

**DRAFT FINAL CHARTER AGREEMENT BETWEEN
THE DEPARTMENT OF WATER RESOURCES
AND
STATE WATER PROJECT CONTRACTORS

TO ESTABLISH AND IMPLEMENT
A STATE WATER RESOURCES DEVELOPMENT SYSTEM FINANCE COMMITTEE**

THIS CHARTER AGREEMENT to establish and implement a State Water Resources Development System Finance Committee ("**Agreement**") is made between the State of California, acting by and through its Department of Water Resources ("**DWR**"), and those public agencies whose representatives' signatures appear below ("**Contractors**"), herein referred to collectively as "**Parties.**"

RECITALS

1. **WHEREAS**, DWR is responsible for constructing, operating and maintaining the State Water Resources Development System ("**SWRDS**");
2. **WHEREAS**, Contractors have long-term contracts ("**Contracts**") with DWR to receive water from SWRDS, which Contracts are similar in all material respects; and
3. **WHEREAS**, pursuant to such Contracts, Contractors are obligated to reimburse DWR for water supply-related SWRDS costs; and
4. **WHEREAS**, DWR and Contractors have agreed to extend such Contracts and to amend certain other terms relating primarily to SWRDS financial matters ("**Contract Amendments**"); and
5. **WHEREAS**, DWR and Contractors understand and agree that it is in their mutual interests to continue to maintain the financial integrity of SWRDS;
6. **WHEREAS**, DWR has agreed in the Contract Amendment to establish the SWRDS Finance Committee to discuss and make recommendations concerning the financial policies of SWRDS.
7. **WHEREAS**, this Agreement is intended to provide a framework for such cooperative efforts and the development of financial policy recommendations, and entering into this Agreement is part of the consideration for entering into the Contract Amendments.

AGREEMENT

NOW THEREFORE, DWR and Contractors agree as follows:

I. EFFECTIVE DATE AND TERM

This Agreement shall be binding on DWR and those Contractors whose representatives' signatures appear below; provided, however, that the Agreement shall only take effect and be binding as to an individual Contractor upon that Contractor's contract amendment taking effect. The Agreement shall remain in effect as long as the contract amendment remains in effect, unless terminated earlier by mutual consent of all the Parties. The Agreement may be amended by the mutual consent of all the Parties.

II. SWRDS FINANCE COMMITTEE

A. Establishment

1. A State Water Resources Development System ("**SWRDS**") Finance Committee is hereby established by and among DWR and Contractors.

B. General Scope and Intent

1. As set forth more fully below, the SWRDS Finance Committee is intended to promote coordination, communication and cooperation among DWR and Contractors regarding SWRDS financial policies, work plans and reports. More specifically, the SWRDS Finance Committee is expected to provide recommendations necessary to effectively coordinate and execute comprehensive financial management of SWRDS.
2. The SWRDS Finance Committee is not intended or expected to address specific SWRDS budget line items, individual project budgets or individual transactions, but rather shall address those financial matters that are broad in scope and applicability.

C. Composition, Selection and Terms

1. The SWRDS Finance Committee shall be composed of and governed by representatives from both DWR and Contractors.
2. Members:
 - a) DWR shall select five (5) representatives to serve as its official members of the SWRDS Finance Committee ("**DWR Members**"). DWR also shall select five (5) representatives to serve as alternates ("**DWR Alternates**") in the event one or more of the DWR Members is absent or otherwise unable to participate on the Committee.
 - b) Each Contractor may designate one representative ("**Contractor Representative**") to attend Finance Committee meetings to represent the Contractor. Contractors shall select five Contractor Representatives to serve as their official members of the SWRDS Finance Committee ("**Contractor Members**"). The five Contractor Members shall come from each of the following Classes of Contractors:
 - Class 1 – Plumas County Flood Control and Water Conservation District, County of Butte, City of Yuba City, Solano County Water Agency, Napa County Flood Control and Water Conservation District, Alameda County Flood Control and Water

Conservation District, Zone 7, Alameda County Water District and Santa Clara Valley Water District

- Class 2 – Tulare Lake Basin Water Storage District, County of Kings, Dudley Ridge Water District, Empire West Side Irrigation District, Oak Flat Water District, Kern County Water Agency
- Class 3 – Metropolitan Water District of Southern California
- Class 4 – Santa Barbara County Flood Control and Water Conservation District (Central Coast Water Authority), San Luis Obispo County Flood Control and Water Conservation District, Castaic Lake Water Agency, Ventura County Watershed Protection District (Casitas Municipal Water District)
- Class 5 – Antelope Valley-East Kern Water Agency, Coachella Valley Water District, Crestline-Lake Arrowhead Water Agency, Desert Water Agency, Mojave Water Agency, Palmdale Water District, San Bernardino Valley Municipal Water District, San Geronio Pass Water Agency, Littlerock Creek Irrigation District, San Gabriel Valley Municipal Water District

Each Class also shall select a representative from their Class to serve as an alternate (“**Contractor Alternate**”) in the event their Contractor Member is absent or otherwise unable to participate on the Committee.

