

**AMENDMENT NO. 3
TO
AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN THE
DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA
AND THE
AUTHORITY**

This Amendment No. 3 to the October 26, 2018 Amended And Restated Joint Exercise of Powers Agreement Between the Department of Water Resources of the State of California (“DWR”), as previously amended, and the Delta Conveyance Design and Construction Joint Powers Authority (“Authority”) is entered into and effective as of the last date set forth on a signature page hereto.

RECITALS

WHEREAS, in May 2018 DWR and the Authority (collectively “the Parties”) entered into a Joint Exercise of Powers Agreement and in October 2018 into an Amended and Restated Joint Exercise of Powers Agreement, whereby the Authority has been retained by DWR to manage the design and construction of California WaterFix under DWR’s ultimate control and oversight;

WHEREAS, the State has set a new water policy for California and on May 2, 2019 DWR withdrew its approval of the California WaterFix project and announced it will embark on new planning and environmental documentation for Delta Conveyance;

WHEREAS, the parties entered into that Amendment No. 1 to the Amended and Restated Joint Exercise of Powers Agreement (“Amendment No. 1”) to outline the initial planning and engineering services that the Authority will provide to DWR during its consideration of a potential Delta Conveyance;

WHEREAS, the parties entered into that Amendment No. 2 to the Amended and Restated Joint Exercise of Powers Agreement as amended by Amendment No. 1 (collectively, the "Agreement") to increase the Initial Contribution and make certain other changes;

WHEREAS, Government Code section 6504 permits parties to a joint exercise of powers agreement to contribute funds, personnel and services, subject to repayment as set forth in such agreement; and

WHEREAS, consistent with Section 6504 and applicable law, the parties desire to further amend the Agreement to improve the parties' coordination and make certain other changes.

NOW THEREFORE, in consideration of the mutual covenants contained in the Agreement and this Amendment No. 3, the parties hereby agree to amend the Agreement as follows.

Amendment

A. Section 9, "Budget and Schedule" is amended to read in full as follows:

9. Budget and Schedule

(a) The Authority shall receive payment, at the Authority's actual cost, for all Work performed, supervised and/or contracted for by the Authority under this Agreement, as the same has been and may be amended from time to time by the Parties, consistent with applicable approved budget(s), including without limitation all administrative costs incurred by the Authority to perform its obligations under this Agreement. Both DWR and the Authority shall provide oversight of the Conveyance Project budget with all final budgetary decisions residing with DWR.

(b) The Parties shall conduct annual planning and budget review meetings not later than 60 days prior to the start of each fiscal year. At each annual budget meeting, the Authority shall present an overview of the expected Work for the fiscal year and associated fiscal year budget, schedule, draft task orders and other supporting documents for the fiscal year, to the Delta Conveyance Office for timely review and approval by DWR to permit Authority Board adoption by its June regular meeting. The budget shall include budgeted costs and associated allowances and contingencies. The Authority shall submit to DWR executed copies of all applicable task orders or contracts or amendments and changes thereto that support the annual budget as they are executed. Such documents shall describe the scope of contracted services, budgeted costs, and schedule and shall be consistent with the approved annual budget.

(c) The Authority shall adopt and implement policies and procedures related to budget and change management. Delta Conveyance Office approval of material budget changes shall be required. To facilitate timely and efficient consideration of changes, such policies and procedures shall permit the Delta Conveyance Office Executive Director, or his or her designee, to participate in Authority consideration of material budget changes prior to submission to the Delta Conveyance Office for approval.

(d) The Authority shall adopt and implement policies and procedures to manage changes to contracts, task orders, scopes of work, costs, or schedules. To facilitate timely and efficient consideration of changes, such policies and procedures shall permit the Delta Conveyance Office Executive Director, or his or

her designee, to participate in Authority consideration of material changes to contracts, task orders, scopes of work, schedules and related program and project delivery documents. These policies and procedures shall include provisions requiring Delta Conveyance Office approval of material changes to contracts, task orders, scopes of work, schedules and related program and project delivery documents to ensure they are consistent with the annual budget (as provided for in subsection (c)) and DWR direction for the Conveyance Project.

