



**DELTA CONVEYANCE DESIGN AND CONSTRUCTION AUTHORITY
BOARD OF DIRECTORS MEETING**

REGULAR MEETING

Friday, March 08, 2024

1:00 p.m.

Hybrid (Teleconference) Meeting

DCDCA Boardroom
980 9th Street, Suite 100
Sacramento, CA 95814

TELECONFERENCE LOCATIONS:

- 1) Valley Water, 5700 Almaden Expressway, Headquarters Boardroom, San Jose, CA 95123
- 2) Palmdale Water District, 2029 East Avenue Q, Headquarters Boardroom, Palmdale, CA 93550
- 3) Kern County Water, 3200 Rio Mirada Drive, Headquarters Boardroom, Bakersfield, CA 93308
- 4) Metropolitan Water District, 700 N. Alameda Street, Conference Room 12-310 Los Angeles, CA 90012
- 5) Coachella Valley Water, 75515 Hovley Lane East, Admin. Conference Center, Palm Desert, CA 92211

CONFERENCE ACCESS INFORMATION:

Phone Number: (669) 444-9171 Access Code: 84370256189#

Virtual Meeting Link: <https://dcdca-org.zoom.us/j/84370256189?from=addon>

Please join the meeting from your computer, tablet, or smartphone

Additional information about participating by telephone or via the remote meeting solution is available here: <https://www.dcdca.org>

AGENDA

Except as permitted by Government Code section 54953(f), Directors will attend the meeting from the DCDCA Boardroom or any of the teleconference locations. Members of the public may attend in person at these locations or remotely through the virtual meeting link above. Assistance to those wishing to participate in the meeting in person or remotely will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested person must request the accommodation as soon as possible in advance of the meeting by contacting the DCA support staff at (888) 853-8486 or info@dcdca.org. Members of the public may speak regarding items on the agenda during those items and when recognized by the Chair. Speakers are limited to three minutes each; however, the Chair may limit this time when reasonable based on the circumstances. Persons wishing to provide public comment remotely on Agenda Items are encouraged to complete a public comment request form at: <https://tinyurl.com/dcapubliccomment> by 2:15 pm or through the QR code below. In addition, members of the public may use the “raise hand” function (*9 if participating by telephone only) during the meeting to request the opportunity to speak. Additional information will be provided at the commencement of the meeting.

1. **CALL TO ORDER**
2. **ROLL CALL** – Any private remote meeting attendance will be noticed or approved at this time.
3. **CLOSED SESSION**
 - (a) PUBLIC EMPLOYEE APPOINTMENT
(Government Code Section 54957)
Title: Executive Director
 - (b) CONFERENCE WITH LABOR NEGOTIATORS
(Government Code Section 54957.6)
Agency designated representatives: Robert Cheng, Tony Estremera, Gary Martin
Contractor: Executive Director
 - (c) CONFERENCE WITH LEGAL COUNSEL
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2):
 - i. *Tulare Lake Basin Water Storage District v. DWR*, Sacramento Superior Court, Case No. 24WM000006 (and related cases Nos. 24WM000008, 09, 10, 11, 12, 14, 17); *South Delta Water Agency v. DWR*, San Joaquin Superior Court, Case No. STK-CV-UCP-2024-0000816
4. **OPEN REGULAR MEETING & PLEDGE OF ALLEGIANCE** – At approximately 2:00p.m.

5. APPROVAL OF MINUTES:

- (a) February 15, 2024 Regular Meeting Minutes

6. DISCUSSION ITEMS

- (a) Approval of Executive Director Services Agreement
Recommended Action: Adopt Resolution.

7. REPORTS AND ANNOUNCEMENTS

- (a) General Counsel's Report
- (b) Verbal Reports, if any

8. FUTURE AGENDA ITEMS

9. PUBLIC COMMENT

Members of the public may address the Authority on matters that are within the Authority's jurisdiction but not on the agenda at this time. Speakers are generally limited to three minutes each; however, the Chair may further limit this time when reasonable based on the circumstances. Persons wishing to speak may do so remotely through the electronic meeting link, by scanning the QR Code above, or teleconference number when recognized by the Chair. The DCA encourages public comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the DCA or are within its jurisdiction.



10. ADJOURNMENT

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The Board of Directors meet bi-monthly, proposed next scheduled meetings:

April 18, 2024, Regular Board Meeting at 2:00 p.m. (1:30 p.m. if there is a closed session).

May 16, 2024, Regular Board Meeting at 2:00 p.m. (1:30 p.m. if there is a closed session).

June 20, 2024, Regular Board Meeting at 2:00 p.m. (1:30 p.m. if there is a closed session).

BOARD OF DIRECTORS MEETING

MINUTES

REGULAR MEETING

Thursday, February 15, 2024

1:30 p.m.

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER

The regular meeting of the Delta Conveyance Design and Construction Authority (DCA) Board of Directors was called to order in person, by teleconference, and remotely - Conference Access Information: Phone Number: (669) 444-9171, Code: 83084606454#, <https://dcdca-org.zoom.us/j/83084606454?from=addon> at 1:30 pm.

2. ROLL CALL

Board members in attendance from the DCA Boardroom were Sarah Palmer, Martin Milobar, Gary Martin, Miguel Luna, Robert Cheng, and Adnan Anabtawi. Tony Estremera participated from Valley Water Headquarters Boardroom.

Alternate Directors in attendance remotely were John Weed, Royce Fast, Dan Flory, Russel Lafevre, Bob Tincher and Dennis LaMoreaux.

DCA staff members in attendance were Graham Bradner and Josh Nelson. Valerie Martinez participated in the Board Meeting remotely.

DWR staff members in attendance were Katherine Marquez and Rylan Gervase.

3. CLOSED SESSION

a) PUBLIC EMPLOYEE PERFORMANCE EVALUATION DISCUSSION

(Government Code Section 54957)

Title: Executive Director

b) CONFERENCE WITH LEGAL COUNSEL

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2): 2 cases

- i. *Sierra Club et al. v. California Department of Water Resources*, Sacramento County Superior Court Case No. 34-2020-80003517

- i. Petitions regarding the Department of Water Resources' certification of the Final Environmental Impact Report for the Delta Conveyance Project.

4. OPEN SPECIAL MEETING & PLEDGE OF ALLEGIANCE

President Sarah Palmer convened the open session at approximately 2:10 p.m. and led all present in reciting the Pledge of Allegiance.

There were no reportable actions from the closed session.

5. APPROVAL OF MINUTES: January 24, 2024, Special Board Meeting

Recommendation: Approve the January 24, 2024, Special Board Meeting Minutes

Motion to Approve Minutes from January 24, 2024, as

Noted: Estremera
Second: Milobar
Yeas: Palmer, Milobar, Martin, Luna, Estremera, Cheng, Anabtawi
Nays: None
Abstains: None
Recusals: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstain; 0 Absent. (Motion passed as MO 24-02-01).

6. DISCUSSION ITEMS:

a) February DCA Monthly Report

Information Item

DCA Executive Director, Graham Bradner, presented to the Board an overview of the monthly board report. He began with Section 1: Work Performed in January 2024. The Program Management team completed the midyear budget review. This review allows DCA to view all the work that has been proposed and contracted through various task orders, assess the progress, and consider any potential changes. DCA does address potential changes through the year as a continual process. The midyear point provides the opportunity to see the direction the DCA is heading towards and guides how the second half of the year will go. This allows DCA to consider any changes that can be made to contracts and task orders, which provides the opportunity to daylight what the estimate at completion (EAC) will be for the fiscal year. DCA is starting to forecast an underrun of just under \$4M for the fiscal year, more details on this in the budget section of the report.

Mr. Bradner moved on to the Administrative functions, stating that the alignment tours are starting up again. DCA held about 20 tours last year and will be conducting tours starting in the spring and continue through summer and fall.

President Palmer asked if the tours would be changing as now there is a selected project.

Mr. Bradner stated that there does not seem to be any change to the tours as DCA was touring the proposed Bethany alignment project last year. DCA will continue to add and change different variations tailored to each audience with specific interest and timelines in mind. DCA will continue to look for ways to improve the tours.

Mr. Bradner continued to the Engineering section; the Engineering team is working on the estimate for the Bethany Reservoir alternative. DCA is also evaluating potential innovations that could reduce impacts, cost schedule, or improve constructability. DCA's plan is to reflect those potential innovations through a secondary estimate. The primary estimate will be a complete estimate of construction activity, soft cost, budget for community benefits and environmental mitigation costs. The secondary estimate that the DCA will develop using the cost savings innovations is more to take the primary estimate and deduct costs associated with various quantity, effort, equipment, and labor reductions. The timeline for the updated estimate is quarter two (2) and DCA has a graphic that will be shown later in the staff reports section. The graphic lays out these activities through the course of the year and depending on the Boards choice, it can be a continuous item that can be talked about during the regular board meeting updates.

Mr. Bradner went on to update the Board on Fieldwork activities and stated that the DCA completed most of the fall program in December 2023. There were a few locations that DCA was not able to access and is still working through with the team to gain access, but overall, the team had great success. Currently, the Fieldwork team is taking consideration of potential priority of future investigations to support continued evaluations of the Bethany Reservoir alternative alignment and construction refinements as the project continues to evolve. The work done under the initial study mitigated negative declaration (ISMND) was very broad in scope and looking to understand conditions across the Delta and fill data gaps. One key factor is that the future investigative work would be more focused and specifically aligned with the preferred project and less broadly distributed across the Delta. Mr. Bradner stated to the Board that DCA is in the early stages of the planning process and will keep the Board updated as the team makes progress.

Director Luna asked if the investigations are aligned along the east of the alignment.

