewater treatment facility without prior written approval from EDA.

3. Avenal agrees that should federal funding for the oversizing of the treatment plant be denied, terminated, withdrawn or recouped at any time, whether before or after transfer of ownership and control of the plant to Avenal, the City of Avenal shall reimburse CDC for all costs of over-sizing which are not covered by federal funds. Provided CDC makes a good faith effort to comply with EDA grant requirements, the reason for the denial, termination, withdrawal or recoupment of federal funds shall not affect Avenal's duty to reimburse CDC. However, notwithstanding any other provision of this paragraph, Avenal shall not be responsible to reimburse CDC for federal funds denied, terminated, withdrawn or recouped because of deficiencies in design or construction, which deficiencies interfere with Avenal's ability to operate and/or maintain the wastewater treatment facility.

4. The provisions contained herein are in addition to those contained in the Amended Joint Powers Agreement of August 14, 1986. Each and every provision of the Amended Joint

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Powers Agreement of August 14, 1986 shall remain in full force and effect except that, to the extent that they may be inconsistent or conflict with the provisions of this amendment, the provisions contained herein shall control.

5. The obligations undertaken by Avenal pursuant to this amendment are in consideration of, among other things, CDC's participation as co-applicant with Avenal for a grant from the United States Department of Commerce, Economic Development Agency.

City of Avenal, a
Municipal Corporation

By:

Harley Casida

Its: MAYOR

State of California
Department of Corrections

By:

Charles T. By

Its: Chief, Contract & Business Services

(Attach is a certified copy of the City Council Resolution authorizing this Amendment.)

I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1209 have been complied with and this document is exempt from review by the Department of Finance.

I hereby certify that all conditions for exemption set forth in Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code have been complied with and this contract is exempt from the Department of General Services.

By:

Richard O. Lamb

Date:

03-26-87

3rd
AMENDMENT
TO
JPA

DATED: 11/05/1998

RESOLUTION NO. 98 - 38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVENAL AUTHORIZING THE CITY MANAGER OF THE CITY OF AVENAL TO SIGN AND EXECUTE THE THIRD AMENDMENT TO THE JOINT POWERS AGREEMENT WITH THE DEPARTMENT OF CORRECTIONS.

WHEREAS, certain aspects of the JPA need to be amended, from time to time to reflect existing conditions; and

WHEREAS, the amendment is both beneficial to both the City and the Department of Corrections.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Avenal does hereby authorize the City Manager of the City of Avenal to sign and execute the Amended Joint Powers Agreement with the Department of Corrections/Avenal State Prison.

PASSED AND ADOPTED at a regular meeting of the Avenal City Council held on the 8th day of October, 1998, by the following vote:

AYES: Elliott, Craighead, Casida.

NOES: None.

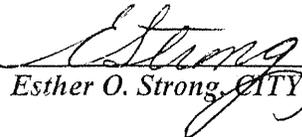
ABSENT: Woolley.

ABSTAIN: Cota.

APPROVED:


Andrew L. Cota, MAYOR

ATTEST:


Esther O. Strong, CITY CLERK

DEPARTMENT OF CORRECTIONS

P. O. Box 942883

Sacramento, CA 94283-0001



November 3, 1998

Ms. Melissa G. Whitten
City Manager
City of Avenal
919 Skyline Boulevard
Avenal, California 93204

Dear Ms. Whitten:

JOINT POWERS AGREEMENT REGARDING WATER AND WASTEWATER IMPROVEMENTS

Based on recent discussions with my staff, it is our understanding that the City of Avenal (City) is prepared to approve the Joint Powers Agreement (JPA) regarding water and wastewater improvements as they relate to the Emergency Bed Program at Avenal State Prison (ASP). You indicated that this was conditioned upon participation by the State of California (State) in installing a device on the wastewater meter at ASP, which would provide wastewater flow data to the City's wastewater treatment facility. This is to inform you that the State will participate up to an amount not to exceed \$5,000.

With this commitment, I hope we can move forward with the execution of the JPA quickly. Please send duplicate signed originals of the JPA to us for processing, along with a duly certified copy of the Council's authorization resolution and the City's invoice for the monies payable pursuant to Paragraphs 2, 3, and 4 of the JPA. An agreement is currently being prepared to facilitate the transfer of funding for the installation of the new telemetry equipment and will be sent to you as soon as it is ready for signature.