Each Class shall determine its own method of selecting their Contractor Member and Contractor Alternate.

- c) Members and Alternates shall be appointed to serve one-year terms commencing on January 1 of each year. Members and Alternates may serve multiple terms, but shall be appointed or re-appointed each year as appropriate.
- d) By December 15 of each year, DWR and Contractors shall exchange lists of the Members and Alternates that have been selected to serve on the SWRDS Finance Committee for the following year. Such lists shall include the name, title and contact information for each Member and Alternate on the list.

3. Chair and Vice-Chair:

- a) The SWRDS Finance Committee shall have a Chair and Vice-Chair, who shall be appointed to serve one-year terms in January of each year.
- b) A DWR representative shall serve as the Chair and shall be selected by and from the DWR Members appointed to serve on the Committee for that year.
- c) A Contractor representative shall serve as the Vice-Chair and shall be selected by and from the Contractor Members who have been appointed to serve on the Committee for that year.

D. Meetings and Agendas

- 1. The SWRDS Finance Committee shall meet as frequently as is necessary to carry out its responsibilities, but no less than two times annually, at such times and locations as

determined by the Committee Chair and Vice-Chair. The Chair and Vice-Chair each shall have the authority to call a meeting and shall do so upon their own motion or upon the request of any Member of the Committee. Each Member shall endeavor to attend all scheduled meetings or ensure that an Alternate attends in his/her absence.

2. Prior to each meeting of the SWRDS Finance Committee, the Chair or Vice-Chair shall prepare a written agenda. Proposed agenda items shall be submitted in writing to the Chair or Vice Chair prior to the meeting for consideration. Each proposed agenda item shall follow a standard format (SWRDS Finance Committee Proposal Template) that includes the following sections:
 - a) A description of the issue or matter to be considered by the Committee, including, if applicable, attempts that have been made to resolve disputes.
 - b) A justification of why the issue or matter is within the Committee's scope and purpose.
 - c) A discussion of at least two alternative solutions intended to resolve the issue or matter under consideration and the consequences of inaction.
 - d) The preferred alternative or recommendation.
 - e) The name and contact information for the sponsor(s) of the issue.If a proposed agenda item is deemed to be consistent with the intent of this Agreement by either the Chair or the Vice-Chair, then it shall be placed on the agenda.
3. In addition to the ten (10) designated Members, the meetings of the SWRDS Finance Committee shall be open to all designated Contractor Representatives and DWR alternates. Other subject matter experts, contractor staff, and/or DWR staff may be invited by the Chair or Vice Chair, as needed, to provide relevant and material input pertaining to individual issues brought to the Committee. All designated representatives can participate in discussions based on procedures and rules in Section G below.

E. Quorum

1. A quorum of the SWRDS Finance Committee shall consist of six (6) Members. In the absence of a quorum, the Committee may receive information, but shall not take any actions, make any recommendations, or engage in any other business or activities.

F. Minutes

The Chair or Vice Chair shall be responsible for the keeping of minutes of each SWRDS Finance Committee meeting. Copies of the minutes shall be provided to the Committee Members within two weeks after a meeting.

G. Procedures and Rules

The SWRDS Finance Committee may adopt such procedures and rules as it determines are necessary or convenient to govern the conduct of the Committee or to assist the Committee in carrying out its responsibilities. Procedures and Rules will be established as mutually agreed upon by members of the Committee.

H. Technical or Ad Hoc Committees

The SWRDS Finance Committee may establish such technical, ad hoc or other sub-committees as it determines are necessary or convenient to assist the Committee in carrying out its responsibilities.

I. Recommendations to the DWR Director

1. After discussion of a given issue or matter, the Committee will designate a Member or Members to prepare a written recommendation for the Director. All Members who concur will sign the recommendation indicating concurrence.
2. If there are competing recommendations for a given issue or matter, multiple written recommendations may be prepared for the Director's consideration. Members will sign the appropriate recommendation indicating their support.
3. Within thirty (30) business days after receipt of a recommendation or recommendations, the Director will issue a decision of acceptance or rejection, and if the Director does not accept the recommendation, an explanation for his/her decision. Such decision or explanation will be provided by the Director in writing or orally at a regularly scheduled SWRDS Finance Committee meeting. If the Director needs additional information and time, the Finance Committee will be notified.

III. DESIGNATION OF SWRDS CHIEF FINANCIAL MANAGER

- A. Consistent with state personnel rules and regulations, DWR shall create and fill a new position to be known as the SWRDS Chief Financial Manager ("**CFM**").
- B. The CFM shall serve as the single point of authority over all SWRDS financial matters. The CFM shall have the responsibility and authority throughout DWR to oversee and implement, in a timely manner, all SWRDS financial policies and shall report directly to the DWR Director or the Deputy Director in charge of the SWP.
- C. Working with the SWRDS Finance Committee, the CFM shall develop and enhance those financial policies, work plans and administrative measures necessary or appropriate to provide comprehensive and cost effective financial management of SWRDS.
- D. The SWRDS Finance Committee and CFM shall coordinate and cooperate with each other at all times in carrying out their respective responsibilities.
- E. Until DWR creates and fills the new CFM position, it shall designate the SWP Deputy Director who shall serve in the same capacity as described above.