Mr. Bradner stated that currently DCA over the last few years has collected 170-180 exploration points distributed throughout the system. There is a lot of data in the central Delta, much historical data that has been collected along the levies and long previous iterations of the project. Along the eastern margin of the Delta there are wide gaps of unknown conditions and information. DCA is continuously filling in the gaps with

information collected. To complete the final design of the project, DCA would need about 1,500-2,000 exploration points, while currently, the DCA is trying to understand the subsurface conditions and the variability.

Mr. Bradner continued to Section 3: Budget, DCA has an approved budget of \$40.4M with an EAC showing \$36.5M. The DCA has committed just under \$35M to date with about \$1.5M in reserve. As the spring approaches the underrun could shift to accommodate surveys, geotechnical work, and other activities.

Mr. Bradner stated in figure one (1) of the cash flow chart, expenses to date are still tracking as anticipated with the planned costs. The Controls team and Contract managers have done a great job forecasting their activities and turning those into actual expenditures. The DCA has not re-baselined the project, it will continue to stay where the line on the graph is and monitor the progress. There has been an increase in activities starting in the second half of the fiscal year due to the Department of Water Resources (DWR) decision on the project. It is uncertain whether the accuracy of the forecast will be maintained or if it will start to drift.

Mr. Bradner stated that the Program Management support activities are ongoing and linear in terms of how they spend the year. The project definition reports have a delayed status due to DCA intentionally delaying the start of the reports. The definition reports are associated with the procurement activities that will eventually be needed. DCA's vision for the engineering documentation is to have a preferred project engineer's report prepared by next fiscal year. The preferred project engineer's report will be the big picture document for the Bethany Reservoir alternative that contains all the engineering documentation. Currently the preferred project engineer's report is spread out among multiple engineering project reports with different alternatives, flow rates, addenda, supplements and other pieces that make it difficult to track. The DCA will produce a preferred project engineer's report that will remove any alternatives, anything that is not relevant to the preferred project and create a cohesive document that will include information that has been used to date. The preferred project engineer's report would then be supported by basis of design reports what the DCA tentatively called project definition reports. The project definition reports will be focused on the specific project features which will provide next level engineering information that will be necessary for procurement of feature design contractors. DCA is currently assessing the project priorities and Mr. Bradner stated that the project is not in the position to start the project definition reports.

Mr. Bradner stated that the investigation program is on track as the DCA is completing the lab analysis and all the documentation will have the calendar year 2023 data report ready for the internal use by the engineering team as they continue to look at subsurface conditions and evaluate those assumptions.

Director Cheng stated that State Water Contractor (SWC) staff were thinking that there's additional budget that's necessary for other tours outside the scope of the director's tour and wanted to know if Mr. Bradner had any conversations with SWC staff, Director Cheng mentioned that the Board was having those discussions.

Mr. Bradner stated that he had not had any discussion with the SWC staff. DCA is fully capable of managing tours and has reserve set aside. The Delta tours are an important part of the project and happy to take folks out on the tour and provide all the necessary resources. There may be a gap in terms of getting folks to Sacramento if they don't live locally and the DCA would appreciate the help in terms of making that happen.

No further comments or questions were received from the Board, nor were any public comment requests received.

b) DCA Environmental Compliance Committee Concept

Information Item

DCA General Counsel, Josh Nelson noted that with the recent certification of the Final Environmental Impact Report (FEIR). DCA is viewing the next steps and deciding when it would be best to establish the Environmental Compliance and Mitigation Committee. This committee is specifically identified in the Joint Powers Agreement (JPA) as well as the bylaws and needs to be established within 60 days of an approved project. As an approved project is not defined, DCA staff's recommendation is to not establish the committee now but establish it once DCA is ready to move into the construction and implementation phase. The reason for that is the work that DCA is currently doing is still within the planning phase. As stated in the previous month through a JEPA amendment, there was clarification that the planning phase would continue until all permits were obtained and the project is ready to move into construction and implementation. It is most appropriate for the Environmental Compliance and Mitigation Committee to be established once we are ready to move into construction and implementation. However, this is a Board advisory committee and it is a Board decision as to when to establish the committee. Accordingly, DCA staff wanted to bring this item before the Board to obtain feedback. If the board is comfortable with the staff's recommendation, no actions are required. If the Board would like to move forward with establishing the committee, there would need to be a resolution that can be made during a future meeting.

Director Anabtawi stated that he appreciates the staff for reviewing this and identifying that sort of ambiguity of the approval term. Committees and participation take a lot of time from everyone and it's important that those committees are focused and provide value as committee members and those participating.

President Palmer stated that there was some issue in terms as to when this decision would happen and appreciated the legal opinions and the staff work that put this forward. She asked if the Board was able to bring this forward at any time.

Mr. Nelson stated that yes, the Board may bring this topic up at any time.

Mr. Nelson stated that this doesn't mean that DCA wouldn't be doing outreach efforts as stated by Ms. Valerie Martinez. DCA and DWR are making substantial outreach efforts that are ongoing regardless of this committee being established.

President Palmer stated that this committee makes sense to be established in the future.

Mr. Bradner stated that the DCA had the stakeholder engagement committee that was sunset towards the beginning of the public process associated with the California Environmental Quality Act (CEQA). This was done in part to avoid confusion with engagement and involvement of the role of that committee relative to those other more regulatory mandated public Processes by DWR. There are permits remaining that have also mandated processes of their own and delaying the committee may be appropriate.

President Palmer stated that it makes since, DCA is the construction authority.

No further comments or questions were received from the Board, nor were any public comment requests received.

c) Adopt Resolution Establishing the DCA Finance Committee; Ratify President's Appointments to the Committee

Approve Resolution

Mr. Bradner presented to the board that in the past DCA has had budgets as small as on the order of \$21M. While DCA's budget this year is around \$40M, DCA anticipates something similar in the next fiscal year. As the program continues to grow and progress, Mr. Bradner expects the complexity of the budget process and activities being undertaken will continue to grow. Mr. Bradner believes the timing is right to start re-evaluating DCA's processes and consider how DCA allows this process to grow with likely expanding the budgets and work scope.

Director Palmer stated what DCA may be needing in terms of a finance committee and looking to have board alternates placed on committee with a board member chairing it. President Palmers considered all board members are qualified and deciding who may have the time to set forth to join the committee. The distribution of the committee is to represent people from the southern, middle and northern areas of the state. As a result, Director Gary Martin has consented to chair this committee, Director Martin Milobar has

also consented to be on this committee. President Palmer will also serve on the committee.

Recommendation: Motion to Adopt Resolution Establishing the DCA Finance Committee; Ratify President’s Appointments to the Committee

Motion to Adopt Resolution Establishing the DCA Finance Committee; Ratify President’s Appointments to the Committee, as

Noted: Luna
Second: Anabtawi
Yeas: Palmer, Milobar, Martin, Luna, Estremera, Cheng, Anabtawi
Nays: None
Abstains: None
Recusals: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstain; 0 Absent. (Motion passed as Resolution 24-02).

Director Cheng asked if the membership process was on an annual basis or what is the current thought.

President Plamer stated that the group has not gotten to that point yet.

Mr. Nelson stated that currently in the resolution it would be a two-year term following a fiscal year basis with the initial appointment expiring on June 30 of 2025. This is a decision point for this board and if there is a desire to modify that, the board would need to modify that in the resolution when adopting it.

No further comments or questions were received from the Board, nor were any public comment requests received.

d) The Economy of The State Water Project Report

Information Only

Mr. Bradner presented to the board, DWR, Policy Advisor Rylan Gervase that is currently the policy adviser for the State Water Project (SWP). Mr. Gervase leads key communication initiatives and projects. Mr. Gervase helps develop policy for special projects in the Suisun Marsh and Bay Delta. He also manages the SWP Federal funding program. Prior to his role at DWR, Mr. Gervase advocated for water and environmental policy for local governments as a legislative representative for California special district Association from 2017 to 2019. From 2013 to 2017, Mr. Gervase developed legislative legislation as legislative aid for Oakland assembly member Rob Bonta. Mr. Gervase graduated from Sacramento State University with a Bachelor of Arts degree in Government and Spanish. After graduation, Mr. Gervase was selected as a Jesse M Unruh

assembly fellow where he learned the legislative process and was mentored by senior staff in the California State Assembly.

President Palmer welcomed Mr. Gervase.

DWR conducted an economic analysis of the SWP to assess its importance and the need for investment in its aging infrastructure. The SWP, which is over 60 years old, requires billions of dollars in refurbishment and rehabilitation to maintain its current water service level of about 2.4M acre-feet per year. An additional 10% reduction in California's water supply due to climate change further necessitates massive infrastructure projects like the DCP to help modernize the water system for the effects of climate change. The study compared the SWP service area to other national economies and found that a portion of California receives most of its water from the SWP that is about 27M people and 750,000 acres of irrigated farmland across the state. The first takeaway of the study found that just this portion of California served by the SWP has a Gross Domestic Product (GDP) of \$2.3T, making it the equivalent of the world's eighth largest economy. According to the graph, that would put the SWP between the economies of France and Italy. California has a \$3.5T GDP, which makes that the fifth (5) largest economy in the world. The SWP is feeling a great deal of economic growth in California, which more than most of the entire economy is supported by the SWP. The SWP supports the largest economy in the United States out of any major water system and the second largest economy of any water management system in the world.