If you have any questions, please contact Dennis S. Turnipseed, Chief, Existing Facility/Day Labor Branch, at (916) 323-1148.

Sincerely,

A handwritten signature in cursive script that reads "Judith A. McGillivray".

JUDITH A. MCGILLIVRAY
Deputy Director
Planning and Construction Division

cc: M. K. Madding, Warden, ASP

DEPARTMENT OF CORRECTIONS

1515 S Street, Room 415S
P.O. Box 942883
Sacramento, CA 94283-0001



RECEIVED
DEC 7 1998

December 4, 1998

Melissa G. Whitten, CITY MANAGER
City of Avenal
919 Skyline Blvd.
Avenal, CA 93204

Dear Ms. Whitten:

JOINT POWERS AGREEMENT NUMBER: C85.542.0.01, Amendment No. 3

Enclosed for your files is a fully executed copy of the above-referenced amendment.

If you have any questions, please call me at (916) 324-4916.

Sincerely,

A handwritten signature in cursive script that reads 'Peggy M. Ginsberg'.

PEGGY M. GINSBERG
Construction Contracts Analyst
Construction Contracts and Bid Packages Section

Enclosures

THIRD AMENDMENT TO THE JOINT POWERS AGREEMENT
BETWEEN THE CITY OF AVENAL AND THE
DEPARTMENT OF CORRECTIONS

This third amendment to the Joint Powers Agreement (JPA) of December 30, 1985, as amended on August 14, 1986, and March 12, 1987, by and between the City of Avenal, a municipal corporation (hereinafter "City"), and the State of California, acting by and through its California Department of Corrections (hereinafter "CDC"), is made and entered into this 5th day of November 1998.

RECITALS

WHEREAS, CDC currently operates a State prison in the City of Avenal, County of Kings; and

WHEREAS, a JPA was made and entered into December 30, 1985, by and between the parties hereto related to Avenal's water and wastewater systems, with a first amendment on August 14, 1986, and a second amendment on March 12, 1987; and

WHEREAS, the parties seek to amend, modify, and clarify the JPA in certain particulars; and

WHEREAS, on November 15, 1995, CDC approved and certified a Final Environmental Impact Report (FEIR) for the Emergency Bed Project (hereinafter "Project") at Avenal State Prison (hereinafter "ASP"). The Project would accommodate up to an additional 1,960 inmates in emergency housing facilities and related structures on the grounds of ASP; and

WHEREAS, the Project would require the City to provide additional maximum day water demands and additional wastewater treatment capacity and require the City to make infrastructure improvements in order to provide this additional capacity; and

WHEREAS, the parties hereto have determined that it is in their common interest to jointly provide for additions and improvements to the City's water and wastewater system so that the City can provide adequate and sufficient water and wastewater service to the prison;

WHEREAS, Title 1, Division 7, Chapter 5 of the Government Code of the State of California (Government Code sections 6500 *et seq.*) authorizes the joint exercise by agreement of two or more public agencies of any power common to them.

NOW, THEREFORE, in consideration of mutual terms, covenants, and conditions herein agreed, the parties hereto amend the Amended JPA and agree as follows:

Purpose of the Agreement: CDC and City enter into this amendment to commit both parties to certain actions and obligations. CDC agrees to fund the following additions, improvements, and alterations to the City water and wastewater systems in order to provide for the water and wastewater needs of the Project and ASP. The City agrees to make the necessary water and wastewater improvements to ensure that the prison's needs are met as described in the recitals contained herein and as follows:

1. The City shall provide potable water to ASP, which shall meet all applicable requirements and standards for human consumption, at an average daily demand of 1.25 million gallons per day (mgd), a maximum day demand not to exceed 2.16 mgd, based on the average daily demand of 1.25 mgd and a maximum day demand factor of 1.7 (specified by the City) and an annual demand not to exceed 1,411 Acre-Feet Per Year (AFY).