(e) Upon approval by DWR, all services identified in the budget and supporting documents shall constitute Work, as defined herein.

(f) The Authority's design and engineering deliverables shall include all materials portraying the design of the project and the analyses and data used for the design. All deliverables will be submitted as quality controlled and quality assured work products by the Authority in a mutually agreed upon format that will facilitate expedient review by the Delta Conveyance Office. The Authority will respond in an agreed upon timely manner to all comments and suggestions received on each deliverable, and the comments shall be resolved to the satisfaction of the parties.

D. Section 10, "Invoicing and Payment" shall be amended to read in full as follows:
Invoices with sufficient detail to justify payment shall be submitted by the Authority in arrears to:

Delta Conveyance Office,

901 P. Street, Room 411B,

Sacramento, CA 94236.

Each invoice must identify this Agreement by the DWR contract number and the applicable budget categories and task orders. Where applicable, invoices shall include receipts for materials, supplies and work accomplished by the Authority and its contractors. Subject to the availability of funding for the Conveyance Project and after determining consistency with the approved fiscal year budget, schedule, contracts, task orders and other supporting documents, DWR shall make payments on the undisputed portions of invoices as soon as State invoice processing procedures allow and consistent with State law. For purposes of this Agreement funding is available (i) if and when DWR, compliance with applicable law, legal decisions and contracts in each case as determined by DWR, issues and sells revenue bonds for the purpose of funding planning activities or construction of a Conveyance Project, or (ii) if sufficient funds have been contributed to DWR by one or more public water agencies that receive water from the SWP or CVP, or a joint powers authority comprised of public water agencies, sufficient in DWR's determination to pay invoices as such invoices become due for payment. Disputed portions of invoices shall be resolved as provided for in Section 24. The Authority shall include within all its public works contracts a provision whereby it withholds from its payments a retention in the maximum amount permitted by law. Should DWR, in the exercise of its rights under Section 6 of this Agreement, participate in any work described in this Agreement, the cost of such participation shall be treated as a Conveyance Project cost in the same manner as costs incurred by the Authority.

- E. Section 11, "Annual Report" shall be amended to read in full as follows: "The Authority shall provide a detailed written annual report to DWR within 60 days of the end of the fiscal year. The annual report shall describe the Authority's activities under this Agreement during the prior fiscal year, the final costs incurred, and the final progress schedule for the prior year's Work. DWR reserves the right to request additional topics for inclusion by submitting in writing to the DCA within 30 days of the close of the fiscal year and DCA shall accommodate all reasonable requests."
- E. The Initial DWR Contribution as defined in paragraph C of Amendment No. 2 is hereby revised to be a total amount of \$33.8 million. The actual amount of Initial DWR Contribution funds expended shall be recovered in full by DWR as soon as practicable but in any event not later than January 10, 2021, from Contractor Contributed Funds. The signatures of authorized representatives of DWR and Authority, respectively, on a letter setting forth a different date for the recovery of funds by DWR shall be evidence of the Parties' intent and constitute their agreement with respect to such change.
- F. Section 12. "Reimbursement Clause" of Exhibit F is amended to delete the following sentence: "The Authority shall determine which reimbursement method is utilized and may modify this election with advance written notice."

Except as hereby amended, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto affixed their names as of the day
and year hereinafter written.

**STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES**

By: Karla Nemeth
Title: Director
Date: 8/28/2020

**DESIGN AND CONSTRUCTION
AUTHORITY**

DocuSigned by:
By: Richard Atwater
Title: President of the Board of Directors
Date: 8/25/2020

Approved as to legal form and consistency

By: Spencer Kenner
Chief Counsel

Approved as to legal form and consistency

DocuSigned by:
By: Josh Nelson
General Counsel