Mr. Gervase continued to present to the Board that the median household income of the service area of the SWP is about 20% higher than the rest of the United States. This shows that there is a significant economic benefit to having a stable and reliable water supply provided by the SWP. The second part of the study compared alternatives to the SWP to see if it would theoretically be cost effective to replace with another source. DWR looked at a variety of different sources including water conservation projects, storm water capture, water recycling and desalination. As shown on the graph, the range of costs for the SWP is about \$250 per acre foot and that's for customers in the Central Valley. For the Central Coast customer that range goes up to almost \$1,500 per acre foot. This is primarily due to pumping costs and the extra energy of getting the water to those areas. The only other alternative source of water that was comparably cost effective is the water conservation projects starting at around \$400 per acre foot ranging up to \$1,500 per acre foot. A water conservation project is less scalable to a utility level like the SWP if looking at the lower end of the scale. The \$400 per acre foot projects include low flow toilets, high efficiency shower heads, high efficiency appliances, etc. Items that simply are not going to produce the scale of water that the SWP will make available to contractors. The other sources of water were comparatively much more expensive without including conveyance. If there were to be a desalination plant built on the coast, that would require a conveyance infrastructure to communities inland. This would add a substantial amount

to the cost of those projects. In result of the study, the SWP is in fact one of the most affordable and cost-effective sources of water in California.

Mr. Gervase continued on, stating that 8.2M people living in disadvantaged communities in California rely on affordable water from the SWP. This would be about three quarters of all residents who live in disadvantaged communities in California and about one in three customers are a resident of a disadvantaged community. Many of these communities are in the Inland Empire of California, Los Angeles, the Central Valley and the Feather River watershed area. The final portion of the study concluded that the SWP supports 750,000 acres of irrigated farmland that produces up to \$19B in agricultural products and other crops a year, supporting 160,000 farm jobs in the state. The four (4) major agriculture counties that receive SWP water have sustained growth since the 1960s. Currently Kern County has received the most agricultural production growth and heavily relies on SWP water to irrigate its farmland. DWR also looked into other industries supported by the SWP and found that 800,000 businesses are indirectly relying on the SWP water and those businesses support 8.7M full-time jobs. Mr. Gervase stated that this is evidence pointing to the SWP as a key part of California's economy to assist in driving agricultural production, full-time employment and industry throughout the state.

Mr. Gervase stated that DWR conducted a study in collaboration with The Berkeley Research Group in December 2023 that highlighted the value of the SWP to California. There is a separate study focused on other public benefits including economic benefits, water supply, flood control, hydropower, environmental benefits, and recreational benefits. DWR is making a case for projects like the SWP as well as helping persuade policy makers in the public that is needed to keep investing in the California water systems.

Director Milobar stated if DWR knows what percentage of agricultural production leaves California and benefits other states.

Mr. Gervase stated that this goes beyond their scope of this study, DWR does not investigate what happens to the product once it leaves California. He will make a note and follow up when available.

Director Milobar stated that there needs to be some contribution of where those products end up. It's an important aspect as to where some of the funds should come from.

Director Martin stated that this presentation reinforces the importance of the SWP. Director Martin stated that when the Delta Conveyance is constructed and the costs are rolled out, if there is a way to see how those numbers might change.

Mr. Gervase stated that DWR is continuously looking for ways to bring in state and federal funding to help keep the cost of water down due to the necessary investments. There is time to continue brainstorming and find ways to bring in funding for the project. Mr. Gervase stated that he assists with the federal funding program to help identify opportunities through infrastructure bills that have been passed in recent years.

Director Martin stated that there does seem to be room for growth for the SWP and have the cost remain competitive with alternative sources. Director Martin asked if there was any plan once Sustainable Groundwater Management Act (SGMA) is completed and implemented which may reduce the amount of agriculture that is able to be done in the state.

Mr. Gervase stated that he does not have a direct answer to SGMA but does know that DWR is concerned about the matter. The expected reduction in water supply will require solutions to develop enough water. This may include alternative projects that were presented earlier. DWR is looking to ensure the water supply for the next 50 years and every solution is on the table and feels that the SWP is the most cost effective to the state compared to alternatives.

Mr. Bradner stated that DCA is working with DWR and economists to provide a full cost evaluation versus the benefit analysis that is expected to be released in quarter two (2) of this year. The analysis will acknowledge the timelines around the construction timing and accrual of benefits. The next steps supported by the SWC and then individually within the water agencies considering different financing alternatives and options. The process of the cost estimate and benefits analysis will shed light on the situation.

Director Martin asked if this analysis will be made available to the board and agencies.

Mr. Gervase stated that yes, these documents will be made available to the board. He has brochures that have great information.

President Palmer would like a few of the slides.

Director Luna stated that this presentation highlights the importance of the DCP. The DCP project is crucial as the SWP contributes 67% of the state's GDP. Failure to plan and invest in non-urgent times will lead to higher costs. The project serves 8.2M people in disadvantaged communities and will provide clean portable water to over a million people. Director Luna feels very fortunate to be on this board and to be able to plan and educate on this issue. When people oppose the project with just opposition and not looking at the new numbers and the facts of how it serves and how it can serve, it is very helpful in the communication aspect. He is very thankful of the Investments that the state has made that has allowed for the state to have this reliable source of water.

Director Cheng stated that he appreciates the time DWR took to create this report. He noted that there is recognition that the SWP is a wonderful asset to the state and investments need to be made. With the desalination experience that Director Cheng has, the source presented in the study challenges previous valuations of desalination and provides a more accurate price tag. This information will serve the board members well.

Director Anabtawi appreciates the ability to step back and understand the presentation. The project is too important to abandon, considering its impact on the economy and the communities it serves. Being a part of the Mojave Water Agency, this reliability and cost of water is always on his mind. It is expensive to supply water to that region of the state and understands that the availability of water to each region of the state varies.

President Palmer stated that she agrees with Director Anabtawi regarding all regions in the state have different water necessities. Regarding agriculture, it is more than just dollars and cents, it is a crucial part of the state and nation. President Palmer asked if the cost of conveyance was also included in the cost analysis that Mr. Gervase provided.

Mr. Gervase stated that the cost of the conveyance project was not included in the cost analysis presented.

Mr. Bradner asked if President Palmer was speaking regarding the DCP or the general conveyance of water.

President Palmer stated that it was moving water in general.

Mr. Gervase stated that this analysis does have the cost of general conveyance folded into the analysis.

Director Estremera stated that it was a great presentation.

Ms. Osha Meserve, Local Agencies of the North Delta, Public Comment, criticized the report and sees it as an insult to say that the SWP is considered a cheap source of water. Ms. Meserve believes that the project has not been paying the full cost of taking water of out this estuary and in result part of the reason as to why the Delta is experiencing at times a permanent drought, harmful algal blooms, an increase in salinity and the fisheries; particularly salmon and other listed fish are in such poor conditions. Ms. Meserve believes that this report that was presented is an admission to show that it cannot support itself and has been told that the DCP would have the beneficiaries pay for the project. The beneficiaries do not and can't pay for the project. Ms. Meserve stated that the report is incorrect with the statement that due to the project the economy is working. Ms. Meserve stated that there is no effort to balance the reasons as to how the economy is doing in certain areas. With the charts, it is believed that without the cost of the tunnel they are useless. Ms. Meserve is interested in knowing what the total cost of the tunnel will be and understands that the DCA is currently working on the report. She also believes that the

SWP could be invested in some of these other alternatives. Ms. Meserve stated that the Environmental Impact Report (EIR) mentioned that the tunnel would only serve about 15% of the customer needs. In addition, the EIR does not mention that the customers would be abandoning previous infrastructures. The current infrastructure needs to be maintained and have more respect for the Delta communities that bear the brunt of these actions.

No further comments or questions were received from the Board, nor were any public comment requests received.

7. STAFF REPORTS AND ANNOUNCEMENTS:

a. General Counsel's Report

DCA General Counsel, Josh Nelson, informed the Board that the annual Form 700s are due by April 2, 2024.

No comments or questions were received from the Board, nor were any public comment requests received.

b. Treasurer's Report

DCA Treasurer, Katano Kasaine, informed the Board that this report is for December 2023 and January 2024. DCA ended January with an ending cash balance of \$1,037,222. The balances for prepaid expenses and accounts payable as of January 31, 2024, were \$202,849 and \$1,174,917, respectively. For the same period, advances amounted to \$800,000 and total net position was \$219,242.

No comments or questions were received from the Board, nor were any public comment requests received.

c. DCP Communications Report

Mr. Bradner informed the Board that DCA has a very busy year ahead. DCA has the updated cost estimate and benefit cost analysis coming in during the middle of quarter two (2) time frame and then that preferred project Engineers report is identified for end of quarter 3. If the Board would like to adopt and introduce these milestones into the monthly report or any other location that would be beneficial.

President Palmer finds this graphic useful.

DCA Communications Manager, Valerie Martinez informed the Board that the Communications team has been working collaboratively with DWR and the Governor's office to ensure transparent public information dissemination. Speaking to the chart the Executive Director just walked the board through, there is a lot of planning for the various activities rolling out in 2024. Ms. Martinez stated that as Director Luna's mentioned, we

have a huge responsibility to ensuring that communities throughout the state understand what the project is and all the different components it entails. DWR has created materials such as brochures, Fast facts, and videos to enhance public understanding of the project. The Board members are welcome to receive the materials if requested and disperse them to their various agencies and general managers. The Communications team continues to work on the closer looks and highly recommend looking at the tunneling video and fact sheet. This does lay out how the project is being built and how the completion will be like. Another great piece is the seismic video, which talks about how the project addresses seismic issues. From a social media standpoint, the Facebook page grew by 100 likes, click-through rates for the work that is being pushed out continues to be at 2%, which typically sits at .8% for the industry. Putting this number into perspective, that is 104,000 video plays in January for the two (2) videos stated above. 1,700 people visited the website last month.