2. In consideration for ASP's specified need for a maximum daily demand of 2.16 mgd, CDC will pay to City \$412,000 to rehabilitate Water Treatment Plant (WTP) Number One, and City will make the following improvements and alterations to WTP Number One: Replacement of the traveling screen, raw water pumps, piping, and valves; rehabilitation of Clarifier Number One, including cathodic protection and repair of the drive unit and bearings; replacement of clearwater pumps, piping, and valves, modifying the filter header piping, and surface washer system; replacement of two pressure filter media, rehabilitation of two pressure filters; permanent connector between WTP Number One and WTP Number Two; rehabilitation of Tank Number One; and improvements to WTP Number One telemetry and associated electrical repairs.

3. CDC shall pay to City \$315,000 for City to expand and upgrade the WTP Number Two pump station lift pumps to raise the pumping capacity of the station to 4.3 mgd to meet the City's and CDC's post-Project needs. City shall make the necessary improvements and alterations, including the following: The removal of existing pumps, purchase and installation of four booster pumps, upgrading the main switchgear to 3,000 amps, modifying the existing booster pump starters, and replacement of the surge tank. In addition, from this amount, the City shall purchase a temporary emergency generator to minimize disruptions to plant operation during construction, additional conduit and wiring to facilitate future City development of the plant, and participation in providing emergency power for WTP Number One.

4. City will provide CDC an additional 0.24 mgd of the unused capacity in City's Wastewater Treatment Plant to a total maximum not to exceed capacity of 1.11 mgd ($0.24 + 0.87 = 1.11$ mgd) in order to accommodate the additional demand for treatment capacity associated with the Project. CDC will pay to City \$456,000 in consideration for the use of this currently unused wastewater treatment capacity. It is our understanding that the City will use the \$456,000 for the addition of, but not limited to, a sludge drying bed, including sludge removal, fencing, road base, emergency power, and a wastewater "grinder," including fencing, to City's Wastewater Treatment Plant.

5. City is not precluded by this agreement from subsequently proposing modifications to the scope and kind of improvements, additions, and alterations that are outlined in this agreement, subject to CDC's approval and the amounts outlined above.

6. The work performed by the City at WTP Numbers One and Two shall be of workmanlike quality and designed in accordance with standard water works practices for a city public water supply system and in accordance with the American Waterworks Association standards.

7. City shall be responsible for obtaining, and promises to obtain, any and all necessary approvals and permits from all necessary agencies or companies and shall be responsible for the operation, maintenance, replacement, and repair of the newly-constructed improvements, additions, and facilities as well as any additions and improvements to existing facilities occasioned by the agreement.

8. All risk of loss or injury, damage or harm to any and all City facilities and property, and all other property, public or private, during the construction of these improvements shall be the sole responsibility of City, including all necessary repair or replacement, and CDC shall not be liable or charged for any such loss, injury, damage or harm.

9. City agrees to indemnify, defend, and hold harmless CDC, its officers, employees, and agents, for all claims, demands, expenses, and costs arising out of the design and construction of the upgrades, additions, and improvements provided for in this agreement.

10. The parties agree that time is of the essence, and the City will use its best efforts to complete the improvements to WTP Number One at the earliest practical date and no later than ~~December 31, 1999~~ ^{June 30, 2000}. City will provide an overall schedule for the completion of the improvements to CDC's Planning and Construction Division within sixty (60) days after execution of this agreement and shall report to CDC every sixty (60) days as to the status of the schedule and progress of the improvements and provide an accounting of incurred costs. City shall immediately notify CDC of any changes to the schedule. A notification of the completion of these improvements will be provided to CDC upon completion of the improvements as outlined above. City will provide CDC with a final accounting of total costs incurred within ninety (90) days of completion of the improvements, and retain supporting documentation and records for four (4) years, and any amounts in excess of actual costs reasonably and necessarily incurred will be refunded to CDC.

11. City agrees to be responsible for compliance with the California Environmental Quality Act with respect to any improvements provided for in this agreement.

12. Should CDC's annual demand exceed 1,411 AFY, City shall take such measures as are reasonably available to it to supply, and to the extent it is able to do so, it shall supply such additional volumes and do so in consideration of payment by CDC to City of City's direct costs of supplying such additional water to CDC, plus normal, customary, and nondiscriminatory, monthly, or other periodic payments to cover CDC's pro rata and equitable share of the costs of operation and maintenance of required additional facilities, if any. CDC will, to the extent possible, assist City in locating and paying for water acquisition when CDC's demand exceeds 1,411 AFY and to the extent the need for additional water is generated by CDC.



