

**State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES**

**AGREEMENT FOR
THE ADVANCE OR CONTRIBUTION OF MONEY TO
THE DEPARTMENT OF WATER RESOURCES
BY
[CONTRACTOR]**

**FOR PRECONSTRUCTION PLANNING COSTS OF THE CALIFORNIA WATERFIX,
A FACILITY OF THE STATE WATER PROJECT**

(SWPAO #_____)

THIS AGREEMENT is made, pursuant to the provisions of all applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources (“Department” or “DWR”), and [*contractor*] (the “Contractor”), each herein referred to individually as a “Party” and collectively as the “Parties”.

Recitals

WHEREAS, DWR and the Contractor listed on the signature pages hereto has entered into and subsequently amended a long-term water supply contract, herein referred to as a “Water Supply Contract,” providing that DWR will supply certain quantities of water to the Contractor, providing that Contractor shall make certain payments to DWR, and setting forth the terms and conditions of such supply and such payments; and

WHEREAS, the Bay Delta Conservation Plan (“BDCP”) process was initiated in 2005-2006 and the Delta Habitat Conservation and Conveyance Program (“DHCCP”) was initiated in 2008; and

WHEREAS, the Bay Delta Conservation Plan (“BDCP”) and (“DHCCP”) resulted in development of a project known as the California Waterfix (“WaterFix”); and

WHEREAS, Certain Contractors have entered into that certain Joint Powers Agreement dated May 14, 2018 forming the Delta Conveyance Design and Construction Authority (“DCA”); and

WHEREAS, DWR and DCA have entered into that certain Joint Powers Agreement (“JEPA”), dated May 17, 2018, which provides for the design and construction of WaterFix by the DCA under the supervision of DWR; and

WHEREAS, DWR has developed a budget, attached hereto as Exhibit A, for certain preconstruction planning activities identified on Exhibit A; and

WHEREAS, Exhibit B sets forth shares of the preconstruction planning activity costs shown on Exhibit A opposite the names of certain Contractors, including the undersigned Contractor, which will be made by each such Contractor upon its approval and execution of an agreement similar to this Agreement; and

WHEREAS, the undersigned Contractor desires to, and is authorized to, advance or contribute a share of preconstruction planning activity costs in the amount specified for the undersigned Contractor on Exhibit B hereto; and

WHEREAS, Exhibit B also sets forth an additional advance or contribution to be made by the Department for the purposes set forth in this Agreement; and

WHEREAS, a State Agency may advance or contribute funds to DWR for SWP purposes pursuant to Water Code section 11135 and (ii) DWR may accept such advanced or contributed funds and thereafter use such funds in accordance with the terms of this Agreement pursuant to Water Code section 11141.

AGREEMENT

NOW, THEREFORE, it is mutually agreed by the Parties as follows:

1. When used in this Agreement, the definitions in the Water Supply Contract (as defined herein) shall apply. In addition, the following definitions shall apply:
 - a. “**Calendar Year**” means the period January 1 through December 31.
 - b. “**Contractor**” means a State Agency as defined in Water Code section 11102 that is a party to a Water Supply Contract with DWR.
 - c. “**Department**” or “**DWR**” means the California Department of Water Resources.
 - d. “**Pay-Go Charge**” means the amount set forth opposite Contractor’s name on Exhibit B to be paid by Contractor pursuant to this Agreement.
 - e. “**Party**” or “**Parties**” means the DWR, an undersigned Contractor, or all signatories to this Agreement.
 - f. “**State Agency**” has the meaning ascribed to it by Water Code section 11102.
 - g. “**SWP**” or “**State Water Project**” means the State Water Project operated by DWR. The SWP generally includes the State Water Facilities, as defined in

California Water Code section 12934(d), and certain facilities authorized by the Central Valley Project Act at section 11100 *et. seq.*