The Communications team is focusing on the Public Water Agency (PWA) one pagers. The team has created about seven (7) fact sheets for different agencies. These are being created at the request of the agencies through coordination with DWR. If any Board member is interested in having a one-pager completed for their agency to inform Ms. Martinez and she will work with her team. The alignment tours are set to resume starting at the end of February. DCA had approximately 200 people attend the tours last year. Many participants enjoyed the tour and have a better understanding of the project and how it will impact communities. Mr. Bradner and Carrie Buckman have teamed together to provide briefings and updates to some of the member agencies. The General Managers are encouraged to call DCA and have Mr. Bradner and Ms. Buckman provide those briefings to the boards and the community.

Ms. Martinez continued to present to the Board, DCA is preparing for the Association of California Water Agencies (ACWA) Conference. Claudia Rodriguez and her team have secured a booth in a strategic location with high traffic.

Ms. Martinez continued to present to the Board that DCA is excited about the Legislative Education Program and how it is shaping out.

Director Luna expressed that he feels DCA has the correct Communications consultant and demonstrates excitement over a tunneling video and he himself shares that excitement. Director Luna continued to mention that the Legislative Education Program is on track, they are outlining a cadence and identifying parties that will be engaging with. There has been great progress with meeting with DWR and the DCA, there may not be much update during the March 2024 meeting but will have some substantive information in April 2024. Director Luna proposed that Ms. Martinez do a presentation for the Delta Conveyance Finance Authority (DCFA) as they seemed very interested in understanding the tools and information.

President Palmer stated that there would be members attending the Washington, DC ACWA conference and if there is any informative material of the project that can be taken, President Palmer will take with her on the trip.

No further comments or questions were received from the Board, nor were any public comment requests received.

d. DWR Environmental Manager’s Report

DWR Program Manager Katherine Marquez is presenting for Carrie Buckman. Ms. Marquez informed the Board that DWR reached an important milestone in December, releasing the Final EIR at the end of 2023. DWR is focusing on the water rights process and submitting a change in point of diversion petition to start the water rights hearing later in the year and the federal and state Endangered Species Act compliance. In addition, the Army Corps is continuing to coordinate their National Environmental Policy Act (NEPA) documents.

No comments or questions were received from the Board, nor were any public comment requests received.

e. Verbal Reports

No verbal reports were received.

8. FUTURE AGENDA ITEMS:

No future agenda items requested.

9. PUBLIC COMMENT:

No public comment requests.

10. ADJOURNMENT:

President Palmer adjourned the meeting at 3:30 p.m., remotely-Conference Access Information: Phone Number: (669) 444-9171, Code: 83084606454#, <https://dcdca-org.zoom.us/j/83084606454?from=addon>

Board Memo

Contact: Josh Nelson, General Counsel

Agenda Date: March 8, 2024, Board Meeting

Item No. 6a

Subject: Executive Director Services Agreement

Summary:

This item is a placeholder. If the Board wishes to move forward with appointing an Executive Director based on its closed session, this item will allow the Board to approve the Executive Director services agreement. If so, materials will be distributed at the meeting.



THE DELTA CONVEYANCE DESIGN AND CONSTRUCTION AUTHORITY
AGREEMENT NO. 230035
FOR CONSULTING SERVICES

This Agreement is between THE DELTA CONVEYANCE DESIGN AND CONSTRUCTION JOINT POWERS AUTHORITY, a public agency organized pursuant to the Joint Exercise of Powers Act (California Government Code Sections 6500, et seq.), hereinafter referred to as the Delta Conveyance Design and Construction Authority or DCA, and Bradner Consulting, LLC, hereinafter referred to as Consultant.

Explanatory Recitals

1. The DCA is a public agency of the State of California organized pursuant to the Joint Exercise of Powers Act (California Government Code Sections 6500, et seq.) pursuant to a joint powers agreement, dated May 14, 2018, to actively participate with the California Department of Water Resources in those activities identified in the agreement (“Project”).
2. The DCA requires the services of Consultant(s) to provide Executive Director services.
3. The DCA does not guarantee that the services stated in the scope of services will be required for the entire duration of the agreement.
4. For the period in which the Consultant is providing Executive Director services as described in this Agreement, the Consultant, including their affiliates and subsidiaries, will be precluded from proposing on other services for the Project in violation of California Government Code Section 1090.
5. The DCA desires to retain Consultant, and Consultant desires to perform the services required by the DCA according to the terms set forth hereinafter.

Terms of Agreement

1. Scope of Work
 - a. The DCA hereby engages Consultant to provide the DCA the services described in detail in the Scope of Work attached hereto as Exhibit A.
 - b. All services related to the scope of services will be ordered, and as necessary further defined, through the issuance of a written Task Order. All Task Orders must be completed and signed in a form agreeable to both parties prior to proceeding with services. Any additional sub-consultants not included in the Fee Schedule for this Agreement will be identified through the issuance of a Task Order. Prior to acquiring the additional sub-consultants, a copy of sub-consultants’ fee schedules must be submitted and approved by the Agreement Administrator as part of the Task Order. Task Orders will be issued on a form substantially similar to the sample form attached hereto as Exhibit B.
 - c. NOT USED



2. Time and Term

Time is of the essence in the performance of services under this Agreement. This Agreement is in effect from April 1, 2024, through March 31, 2029, subject to earlier termination pursuant to the terminations provisions set forth herein. The parties may extend this Agreement for two (2) additional five (5) year terms, or portion thereof, by mutual written agreement.

3. Agreement Administrator

a. In performing services under this Agreement, Consultant shall coordinate all contact with the DCA through its Agreement Administrator. For purposes of this Agreement, the DCA designates Nina Hawk, or her designee, as the Agreement Administrator. The DCA reserves the right to change this designation upon written notice to Consultant.

b. The acceptability of all services performed for this Agreement shall be determined by the DCA's Agreement Administrator. To the extent not otherwise established herein, the DCA's Agreement Administrator will establish the scope of services, timetable for completion of services, and any due dates for preliminary work or reports submitted to the DCA.

4. Key Personnel

It is the intent of both parties to this Agreement that Consultant shall make available the professional services of Graham Bradner, who shall administer all work under this Agreement and shall coordinate directly with the DCA. Any substitution of key personnel must be approved in advance by the DCA's Agreement Administrator, and the Agreement shall be amended to reflect the changes.

5. Independent Contractor

Consultant agrees to furnish consulting services in the capacity of an independent contractor and neither Consultant nor any of its employees shall be considered to be an employee or agent of the DCA.

6. Sub-consultants

a. Consultant shall be responsible to the DCA for all services to be performed under this Agreement. All sub-consultants and their billing rates shall be approved by the Agreement Administrator. Consultant shall be liable and accountable for any and all payments or other compensation to all sub-consultants performing services under this Agreement. The DCA shall not be liable for any payment or other compensation for any sub-consultants.

b. Consultant's contracts with sub-consultants shall require sub-consultant to maintain Workers' Compensation and Automobile Liability insurance as required by the State of California and include the following articles: Intellectual Property, Nonuse of Intellectual Property of Third Parties, Audit, and Equal Employment Opportunity and Affirmative Actions as set forth in this Agreement.

c. As applicable, Consultant's use of sub-consultants shall adhere to the requirements of the DCA as provided herein.



7. Compensation

a. For the services performed and the costs incurred by Consultant under this Agreement, the DCA will compensate Consultant in accordance with the Fee Schedule, attached hereto as Exhibit C. The Board reserves the right to provide periodic increases in addition to the escalation factor set forth in Exhibit C. The Fee Schedule may be modified through issuance of a Task Order where modified compensation terms for the task order work have been agreed to.

b. The DCA will only pay Consultant's expenses to the extent allowable expenses are identified in this Agreement, as set forth in Exhibit C. The DCA shall pay Consultant for allowable expenses, including work and expenses of any sub-consultant, only at Consultant's actual cost, unless an approved mark-up is specifically provided in the Fee Schedule. No payment will be made for expenses or other charges not included in this schedule, including other direct costs, sub-consultants' fees and expenses.

c. Where travel expenses are allowable, Consultant shall adhere to the Allowable Travel Expenses guidelines as set forth in Exhibit E, attached hereto.

8. Maximum Amount

The maximum amount payable under the terms of this Agreement, including expenses, will not exceed \$3,221,148.00. Consultant shall promptly notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached \$2,577,000.00. Consultant shall concurrently inform the Agreement Administrator of Consultant's estimate of total expenditures required to complete its current assignments, and when the remaining work would exceed the maximum amount payable, shall await direction from the Agreement Administrator before proceeding with further work.

9. Billings and Payments

a. Consultant shall submit monthly progress reports and monthly invoices to the DCA's Agreement Administrator electronically through the DCA invoice system. Any change to the Consultant's address must be submitted in writing to the DCA at 980 9th Street, 24th Floor, Sacramento, CA 95814. Without proper notification of an address change, Consultant's invoice payment may be delayed.

b. The individual listed in the agreement as Consultant's key personnel or other identified designee shall sign and certify the invoice to be true and correct to the best of his/her knowledge. Consultant's invoices shall include the following information:

i. Consultant's name and mailing address, the DCA's project name and agreement number, task order number, the beginning and ending billing dates, the maximum amount payable, a summary of costs for the current invoice, amount due for this invoice, cumulative total amount previously invoiced, and estimate at complete (EAC) table showing the current and projected status of the contract.

ii. Invoices shall be itemized by date of service, employee name, title, corresponding billing rate calculated pursuant to the then effective Multiplier, number of hours



worked, description of work performed, total amount due, and shall include the following affirmation:

“By signing this invoice, consultant certifies that the billing hours and work described herein is an accurate and correct record of services performed for the DCA under this Agreement and these hours have not been billed on any other client invoices.”

iii. Where applicable, invoices shall itemize allowable expenses and include receipts for which reimbursement is sought.

iv. Consultant shall attach a copy of each sub-consultant invoice for which reimbursement is sought. Sub-consultant’s invoices shall set forth the actual rates and expenses charged to the Consultant.

v. Multiple Task Orders may be billed on a single invoice; however, the charges and supporting documentation (receipts) shall be separately identified to the appropriate Task Order.

c. Subject to the approval of the Agreement Administrator, the DCA shall make payment of undisputed amounts to Consultant the later of 45 days after DCA’s receipt of the invoice or the DCA’s receipt of funding from the California Department of Water Resources in accordance with Government Code Section 927 *et seq.* Consultant’s invoices submitted 90 days after completion of work, may be delayed or not paid. Notwithstanding anything to the contrary, Consultant understands and agrees that funding for this Agreement is obtained from the California Department of Water Resources and, therefore, the DCA’s obligation to provide payment shall be fully contingent upon appropriation by and receipt of adequate funding from the California Department of Water Resources.