13. The parties agree that time is of the essence. The City will use its best efforts to provide the additional wastewater capacity outlined in this agreement to ASP no later than 360 calendar days after execution of this agreement. Until that time or upon notification by the City, whichever comes first, ASP will not exceed an average daily wastewater flow of 0.87 mgd. The City will use its best efforts to deliver the maximum day demand for treated domestic water no later than 630 calendar days after execution of this agreement. Until that time or upon notification by the City that the additional capacity is available, whichever comes first, ASP will restrict its maximum day demand for treated domestic water to 1.5 mgd.

14. To facilitate the management of water deliveries and to assist in the development of future water allocations from the Federal Bureau of Reclamation, an annual accounting of water usage by ASP and the City shall be undertaken. Based on the previous 12-month water usage, the limitations, as outlined in Provision 1 of this agreement, and any proposed changes in institution population of water usage practices, ASP shall project water delivery requirements for the subsequent 12-month period. The City shall undertake a similar projection of future water delivery requirements. Should changes be required in these projections by either party, both parties shall meet to revise the projections and consider the potential impact on the delivery and availability of water. In the event that the City's water allotment is reduced by the Federal Bureau of Reclamation below the projected requirement for the City and ASP for the 12-month period, then ASP shall proportionally reduce its projected usage amount for the 12-month period based on the following formula:

$$\text{ASP Reduced Usage Amount} = B \times \frac{C}{B + D}$$

Where:

B = ASP Projected Usage Amount [original] (AFY)

C = Federal Bureau of Reclamation Allotment (AFY)

D = City of Avenal Projected Usage Amount [original] (AFY)

This reduced usage amount may be changed by mutual agreement of the City and ASP if both parties believe public security and safety issues may be compromised.

15. It is acknowledged that the specific provisions of this amendment shall modify and take precedence over any conflicting provisions of the JPA and the previous amendments thereto.

16. Any waiver at any time by either party hereto of its rights with respect to a breach or default or any matter arising in connection with this agreement shall not be a waiver with respect to any other breach, default, or matter.

17. This agreement shall become effective upon execution by both parties. This agreement shall be binding upon the successors and assignees of the respective parties, and such successors and assignees shall be subject to all obligations and responsibilities of their predecessors, and no party to this Agreement or any term thereof shall assign or be assigned, unless written approval of such assignment is provided prior to such assignment.

18. The provisions of this agreement shall only be modified, in writing, by CDC and City as an amendment to the agreement.

19. The law of the State of California shall govern this agreement.

20. If one or more of the provisions contained herein should be determined to be invalid or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

21. The obligations of this agreement are contingent upon the agreement being reviewed, affirmed, and approved by and all agencies, officers, or persons, including, but not limited to, the Avenal City Council and the Director of the CDC, as required by law.

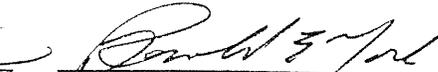
IN WITNESS OF THE FOREGOING, the parties, by and through their representatives, have made and entered into this agreement as of the date first set forth above.