- h. **“Water Supply Contract”** means the long-term water supply contract, as amended and as may be amended in the future, between a Contractor and DWR.
2. Purposes of Agreement. The purposes of this Agreement are to establish (i) the terms and conditions under which the undersigned Contractor will advance or contribute money to DWR and (ii) the purposes for which DWR will expend the money so advanced or contributed.
3. Budget. Exhibit A to this Agreement is a budget (“Budget”) herein incorporated by this reference, for certain preconstruction planning activities related to the WaterFix.
4. Charge Procedure. Contractor shall pay its Pay-Go Charge to DWR in equal monthly installments over a period of 12 months beginning January 1, 2019. The initial amount of each Contractor’s monthly installment is equal to the Pay-Go Charge divided by 12. Contractor’s agreement to pay the Pay-Go Charge is not contingent upon the agreement of any other Contractor to pay the Pay-Go Charge and Contractor agrees to pay the Pay-Go Charge whether any other Contractor enters into an agreement with DWR similar to this Agreement. The failure of any other Contractor to make a payment under an agreement similar to this one shall not relieve the undersigned Contractor of its obligation to pay the Pay-Go Charge. If Exhibit B is amended by the Parties hereto, the amount of each monthly installment shall be adjusted such that any resulting change in a Contractor’s Pay-Go Charge is distributed evenly across the then remaining monthly installments, unless a different treatment is requested in writing by Contractor and agreed to in writing by DWR. The amount(s) computed pursuant to this section 4 will be included in the Contractor’s Annual Statement of Charges for calendar year 2019, or a subsequently issued revision thereof, under the Transportation Minimum Component section of the statement. The payments described in this section 4 may terminate prior to the end of 12 months pursuant to the terms of section 10 hereof.
5. Amendment of Exhibits. Exhibit A may be amended by the Department at any time. If DWR amends Exhibit A it will provide notice to Contractor as soon as practicable after its adoption by the Department. Exhibit B may only be amended, and either the amount or terms of a Contractor’s advance or contribution be changed as a result thereof, by the written agreement of DWR and Contractor.
6. Planning and Execution. DWR agrees to expend the funds advanced or contributed pursuant to this Agreement for the payment of invoices received by DWR from the DCA in accordance with the JEPA and Exhibit A. Notwithstanding anything to the contrary in this Agreement or the JEPA, DWR’s financial liability for the payment of JPA invoices issued to DWR shall be limited to the amount of money actually received by DWR pursuant to this Agreement.

7. Reporting. DWR, through its SWPAO, shall annually prepare a report summarizing the advances or contributions received, and expenditures made pursuant to, this Agreement. The first such report shall be completed not later than January 31, 2020.
8. Unspent Funds. Upon termination of this Agreement, it is the intent of the Parties that any remaining unspent funds after payment of all JPA invoices submitted for work within the scope of Exhibit A, shall be returned to Contractor in proportion to its percentage share of advances or contributions made by all Contractors that entered into Agreements similar to this Agreement. Notwithstanding the foregoing, Contractor recognizes that funds contributed under this Agreement may not be returned, credited or reimbursed for reasons including but not limited to, a determination by DWR in its sole discretion that the return, credit or reimbursement is inconsistent with applicable law or applicable contractual obligations of DWR, or the inability of the Parties to negotiate and execute such further agreements as may be necessary to accomplish such return, credit or reimbursement on terms acceptable to DWR.
9. Status of Project and Funds. Each Contractor recognizes that WaterFix may not proceed to construction. If WaterFix does not proceed to construction, no reimbursements of money advanced or contributed to DWR pursuant to this Agreement will occur, except for unspent funds as provided in section 8 of this Agreement. Contractor waives any claims it may have of any nature whatsoever relating to or arising from payment or nonpayment of DCA invoices by DWR in accordance with this Agreement. Nothing in this Agreement imposes any duty or obligation either expressly or by implication on DWR other than the duty to pay DCA invoices submitted to DWR during the term of this Agreement in accordance with the terms of this Agreement, the JEPA and for the activities described on Exhibit A hereto if, as and when money has been received by DWR under this Agreement and other similar agreements or arrangements with other Contractors for purposes identical to those described herein and is available for the payment thereof. If WaterFix is not constructed the Contractor will not be responsible for any monies expended by DWR as set forth in Exhibit B.
10. Effective Date and Term. This Agreement shall become effective on the date the last Party hereto signs the Agreement as set forth on the signature pages hereto ("Effective Date"), and shall continue in effect until December 31, 2019 or upon receipt by the Department of the Contractor's full Pay-Go Charge whichever is later. Contractor's obligation to make monthly payments under this Agreement may terminate before all 12 monthly installment payments have been made in the event that either (i) the Department or a joint powers authority consisting of at least two Contractors (a "Finance JPA") issues and sells revenue bonds for the purpose of funding CA WaterFix and (ii) the proceeds of such sale have been received by the Department or, in the event Finance JPA does not purchase DWR revenue bonds, an agreement is in place between the Department and such Finance JPA to provide the proceeds to the Department and (iii) the Department, the Parties hereto and the Finance JPA, if applicable, agree in writing that one purpose of such bond issuance and sale is to supersede the payments provided for by this Agreement.