10. Small and/or Disabled Veteran Business Enterprises (SBE/DVBE)

a. It is the policy of the DCA to solicit participation in the performance of all construction, professional services, procurement contracts, supplies, and equipment procured by the DCA by all individuals and businesses, including but not limited to small businesses, locally owned businesses, women, minorities, disabled veterans, and economically disadvantaged enterprises.

b. DCA has adopted an SBE/DVBE participation goal of 25% and 3% respectively pursuant to DCA’s SBE/DVBE policy, which is incorporated herein by this reference. Consultant shall use reasonable efforts to utilize the services of SBE and DVBE firms consistent with DCA’s SBE/DVBE policy. Consultant should identify each SBE/DVBE sub-consultant in Attachment 1, Respondent’s Participation Form.

c. Consultant shall not substitute a SBE/DVBE firm without obtaining prior approval of the Agreement Administrator. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted entity.



d. In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of this Agreement. In addition to any other remedy the DCA may have under this Agreement or by operation of law, in this event the DCA:

i. May withhold invoice payments to Consultant until noncompliance is corrected and assess the costs of the DCA's audit of books and records of Consultant and its sub-consultants.

ii. In the event Consultant falsifies or misrepresents information contained in the form or other willful noncompliance as determined by the DCA, the DCA may disqualify the Consultant from participation in other the DCA contracts for a period of up to 5 years.

11. Successors and Assignment

This Agreement covers services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.

12. Change in Ownership or Control

Consultant shall notify the Agreement Administrator, in writing, of any change in ownership or control of Consultant's firm or sub-consultant. Change of ownership or control of Consultant's firm will require an amendment to the Agreement.

13. Use of Materials

a. The DCA will make available to Consultant such materials from its files as may be required by Consultant to perform services under this Agreement. Such materials shall remain the property of the DCA while in Consultant's possession. Upon termination of this Agreement and payment of outstanding invoices of Consultant, or completion of work under this Agreement, Consultant shall turn over to the DCA any property of the DCA in its possession and any calculations, notes, reports, electronic files, or other materials prepared by Consultant in the course of performing the services under this Agreement.

b. The DCA may utilize any material prepared or utilize work performed by Consultant pursuant to this Agreement, including computer software, in any manner, which the DCA deems proper without additional compensation to Consultant. Consultant shall have no responsibility or liability for any revisions, changes, or corrections made by the DCA, or any use or reuse pursuant to this paragraph unless Consultant accepts such responsibility in writing.

14. Intellectual Property

a. All right, title and interest in all intellectual property conceived or developed in the course of Consultant's work for the DCA under this Agreement shall be the property of the DCA. As used herein, the term "intellectual property" includes, but is not limited to, all inventions, patents, copyrightable subject matter, copyrights, test data, trade secrets, other confidential information, and software.



b. Consultant shall not use or disclose any intellectual property conceived or developed in the course of Consultant's work for the DCA, except: (i) intellectual property in the public domain through no fault of Consultant, (ii) intellectual property which Consultant can prove was received by him or her from a third party owing no duty to the DCA, and (iii) intellectual property for which Consultant has received express, written permission from the General Counsel for the DCA, or from the General Counsel's designated agent, or is authorized or required to use or disclose under the terms of this Agreement.

c. Consultant shall promptly notify the DCA, in writing, of all intellectual property conceived or developed in the course of Consultant's work for the DCA under this Agreement.

d. Consultant shall assign and does hereby assign to the DCA all right, title and interest to intellectual property conceived or developed by Consultant in the course of Consultant's past and future work for the DCA.

e. Consultant shall cooperate in the execution of all documents necessary to perfect the DCA's right to intellectual property under this Agreement.

f. When requested by the DCA, or upon the completion of each work assignment or upon termination of this Agreement, Consultant shall return all documents and other tangible media containing intellectual property developed by Consultant during the course of this Agreement, including all prototypes and computer programs.

g. When requested by the DCA or upon termination of this Agreement Consultant shall promptly erase copies of all the DCA intellectual property from Consultant's computers. Consultant may retain one complete set of reproducible copies of all its instruments of service for internal use purposes but shall be required to obtain the DCA's written consent for any other purpose.

15. Nonuse of Intellectual Property of Third Parties

Consultant shall not use, disclose or copy any intellectual property of any third parties in connection with work carried out under this Agreement, except for intellectual property for which Consultant has a license. Consultant shall indemnify and hold the DCA harmless against all claims raised against the DCA based upon allegations that Consultant has wrongfully used intellectual property of others in performing work for the DCA, or that the DCA has wrongfully used intellectual property developed by Consultant pursuant to this Agreement.

16. Legal Requirements

In carrying out its obligations under this Agreement, Consultant and its employees and representatives shall secure and maintain all licenses or permits required by law and shall comply with all applicable federal, State, or local laws, codes, rules, and regulations in the performance of this agreement.



17. Guarantee and Warranty

a. Consultant guarantees and warrants that the work shall be performed and completed in accordance with generally accepted industry standards, practices, and principles applicable to the work. Among other things, and without waiver of the DCA's other rights or remedies, the DCA may require Consultant to re-perform any of said services which were not performed in accordance with these standards. Consultant shall perform the remedial services at its sole expense.

b. The DCA's representatives shall at all times have access to the work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement.

18. Access to DCA Premises

a. Due to security and safety concerns, Consultant shall verify that all persons employed or engaged by it or its sub-consultants to work without escort on the DCA's premises are eligible for employment under all state and federal laws; have no pending criminal proceedings and have had no criminal convictions for the past seven (7) years, or if not, prove to the DCA's satisfaction including but not limited to providing an affidavit that the individual does not pose a security risk. Additionally, Consultant shall verify that all persons employed or engaged by Consultant or its sub-consultants who drive or operate machinery requiring specialized permits or licenses on the DCA's premises have a valid license to do so. Consultant shall maintain in its files criminal and employment background checks and all other documents supporting its verification of the above requirements and shall, upon the DCA's request, provide copies of or access to all such records.

b. For each person scheduled to work on the DCA's premises, Consultant shall submit to the DCA the name and written verification of the above requirements at least 10 workdays prior to the first proposed work start date on the DCA's premises. Consultant or sub-consultant personnel requiring access to the DCA premises shall be prepared to present to security the following:

i. Federal or State issued photo identification such as California Driver's License or Passport. Matricula I.D.'s are not acceptable.

ii. Employee identification indicating that the individual(s) seeking access is/are current employee(s) of the Consultant or sub-consultant performing services for the DCA.

When circumstances require that Consultant or sub-consultant personnel be issued an access badge to areas within the facility, Security will generate a badge available for pickup at the guard station by the individual(s) requiring access. Said individual(s) shall be prepared to leave a valid picture identification with Security in exchange for receipt of the access badge. As a condition of leaving the premises, said individual(s) shall return the access badge to Security in order to receive the provided identification.



c. Upon the DCA's notice, Consultant shall bar from the DCA's premises any Consultant or sub-consultant employee who, in the opinion of the DCA, is incompetent, disorderly, violates safety requirements, poses a security risk, or otherwise threatens to disrupt the work or the DCA's operations.

d. Consultant shall notify the DCA within five (5) days of any employee's departure (including termination or resignation) from the Project.

19. Indemnity

a. Consultant assumes all risk of injury to its employees, agents, and contractors, including loss or damage to property due to the negligence, recklessness, or willful misconduct in the performance of this Agreement.

b. Consultant shall defend, indemnify, and hold harmless the DCA, its Board of Directors, officers, employees, and agents from and against all claims, suits, or causes of action for injury to any person or damage to any property arising out of, pertaining to, or related to Consultant's negligence, recklessness or willful misconduct in the performance of this Agreement, including any claims, suits, or causes of action by any employee of Consultant and/or sub-consultants relating to his or her employment status with the DCA and/or rights to employment benefits from the DCA.

c. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

d. Notwithstanding anything to the contrary, Consultant will indemnify, hold harmless, release and defend DCA, its Board of Directors, officers, employees, and agents from and against any and all claims arising from an allegation, charge, assertion or accusation by a third party that Consultant and/or DCA has violated California Government Code Section 1090 or any other conflict-of-interest law in the procurement, execution or performance of this Agreement or any associated contracts. This indemnification obligation will continue to bind Consultant after the termination or expiration of this Agreement.

