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February 12, 2018

Recycled Water Committee ("RWC")
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

RE: Expedited Purified Water Program P3 Response

Dear Directors Keegan, Estremera, and Kremen,

Cintra Global Ltd. ("Cintra") is pleased to provide both District Staff and the Board of Directors of the Santa Clara Valley Water District important information for your consideration to assist in determining what delivery model should be selected for the Expedited Purified Water Program ("EPWP").

Pre-Development Agreement

In Board Agenda Item: 5.2 there are three delivery options summarized: Option A – Traditional P3, Option B – Progressive P3 and Option C – Development-Oriented P3. We believe that it is important to correctly label Options B and C. There is no such public-private partnership titled "Progressive P3" or "Development-Oriented P3". Options B & C are what are referred to as pre-development agreements (PDAs) or master development agreements. A PDA has two phases:

- 1) Feasibility or Consulting Phase: this is a consulting agreement whereby the private development partner or consortia co-develops with the public agency a financially feasible project design, technical studies and environmental clearance. In return for performing this consulting work, the developer will be paid a fee and receive a right of first refusal to develop the project under a P3 (design, build, finance, operate and maintain) basis. The public sector always has an off-ramp should it decide that a P3 is not the best option or if there is no agreement on pricing. The PDA is awarded on a best value basis to the most qualified proposer with the best development and financial plans.
- 2) Implementation or P3 Phase: during this phase the private sector partner/consortium is awarded the P3 contract on a sole-source basis and the team constructs the project and operates and maintains the concession for 30 years.

Cintra and Ferrovial Agroman are highly experienced in PDAs having been awarded three PDA's that turned into P3s, including SH-130, NTE 3A & 3C (both in Texas) and just last year, the



Denver Airport Great Hall project. We are believers in PDAs where and when they make sense. PDAs tend to provide value and work best for projects that are relatively undefined with respect to scope of work and cost. In the case of the EPWP, it is quite clear what needs to be built and a PDA would provide little value in defining the project's scope.

Innovation

During the January 23, 2018 Recycled Water Committee's P3 workshop we heard the importance of ensuring maximum innovation in the choice of the ultimate delivery model. It is very important for Staff and the Board to understand that a PDA (if not properly structured) can result in significantly less innovation savings than a traditional P3, and will likely minimize the appropriate cost, design, and schedule risk transfer from the District to the private sector that is one of the major benefits of P3.

We understand that Staff and the Board have been hearing that a PDA will promote maximum innovation in the process and hence drive the final delivery price down. **In a P3 (DBFOM) maximum innovation comes through the competitive RFP bidding process and the Alternative Technical Concepts ("ATC") regime**, where teams are highly incentivized through competitive tension to seek out design and construction innovations that are confidential to their proposal. **In a PDA, there can be little incentive for a PDA consultant to develop ATCs** during the consulting part of the contract, since there is no guaranty that the team will be awarded the delivery of the project. As an example, assume during the PDA (consulting) period the private partner finds an innovation idea that may save \$100 million. If the PDA developer brings this ATC to the attention of the owner their possible construction contract will shrink by \$100 million meaning lower construction fees. In addition, if the owner decides to terminate the PDA and rebid the final delivery model, either DBFOM or DB, when the developer does not share the \$100 million ATC with the owner, he now has use of this ATC to help win the new competitive RFP for the project.

Schedule

In our experience, we believe the timetable for Option A is overly conservative and that the timetables for the PDA options are likely conservative as the PDA's typically have a period of negotiation that is significantly longer than a negotiation for a P3. While a P3 will have a longer RFP period than a PDA due to design advancement, one-on-one meetings and the ATC process, the P3 RFP process usually begins prior of the final CEQA/NEPA approvals. P3 and Design Build projects in California regularly have proposals due 90 to 120 days after completion of CEQA/NEPA, and thus the associated firm pricing, established shortly after the completion of the CEQA/NEPA and typically would not require a two year process before financial close.

District Control Through One-On-One RFP Meetings

We understand that certain members of Staff and the Board feel that a traditional P3 would require a significant loss of control during the RFP phase. One of the hallmarks of P3 best



practices is the industry review process, whereby the District and its advisors would schedule a series of three or four confidential one-on-one meetings with each of the qualified respondents to the RFP. These meetings will serve as an iterative forum for the discussion and mutual understanding among each of the respective working groups from both the public and private sector partners. These one-on-one meetings serve preproposal purposes that will allow the District to understand what value can be reasonably expected to be created or detracted and the specific changes that could be incorporated into the final RFP as well as provide a sounding board for the proposers to receive input from the District. These meetings typically discuss risk sharing, commercial issues, design review and presentation of ATCs. The applicable revisions will be discussed with all qualified respondents. Such one-on-one meetings are not negotiations. The meetings serve the best interests of the public and are consistent with best practices for alternative project delivery.

Conclusion

In summary, Cintra does not believe that a PDA is suitable for the EPWP, and that much of the information being provided to the Staff and the Board is from firms that have a self-serving interest to manage their risks and bid costs associated with the project. The District has built a similar project (albeit smaller), the SVAPWF, with the same treatment process as required for the EPWP and pipelines to transport water through the County. Associated environmental, permitting and other risks and challenges in the EPWP will not materially differ.

We are of the strong belief that the District and the taxpayers would be far better served with a RFQ/RFP for a well-qualified P3/DBFOM consortium that can deliver the project with 1) maximum innovation and cost savings, 2) maximum competition, 3) optimal risk transfer, 4) on-budget and on-time with least ability for change orders and 5) superior customer service with guaranteed O&M.

Yours truly,

A handwritten signature in blue ink, appearing to read "Antony Elkins", written over a horizontal line.

Antony Elkins
Commercial Director