11. Reimbursement of Contributed Funds. It is the intent of the Parties hereto that the funds contributed pursuant to this Agreement be reimbursed or credited to each Party according to the relative amount each such Party paid pursuant to this Agreement, upon the issuance and sale of revenue bonds by either the Department or Finance JPA, whichever occurs earlier, for the purpose of, among other things, funding WaterFix. The Department shall be under no obligation to issue and sell bonds for the purpose(s) described in the foregoing sentence or to undertake any reimbursement or credit as so described, unless a determination is first made by DWR in its sole discretion that such issuance and sale of revenue bonds, such reimbursement, or such credit as applicable is consistent with applicable law, applicable judicial rulings, and applicable contractual obligations of DWR, and the Parties have negotiated and executed such further agreements as may be necessary to accomplish such reimbursement, credit or reimbursement on terms acceptable to DWR.
12. Invoices, Notices or Other Communications. All invoices, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (i) served personally on the Party to whom notice is to be given; (ii) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (iii) on the third day after mailing, if mailed to the Party to whom invoice, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Chief, State Water Project Analysis Office
Department of Water Resources
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Post Office Box 94236
Sacramento, California 94236-0001

Copy to
Gary Lippner
Deputy Director, Delta Conveyance Office
Department of Water Resources
901 P Street, Room 413
Sacramento, California 94236-0001

Contractor:

[Contractor Name and Address]

13. No Delegation of Authority. Nothing in this Agreement constitutes a delegation by any Party of its existing authority to make any decision it is mandated to make. Nothing in this Agreement shall limit DWR's final decision-making authority at the time of consideration of WaterFix related approvals. All provisions of this Agreement are

intended and will be interpreted to be consistent with all applicable provisions of State and federal law. The undersigned recognize that the signatories are public agencies and have specific statutory responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements of State and federal law. Nothing in this Agreement is intended to, nor will have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities or requiring an agency to take any action inconsistent with applicable law. Nothing in this Agreement constitutes an admission by any party as to the proper interpretation of any provision of law, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under applicable law. Except as expressly set forth above, execution of this Agreement does not constitute a waiver by any signatory of any rights or remedy it may have, nor does execution constitute pre-approval of any project or preferred project alternative, or waive or otherwise abridge responsible trustee duties required, or discretion authorized, under State and federal law.

14. Amendment. Except as otherwise set forth above, this Agreement may only be amended or modified by a subsequent written agreement approved and executed by all of the Parties.
15. Applicable Law. This Agreement will be construed under and will be deemed to be governed by the laws of the United States and the State of California.
16. Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement.
17. Counterparts. This Agreement may be executed in counterpart, each of which shall constitute an original, but all of which shall constitute one and the same agreement. Each signing Party shall have received a copy of the signature page signed by every other Party.

Exhibits attached and incorporated herein:

Exhibit A Budget

Exhibit B Pay-Go Charge and Other Funding

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Agreement on the date(s) set forth below.

Approved as to Legal Form
and Sufficiency

State of California
Department of Water Resources

Spencer Kenner
Chief Counsel

Karla Nemeth
Director

Date

Date

Approved as to Legal Form
and Sufficiency

[Contractor]

Name

Name

Title

Title

Date

Date

Exhibit A
Budget
[For July 2018 – July 2019]

Exhibit B

	Agency	Pay-Go Charge or Commitment
1	City of Yuba City	\$ -
2	Solano County Water Agency	\$ -
3	Napa County Flood Control and Water Conservation District	\$ -
4	Alameda County Flood Control and Water Conservation District Zone 7	\$ 250,000.00
5	Alameda County Water District	\$ 459,050.00
6	Santa Clara Valley Water District	\$ 1,092,975.00
7	Tulare Lake Basin Water Storage District	\$ -
8	County of Kings	\$ -
9	Dudley Ridge Water District	\$ -
10	Empire West Side Irrigation District	\$ -
11	Oak Flat Water District	\$ -
12	Kern County Water Agency	\$ 6,229,514.00
13	San Luis Obispo County Flood Control and Water Conservation District	\$ 273,244.00
14	Santa Barbara County Flood Control and Water Conservation District (C)	\$ 497,151.00
15	Metropolitan Water District of Southern California	\$ 86,117,793.00
16	Ventura County Watershed Protection District	\$ 218,595.00
17	Santa Clarita Valley Water Agency	\$ 1,040,513.00
18	Antelope Valley-East Kern Water Agency	\$ 1,583,110.00
19	Coachella Valley Water District	\$ 1,512,132.00
20	Crestline-Lake Arrowhead Water Agency	\$ 63,392.00
21	Desert Water Agency	\$ 609,334.00
22	Mojave Water Agency	\$ 981,492.00
23	Palmdale Water District	\$ 232,804.00
24	San Bernardino Valley Municipal Water District	\$ 10,000,000.00
25	San Geronio Pass Water Agency	\$ 189,085.00
26	Littlerock Creek Irrigation District	\$ -
27	San Gabriel Valley Municipal Water District	\$ -
28	County of Butte	\$ -
29	Plumas County Flood Control and Water Conservation District	\$ -
	DWR	\$ 22,339,593.00
	Total:	\$ 133,689,777.00