20. Insurance

a. Consultant shall procure, at its own expense, and maintain for the duration of this Agreement, or longer as provided herein, insurance coverage as specified in this Section 20. Provision of the required insurance shall not be interpreted to relieve Consultant of any obligations hereunder. Consultant acknowledges and agrees that any actual or alleged failure on the part of the DCA to inform Consultant of non-compliance with any requirement herein imposes no additional obligations on the DCA nor does such actual or alleged failure waive any



rights hereunder. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise approved by the DCA. Workers' compensation insurance through the State Compensation Insurance Fund when not specifically rated, is acceptable. All of the liability insurance policies, except for the professional liability policies, shall explicitly waive subrogation rights by endorsement or policy provisions, or shall allow the insured to waive its rights of recovery against Indemnified Parties prior to loss.

b. Coverage shall include the following insurance which shall comply with all of the provisions in this Section 20:

i. Commercial general liability insurance using Insurance Services Office (ISO) occurrence Form CG 00 01. Policy limits shall be no less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The DCA, its Board of Directors, officers, and employees shall be additional insureds under such policy using ISO form CG 20 10 or comparable form as otherwise approved by the DCA.

ii. Commercial auto liability insurance using ISO CA 00 01 covering Automobile Liability, Code 1, (any auto). Policies shall include as an insured anyone liable for the conduct of an insured as defined in the policy, or shall add as insureds, the DCA, its Board of Directors, officers, employees, and agents. Policy limits shall be no less than \$1,000,000 combined single limit.

iii. Umbrella or excess liability insurance on a "follow form" and "pay on behalf" basis as necessary to provide total per occurrence and aggregate limits of not less than \$5,000,000 (including limits provided in any primary policy), that will provide bodily injury, and property damage liability coverage at least as broad as the primary coverages set forth above, and employer's liability in excess of the amounts set forth in paragraph iv, below.

iv. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Employer's liability limits shall be no less than \$1 million each accident, each employee for bodily injury, and policy limit for bodily injury. If there is a known exposure, the workers' compensation policy shall also include U.S. Longshore and Harbor Workers Act, Jones Act, and Federal Employer's Liabilities Act coverage. If there is only a remote exposure, these coverages shall be provided on an "if any" basis. The policy shall be endorsed to waive the insurer's right of subrogation against the DCA, its Board of Directors, officers, and employees. Insurance set forth in this subsection 20.b.iv shall not be required during any time in which Consultant does not have any employees.

v. Professional Liability or Errors and Omissions Liability insurance appropriate to the Consultant's profession with limits not less than \$(2,000,000 per claim and aggregate. Coverage shall apply specifically to all professional activities performed under the Contract Documents. The policy(ies) shall have a retroactive date consistent with the inception of design and/or project construction management activities, and no later than the date on which the RFQ was issued. Consultant agrees to maintain this required coverage for a period of no less than five (5) years after Substantial Completion or to purchase an extended reporting period for no less than five (5) years after Substantial Completion.



c. General Requirements for All Insurance

i. Verification of Coverage: The required evidence of insurance shall be received and approved by the DCA prior to the commencement of work. Consultant shall email to the DCA's Agreement Administrator at jarabshahi@dcdca.org and a copy to: Document Control at doccontrol@dcdca.org, evidence of required insurance consisting of a certificate or certificates of insurance and all required endorsements, including additional insured endorsements, and other endorsements as identified in this Section 20. The evidence provided must be adequate to allow the DCA to determine if all insurance requirements have been met. Consultant also shall promptly deliver to the DCA evidence of insurance, as required by this Section 20 with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such evidence shall be delivered to the DCA not less than fifteen (15) days prior to the expiration date of any policy, or such shorter period as approved in advance by the DCA. The DCA reserves the right to require complete, certified copies of all required insurance policies except for professional liability, including endorsements effecting coverage and coverage binders required by these specifications at any time.

ii. Premiums, Deductibles and Self-Insured Retentions: Consultant shall be responsible for payment of premiums for all insurance required under this Section 20. Neither the DCA nor any of the additional insureds as required hereunder have an obligation to pay any premium. Consultant further agrees that for each claim, suit or action made against insurance provided hereunder, Consultant shall be solely responsible for all deductibles, self-insured retentions and loss amounts in excess of the coverage provided. With the exception of professional liability insurance and approved self-insurance for worker's compensation coverage, self-insured retentions must be approved by the DCA.

iii. Insurance Primary: For any claims related to this project, with the exception of Worker's Compensation/Employer's Liability and Professional Liability insurance the Consultant's insurance coverage shall be primary insurance as respect to the DCA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the DCA, its officers, officials, and employees shall be excess of the Consultant's insurance and shall not contribute with it.

iv. Cancellation Notice: Each policy required hereunder, except for Professional Liability, shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits below those required herein except after thirty (30) days prior written notice has been given to the DCA to the attention of DCA Document Control, except for nonpayment of premium for which 10-day notice shall be provided. In the event Consultant's policies required under this Agreement do not provide the notice required herein, Consultant shall be responsible for providing such notice.

v. Subrogation Waivers: The DCA and Consultant waive all rights against each other, against each of their agents and employees and their respective members, directors, officers, employees, agents, and consultants for any claims to the extent covered by



insurance obtained pursuant to this Section 20, except such rights as they may have to the proceeds of such insurance. Consultant shall require all sub-consultants to provide similar waivers in writing in favor of DCA, its officers, officials, employees and volunteers except as otherwise agreed to by DCA.

vi. Non-Limitation: The insurance coverage provided, and limits required hereunder, are minimum requirements and are not intended to limit Consultant's indemnification obligations under Section 19, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status. Requirements of specific coverage features or limits contained in this Section 20 are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. Endorsements to Consultant's insurance policies adding the required parties as insureds, shall not limit defense or indemnity payments to any amount specified as a minimum limit required by this agreement.

vii. Failure to Comply: If Consultant or any Subconsultant fails to provide and maintain insurance as required herein, then the DCA shall have the right but not the obligation, to purchase such insurance, to terminate the Agreement, or to suspend Consultant's work until proper evidence of insurance is provided. Any amounts paid by the DCA (plus an administrative charge equal to ten percent (10%) of the cost) shall, at the DCA's sole option, be deducted from amounts payable to the Consultant or reimbursed by Consultant upon demand.

viii. Notice and Prosecution of Claims: The DCA shall have the right, but not the obligation, to submit the DCA's claims and tenders of defense and indemnity under applicable liability insurance policies (excluding professional liability). Unless otherwise directed by the DCA in writing with respect to the DCA's insurance claims, Consultant shall be responsible for reporting and processing all potential claims against the DCA or Consultant to the appropriate insurers. Consultant agrees to report timely to the insurer(s) under such policies all matters which may give rise to an insurance claim against Consultant or the DCA and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such policies, whether for defense or indemnity or both. Consultant shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Governmental Rules to collect thereon, including pursuing necessary litigation and enforcement of judgments. Consultant shall immediately notify the DCA, and thereafter keep the DCA fully informed, of any incident, potential claim, claim or other matter of which Consultant becomes aware that involves or could conceivably involve the DCA, its officers, officials, employees or volunteers as a defendant. Consultant shall cooperate with the DCA and shall require its liability insurers to agree in writing to work with the DCA to assure compliance with all requirements of Governmental Rules regarding timely response to claims.

ix. Disclaimer: Consultant and each Subconsultant shall have the responsibility to make sure that their insurance programs fit their needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable,



whether or not specified herein. The DCA makes no representation or warranty that the coverage, limits of liability or other terms specified for the insurance policies to be carried pursuant to this Section 20 are adequate to protect Consultant against its undertakings under this Agreement or its liability to any third party or preclude the DCA from taking any actions as are available to it under the Agreement or otherwise at law.

21. Audit

a. Consultant shall be responsible for ensuring the accuracy and propriety of all billings and shall maintain all supporting documentation for the period specified below.

b. The DCA will have the right to audit Consultant's invoices and all supporting documentation for purposes of compliance with this Agreement during the term of this Agreement and for a period of three years following completion of services under this Agreement.

c. Upon reasonable notice from the DCA, Consultant shall cooperate fully with any audit of its billings conducted by the DCA and shall permit access to its books, records and accounts as may be necessary to conduct such audits.

d. Consultant agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative (the State) shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Consultant. Consultant agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Consultant agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Consultant agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.

22. Non-Discrimination Clause

a. During the performance of this Agreement, Consultant shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Consultant shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set



forth in full. Consultant shall give written notice of its obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b. By signing this Agreement, Consultant assures that it complies with the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

c. For agreements over \$100,000, Consultant shall comply with Public Contract Code section 10295.3 and shall not discriminate between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

23. Anti-Terrorism Laws

Consultant represents and warrants that both 1) Consultant, and 2) to Consultant's knowledge, its directors, officers, employees, subsidiaries and subconsultants:

(A) are not listed in the annex to, or otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order");

(B) are not owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(C) are not an individual, entity or organization with which the DCA is prohibited from engaging in any transaction by any other laws, regulations or executive orders relating to terrorism or money laundering;

(D) do not commit, threaten or conspire to commit or support "terrorism" as defined in the Executive Order; or

(E) are not named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign Asset Control ("OFAC") or any list issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list.

In the event that Consultant, its directors, officers, employees, subsidiaries and sub-consultants become an entity that the DCA is prohibited from dealing or otherwise engaging in any transaction by any other laws, regulations or executive orders relating to terrorism or money laundering, the DCA shall be entitled to immediately terminate this Agreement and take such other actions as are permitted or required to be taken under law or in equity.