CITY OF AVENAL

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS



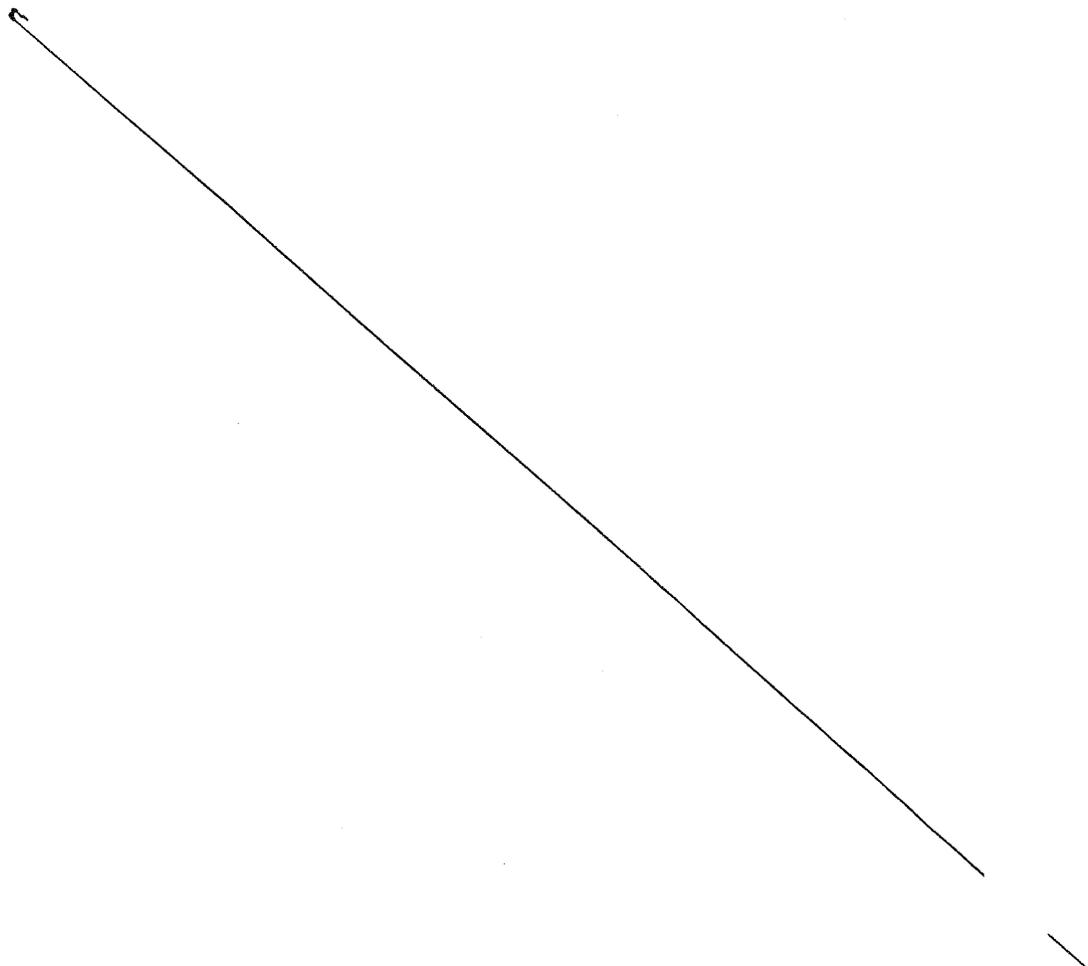
MELISSA G. WHITTEN
City Manager



F. FRANK E. RENWICK, Chief
Contract and Audit Management Branch
Administrative Services Division

ENCUMBRANCE

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|---|---------------------------------|--------------------|
| DEPARTMENT OF CORRECTIONS AND CITY OF AVENAL | CONTRACT NUMBER C85.542.0.01 | AMENDMENT NO. 3 |
|---|---------------------------------|--------------------|



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|---|--|------------|-----------------------|---------------------------|----|--|
| AMOUNT ENCUMBERED | PROGRAM / CATEGORY (CODE AND TITLE) | | | FUND TITLE | | <p style="text-align: center;"><i>Department of Corrections Use Only</i></p> <p>I hereby certify that all conditions for exemption set forth in Penal Code Sections 7000-7016 and/or State Administrative Manual Section 1206 have been complied with and this contract is exempt from approval by the Department of General Services.</p> <p>By: <u><i>Paul S. Tol</i></u></p> <p>Date: <u><i>12/3/98</i></u></p> |
| \$ | CAPITAL OUTLAY | | | PUBLIC BLDG CONST FUND | | |
| UNENCUMBERED BALANCE | (OPTIONAL USE) | | | | | |
| \$ | 6050/842.30/90554 | | | | | |
| ADJ. INCREASING ENCUMBRANCE | ITEM | CHAPTER | STATUTE | FISCAL YEAR | | |
| \$ 1,683,000.00 | 5250-301-660.184 | 303 | 95 | 98/99 | | |
| ADJ. DECREASING ENCUMBRANCE | OBJECT OF EXPENDITURE (CODE AND TITLE) | | | | | |
| \$ | 842.30 | | RETAINED | | EM | |
| I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above. | | T.B.A. NO. | B.R. NO. | | | |
| SIGNATURE OF ACCOUNTING OFFICER | | | DATE | | | |
| x <u><i>DeAndrea N. Styles</i></u> | | | <u><i>12/4/98</i></u> | | | |