IV. CONSIDERATION OF SWRDS FINANCIAL POLICIES MATTERS

- A. The SWRDS Financial Committee shall serve as a forum for discussions regarding financial policy matters applicable to the construction, operation and maintenance of SWRDS facilities and as a channel for making recommendations to the DWR Director concerning such matters.
- B. In general, the types of financial policy matters that should be brought to the SWRDS Finance Committee for consideration are ones that are broad in nature and that cannot be resolved

more effectively in another forum such as an existing Contractor committee. Characteristics of SWRDS financial policy matters that would properly be brought to the SWRDS Finance Committee include those that:

1. affect a group of Contractors, rather than individual contractors;
2. potentially apply to multiple projects, rather than individual projects; and
3. involve potentially large transactions or a large number of transactions.

In weighing these factors, an important consideration shall be whether the SWRDS financial policy matter at issue would potentially merit ultimate resolution by the DWR Director.

- C. Contractors understand and acknowledge that although the SWRDS Finance Committee is charged with providing financial policy recommendations to the DWR Director, the DWR Director shall retain final discretion on whether or not to accept such recommendations.

V. DEVELOPMENT AND APPROVAL OF SWRDS FINANCIAL ENHANCEMENT WORK PLANS

- A. The SWRDS Finance Committee shall guide the development of the SWRDS financial enhancement work plans ("**SWRDS Work Plans**") in cooperation and coordination with the CFM.
- B. The SWRDS Finance Committee shall review and approve all SWRDS Work Plans prior to implementation.
- C. The SWRDS Finance Committee also shall provide input and recommendations to the DWR Director regarding implementation of such work plans.
- D. Once a work plan is approved, the SWRDS CFM, or the SWP Deputy Director if the CFM is not yet appointed, shall be responsible for ensuring the SWRDS Work Plans are implemented in a timely manner.

VI. SWRDS REPORTING PRINCIPLES

- A. The SWRDS Finance Committee is charged with providing financial policy recommendations to the DWR Director, and the DWR Director has final discretion on whether or not to accept the recommendations. While the SWRDS Finance Committee is not charged with reviewing the content of financial reports, timely and accurate financial reporting and financial management reporting provides technical committees access to useful information that can be used to formulate proposals on financial policy matters that may be brought to the SWRDS Finance Committee.
- B. Regardless of the exact nature, scope and frequency, such reports shall follow the principles set forth in Exhibit XX (See Offer Section VIII. Objective 2G: SWRDS Reporting Principles) of the Contract, as applicable.

VII. ENFORCEMENT

This Agreement and any of its terms and provisions may be enforced through an action seeking specific performance or equitable relief only. No Party shall be liable for damages for any breach of this Agreement or its terms and provisions.

VIII. GENERAL PROVISIONS**A. Authority**

Each Party represents and warrants that: (1) the Party has the authority to enter into this Agreement; (2) the individual signing on behalf of the Party has been duly authorized to execute this Agreement by that Party; and (3) upon execution by such individual, that Party shall be bound by the terms and provisions of this Agreement without any further act, approval or authorization of such Party or its governing body or management.

B. Successors and Assigns

Any agency, which as a successor or assignee, becomes a party to a Contract with DWR shall be entitled to become a party to this Agreement. Any party to this Agreement which ceases to be a party to a Contract with DWR shall cease to be a party to this Agreement.

C. Third-Party Beneficiaries

This Agreement is intended to apply solely to its signatories and their successors and approved assigns. This Agreement does not confer any rights or interests on any other private or public persons or entities ("non-Parties"). This Agreement shall not be construed as permitting any non-Party to maintain a suit at law or in equity to enforce the terms of this Agreement or to assert any other claims based on that non-Party's alleged status as a third-party beneficiary.

D. No Waiver

A waiver of any term or provision of this Agreement by any Party shall not constitute or be construed as a waiver of any other term or provision of this Agreement by that Party. No waiver of a term or provision of this Agreement shall be binding unless and until executed in writing by the Party providing the waiver.

E. Joint Drafting; Voluntary Execution

This Agreement was drafted jointly by all Parties. Each Party represents and warrants that: (1) it has read and understands the meaning and effect of all terms and provisions of this Agreement; (2) that prior to execution of this Agreement, it had the opportunity to consult with legal counsel regarding the meaning and effect of this Agreement and its terms and provisions; and (3) it is voluntarily entering into this Agreement.

F. Section Titles

The section titles in this Agreement are for convenience of reference and organization only and shall not be used to modify, explain or interpret any terms or provisions of this Agreement.

G. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement; provided, however, that each signing Party shall have received a copy of the signature page(s) signed by every other Party.

H. Governing Law

This Agreement shall be construed in accordance with the laws of State of California.

I. Amendment

This Agreement may not be amended except through the express written consent of all Parties.

[SIGNATURE BLOCKS]