24. Conflict of Interest and Gift Restrictions

a. Consultant represents that it has advised the DCA in writing prior to the date of signing of this Agreement of any known relationships with a third party, the DCA's Board of Directors, or employees which would (1) present a conflict of interest with the rendering of



services under this Agreement, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

b. Consultant agrees not to accept any employment during the term of this Agreement from any other person, firm or corporation where such employment is a conflict of interest or where such employment is likely to lead to a conflict of interest between the DCA's interest and the interests of such person, firm or corporation or any other third party. Consultant shall immediately inform the DCA, throughout the term of this Agreement, if any employment contemplated may develop into a conflict of interest, or potential conflict of interest.

c. Consultant is hereby notified the California Political Reform Act ("PRA") and regulations of the Fair Political Practices Commission ("FPPC") prohibit DCA Board members, officers and employees from receiving or agreeing to receive, directly or indirectly, any compensation, reward or gift from any source except from his or her appointing DCA or employer, for any action related to the conduct of the DCA's business, except as specifically provided in the PRA and FPPC regulations. Consultant agrees not to provide any prohibited compensation, reward or gift to any DCA Board member, officer or employee.

d. Consultant should be aware of the following provisions regarding current or former state employees. If the Consultant has any questions on the status of any person rendering services or involved with the Agreement, the DCA must be contacted immediately for clarification.

i. Current State Employees: (PCC §10410)

1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

ii. Former State Employees: (PCC §10411)

1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.



iii. Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e)).

e. Consultant must disclose to the DCA any activities by the Consultant or sub-consultant involving representation of parties, or provision of consultation services to parties, who are adversarial to DWR. DCA may immediately terminate this contract if the Consultant fails to disclose the information required by this section. DCA may immediately terminate this contract if any conflicts of interest cannot be reconciled with the performance of services under this contract.

f. The Consultant should also be aware of the following provisions of Government Code §1090:

“Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

g. Consultant and any sub-consultant (except for sub-consultants that provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

25. Release of Information

Consultant shall not make public information releases or otherwise publish any information obtained or produced by it as a result of, or in connection with, the performance of services under this Agreement without the prior written authorization from the Agreement Administrator. **This provision survives the termination of this Agreement.**

26. Use of the DCA’s Name

Consultant shall not publish or use any advertising, sales promotion, or publicity in matters relating to services, equipment, products, reports, and material furnished by Consultant in which the DCA’s name is used, or its identity implied without the Agreement Administrator’s prior written approval. **This provision survives the termination of this Agreement.**

27. Termination

The DCA may terminate this Agreement with or without cause by providing written notice to Consultant not less than ten days prior to an effective termination date. The DCA’s only obligation in the event of termination will be payment of fees and expenses incurred in conformity with this Agreement up to and including the effective date of termination.



28. Force Majeure Events

a. Excuse to Performance: In addition to specific provisions of the Agreement, lack of performance by any Party shall not be deemed to be a breach of this Agreement, where delays or defaults are due to acts of God, or the elements, casualty, strikes, lockouts, or other labor disturbances, acts of the public enemy, orders or inaction of any kind from the government of the United States, the State of California, or any other governmental, military or civil authority (other than the DCA, or another party to this Agreement), war, insurrections, riots, epidemics, landslides, lightning, droughts, floods, fires, earthquakes, civil disturbances, freight embargoes, or any other inability of any Party, whether similar or dissimilar to those enumerated or otherwise, which are not within the control of the Party claiming such inability or disability, which such Party could not have avoided by exercising due diligence and care and with respect to which such Party shall use all reasonable efforts that are practically available to it in order to correct such condition (such conditions being herein referred to as "Force Majeure Events").

b. Responding to Force Majeure Events: The Parties agree that in the event of a Force Majeure Event which substantially interferes with the implementation of this Agreement, the Parties will use their good faith efforts to negotiate an interim or permanent modification to this Agreement which responds to the Force Majeure Event and maintains the principles pursuant to which this Agreement was executed.

29. JEPA Terms and Conditions

a. On May 22, 2018, the DCA and the California Department of Water Resources (DWR) entered into a joint exercise of powers agreement (JEPA), available at <http://www.dcdca.org/#docs>. Pursuant to the JEPA, DWR is a third-party beneficiary to this Agreement and reserves all rights set forth in Section 6 of the JEPA. The DCA and Consultant agree that DWR is an intended and express third-party beneficiary of the provisions of this Agreement and shall have the right to enforce the terms and conditions of this Agreement against Consultant or to exercise any other right, or seek any other remedy, which may be available to it as a third-party beneficiary of this Agreement. Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and Consultant. The DCA's obligation to pay Consultant is an independent obligation from the State's obligation to make payments to the DCA. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to Consultant.

b. Consultant agrees to comply with, and not violate, any applicable terms and conditions set forth in the JEPA, including any terms and conditions set forth in Exhibit F to the JEPA, as it may be amended from time to time.

30. Recycled Content Certification

In accordance with Public Contract Code Sections 12200-12217, et seq. and 12153-12156, et seq. the Consultant must complete and return the form DWR 9557, Recycled Content Certification (<https://water.ca.gov/Library/Public-Forms>), for each required product to



the Department at the conclusion of services specified in this contract. Form DWR 9557 is made part of this contract by this reference.

31. Child Support Compliance Act

a. For agreements over \$100,000, Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

32. Loss Leader

If this Agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

33. Sweatfree Code of Conduct

a. Consultant contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Consultant further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. Consultant agrees to cooperate fully in providing reasonable access to the Consultant's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the Consultant's compliance with the requirements under paragraph (a).

34. Drug-Free Workplace Certification

By signing this Agreement, Consultant or grantee hereby certifies under penalty of perjury under the laws of the State of California that Consultant or grantee will comply with the



requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. The person's or organization's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed contract or grant:
 - i. Will receive a copy of the company's drug-free policy statement, and
 - ii. Will agree to abide by terms of the company's statement as a condition of employment on the contract or grant.

This Agreement or grant may be subject to suspension of payments or termination, or both, and Consultant or grantee may be subject to debarment if the department determines that: (1) Consultant or grantee has made a false certification, or (2) Consultant or grantee violates the certification by failing to carry out the requirements noted above.

35. Notices

Any notice or communication given under this Agreement shall be effective when deposited, postage prepaid, with the United States Postal Service and addressed to the contracting parties as follows:

DELTA CONVEYANCE DESIGN AND
CONSTRUCTION AUTHORITY

980 9th Street, 24th Floor
Sacramento, CA 95814
Attention: Agreement Administrator

BRADNER CONSULTING, LLC
P.O. Box 201
Folsom, CA 95763s
Attention: Mr. Graham Bradner
graham@bradnerconsulting.com

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.



36. Assignment

This Agreement may be assigned to DWR upon written notice from DWR stating that it has exercised its rights under Section 6(e) of the JEPA, described in Section 29 to this Agreement.

37. Severability

If any provision of this Agreement shall be held illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

38. Jurisdiction and Venue

This Agreement shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Both parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the proper venue of any action brought thereunder is and shall be Sacramento County, California.

39. Waiver

No delay or failure by either party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

40. Entire Agreement

a. This writing contains the entire agreement of the parties relating to the subject matter hereof; and the parties have made no agreements, representations, or warranties either written or oral relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without formal amendment thereto. This Agreement expressly supersedes that certain Agreement No. 190005 for Consulting Services, as amended, ("Prior Agreement") between the parties. Upon the commencement of this Agreement, the Prior Agreement shall be of no further force or effect.

b. Notwithstanding the foregoing, and to realize the purpose of this Agreement, the Agreement Administrator may issue a written modification to the Scope of Work, if this modification will not require a change to any other term of this Agreement.

41. Joint Drafting

Both parties have participated in the drafting of this Agreement.

42. California Labor Code Requirements

a. Consultant is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, which require the payment of prevailing wage rates and the



performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the DCA, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subcontractors performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the DCA. Consultant shall defend, indemnify and hold the DCA, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

43. Political Reform Act

Consultant shall comply with the language stated in the Standard Contract Provisions Concerning the Political Reform Act, Attachment 2. Consultant shall file a Statement of Economic Interests (Fair Political Practices Commission Form 700) upon assuming office, annually, and within 30 days after leaving office.

44. Non-Disclosure



Consultant shall comply with the language stated in the Protection of Confidential and Sensitive Information exhibit and complete the corresponding Non-Disclosure Certificate. The Protection of Confidential and Sensitive Information exhibit and corresponding Non-Disclosure Certificate are attached hereto as Exhibit E and incorporated herein by this reference.

SIGNATURES ON FOLLOWING PAGE



Signature Page

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date last written below.

BRADNER CONSULTING, LLC.

THE DCA

By _____

Graham Bradner
Owner/Principal

Date _____

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President, or any Vice President.)

By _____

Sarah Palmer
President of the Board

Date _____

APPROVED AS TO FORM:
General Counsel

By _____

Print name
Title

Date _____

(This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer, or any Assistant Treasurer.)

By _____

Date _____

Analyst Initials: agr# - date
In duplicate
Attachments

ATTACHMENT 1 – Respondent’s Participation Form

[NOT USED]

ATTACHMENT 2 – Standard Contract Provision Regarding Political Reform Act Compliance

POLITICAL REFORM ACT REQUIREMENTS:

- a. Form 700 Disclosure: The Delta Conveyance Design and Construction Joint Powers Authority (DCA) considers that the Consultant, sub-consultant(s), and/or their key staff may be a consultant, i.e., a public official, within the meaning of the Political Reform Act, specifically Government Code §82048 and Title 2, California Code of Regulations §18701. Accordingly, when notified by DCA, such persons shall complete and submit to DCA's Personnel Officer a Form 700, Statement of Economic Interests, within 30 days of the earlier of the date work commences or the effective date of this agreement. The Consultant shall then file the Form 700 annually and will advise DCA if changes in key staff or duties occur. A leaving office statement must also be filed upon completion of all contract assignments. The financial interests disclosed shall be for DCA Disclosure Category 1. Consultants may access the Form 700 on the Fair Political Practices Commission website at www.fppc.ca.gov. Any questions regarding completion of the Form 700 should be addressed to the FPPC at its website or at (866) 275-3772 (866/ASK-FPPC).

- b. Financial Conflict of Interest Prohibition: Consultant must review the Form 700s filed by its key staff and sub-consultants and determine whether, in the light of the interests disclosed, performance under the contract could violate Government Code §87100. Consultant shall notify the Department immediately of any potentially disqualifying conflict of interest. Government Code §87100 provides: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

- c. Consequences of Failure to Comply with Political Reform Act Requirements: Any one of the following shall constitute a breach of this Contract and shall be grounds for immediate termination of this Contract:
 - (1) Failure to complete and submit all required Form 700s within the 30-day period as required in paragraph A above, or respond to any request from DCA Personnel Officer for additional information regarding any such Form 700s;
 - (2) Failure to notify DCA of a potentially disqualifying conflict of interest;
 - (3) The determination by DCA or the Consultant that any individual, who is a contractor, sub-consultant, and/or a key member of their staff, has a financial interest that could result in a violation of Government Code §87100; provided, however, that DCA may opt to waive such breach if Consultant replaces any individual within two working days after a determination of such financial interest.

Exhibit A: SCOPE OF WORK

Consultant shall provide Executive Director services to oversee the DCA's efforts for the Delta Conveyance project and provide overall direction and management of the consultants and contractors to the DCA and assistance to the DCA Board of Directors in carrying out the mission of the DCA and policy direction of the Board of Directors. The Executive Director will report to the DCA's Board of Directors as an independent contractor and will advise the DCA Board and direct the staff, accordingly.

Consultant will carry out the following duties:

- Provide overall direction to the team of consultants and contractors to DCA at the direction of the Board of Directors of the DCA.
- Provide assistance to the Board of Directors of the DCA.
- Receive general policy direction from the DCA Board of Directors and implement that direction into specific procedures, program practices, strategic planning, initiative development, performance evaluation, fiscal budgeting, and organizational development.
- Coordinate with the California Department of Water Resources Delta Conveyance Office to ensure consistency and compliance with the terms of that certain Amended and Restated Joint Exercise of Powers Agreement dated October 26, 2018, by and between the Department of Water Resources of the State of California and the Delta Conveyance Design and Construction Joint Powers Authority ("JEPA").
- Make periodic site visits to the Delta Conveyance project area(s).
- Be responsible for and attend the DCA's Board of Directors meetings, as well as attend special meetings of the Board at the DCA's offices or elsewhere at the request of the Board. The Executive Director will report to the Board of Directors and implement their orders and directives, accordingly.
- Manage DCA staff and/or consultants and meet and coordinate with the Department of Water Resources, regulatory agencies, and other third parties.
- Develop annual financial and strategic plans and initiatives to meet the public agency's goals and objectives, as well as oversee the preparation of Board agenda packages, provide Board support, interface with media, and facilitate the selection of consultants and contractors.
- Provide advice to assist the DCA Board in achieving the policy goals and objectives of the DCA.
- Develop and implement DCA operating policies and procedures.
- Provide additional support services to the Executive Director or Board of Directors, as directed, and approved by the DCA.
- Act as a public figure when needed to represent the issues and concerns of the DCA.

Exhibit B: SAMPLE TASK ORDER FORM
[See next page]

Attachment A – Scope of Services

<Task Order XXXXXX-XXXX >

<DELETE THESE INSTRUCTIONS FROM FINAL VERSION. Scope must be broken out by Task Order Budget Summary (Attachment C)>

Scope:

1. *Create new task number that is in sequential order based on base Task Order (Task Number will equal the item number in the Task Order Budget Summary). The description of the work must include a justification that is clear and logical.*
2. *All deliverables must be described in Scope of Services (Attachment A) and must be added to Deliverables (Attachment B)*

Relevant Appendices:

Any documents, memos, subconsultant proposals, etc. referenced in the description should be included in this Attachment A as appendices, beginning with Appendix 1

Task 1: Task Description

- 1.

Task 2: Task Description

- 1.

Task 3: Task Description

- 1.

Consultant | Agreement # | Task Order XXXX

Attachment B - Deliverables

WBS Code	Item Number	Deliverable Title	Due Date
	001		
	002		
	003		
	004		
	005		
	006		
	007		
	008		
	009		
	010		
	011		
	012		
	013		
	014		
	015		
	016		
	017		
	018		
	019		
	020		
	021		

Consultant | Agreement # | Task Order XXXX

Attachment C - Budget Summary (Unit Price Task Order)

WBS Code	Item Number	Item Description	Item Unit of Measure	Item Quantity	Item Unit Cost	Task Order Value
	001	<i>Example - Project Management</i>	<i>MO - Months</i>	12	\$ 5,000.00	\$ 60,000.00
	002		<i>DY - Days</i>		\$ -	\$ -
	003		<i>HR - Hours</i>		\$ -	\$ -
	004		<i>MO - Months</i>		\$ -	\$ -
	005		<i>LF - Linear Feet</i>		\$ -	\$ -
	006		<i>GL - Gallons</i>		\$ -	\$ -
					Total	\$ 60,000.00

Note: Technical team may leave WBS Code blank, Project Controls will confirm coding.

Attachment D – Payment Terms Hourly Rate Schedule

Note: Please see sample sentences in *red* below for reference. Choose the sentence that reflects what is consistent with the Prime Contract terms. (delete this note for Final)

ODCs not included: The following negotiated hourly rates apply to staff/resources and include overhead and profit exclusive of Other Direct Billable Costs. Refer to the DCA Travel Policy which can be found on the DCA Website for information on reimbursement rates for project related travel.

ODCs included: The following negotiated hourly rates apply to staff/resources and include overhead and profit inclusive of Other Direct Billable Costs.

#	Staff/Resource	Classification	Hourly Rate
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			

¹ Billable rate may not exceed \$450 per hour

Consultant | Agreement # | Task Order XXXX

Attachment E - Schedule

WBS Code	Item Number	Item Description	Start Date	End Date	Comments
	001				
	002				
	003				
	004				
	005				
	006				
	007				
	008				
	009				
	010				
	011				

Exhibit C: FEE SCHEDULE

Agreement No. 230035 Consultant shall bill the DCA for services rendered under this Agreement pursuant to the following requirements. As set forth below, Consultant shall not receive any additional compensation or reimbursement for travel or similar expenses beyond the monthly amount identified below.

<i>Year</i>	<i>Monthly Fixed Fee*</i>	<i>Months</i>	<i>Total</i>
<i>1</i>	\$50,560	<i>12</i>	\$606,720
<i>2</i>	\$52,077	<i>12</i>	\$624,924
<i>3</i>	\$53,639	<i>12</i>	\$643,668
<i>4</i>	\$55,248	<i>12</i>	\$662,976
<i>5</i>	\$56,905	<i>12</i>	\$682,860
<i>TOTAL Years 1-5</i>			\$3,221,148

*Rate based on \$48,060 monthly cost plus \$2,500 for monthly expenses. Includes 3% annual escalation rate.

Additional services, if approved in writing by the DCA, shall be performed on a time and materials basis at the following rates:

Position [Insert position below]	Hourly Rate (Insert hourly rate below)

- The Monthly Fixed Fee shall include Consultant’s direct labor, burden, overhead and profit, other direct project costs related to personnel (including software, hardware, travel, meals, lodging and transportation), incidental direct costs (copies, mailing, etc.), and overhead costs on subconsultant revenue and profit.

Exhibit D: ALLOWABLE TRAVEL EXPENSES GUIDELINES

To the extent allowable and subject to the other direct costs included in the Fee Schedule, all travel expenses incurred by consultant and any of its subconsultants shall be subject to the DCA's Allowable Travel Expenses Policy, which is available for review at the following web address:

<https://www.dcdca.org/wp-content/uploads/2023/08/2023.08-DCA-Travel-Policy.pdf>

Exhibit E: PROTECTION OF CONFIDENTIAL AND SENSITIVE INFORMATION/ NON-DISCLOSURE CERTIFICATE

1. For purposes of this Exhibit, “Consultant” means any contractor or researcher, including a non-state entity contractor or researcher, receiving funds from, doing business with, conducting research for, or performing services for the Delta Conveyance Design and Construction Joint Powers Authority (“DCA”) pursuant to a contract, purchase order, research agreement, grant or loan agreement, joint powers agreement, public works contract, or other contractual vehicle (collectively “Contract”). The term “Consultant” also includes Consultant’s officers and employees and Affiliates. For purposes of this Exhibit, the term “Affiliate” means a person or entity forming a partnership, joint venture, subcontract, sales contract, or other legal relationship with consultant to carry out the terms of the Contract.
2. This Exhibit shall apply to all Consultants the terms of whose Contracts with the DCA require or permit access to Confidential or Sensitive Information in conducting business with the DCA or performing duties under a Contract with the DCA.
3. Consultant shall impose all the requirements of this Exhibit on all of its officers, employees and Affiliates with access to Confidential and/or Sensitive Information.
4. For purposes of this Exhibit, “Non-State Entity” shall mean a business, organization or individual that is not a State entity, but requires access to State information assets in conducting business with the State. This definition includes, but is not limited to, researchers, vendors, consultants, and their subcontractors, officers, employees, and entities associated with federal and local governments and other states.
5. For purposes of this Exhibit, “Confidential Information” means information, the disclosure of which is restricted or prohibited by any provision of State or federal law or which is treated as privileged or confidential under such laws. Such Confidential Information includes, but is not limited to, information that is exempt from disclosure under the California Public Records Act (Government Code sections 6250-6255), public social services client information described in California Welfare and Institutions code section 10850, and “personal information” about individuals as defined in California Civil Code Section 1798.3 of the Information Practices Act (IPA) if the disclosure of the “personal information” is not otherwise allowed by the IPA. Such Confidential Information may also include

financial, statistical, personal, technical, and other data and information relating to the operation of the DCA.

6. For purposes of this Exhibit, "Sensitive Information" means information that requires special precautions to protect it from unauthorized modification or deletion. Sensitive information may be either public records or Confidential Information. Examples include statistical reports, financial reports, and logon procedures.

7. Consultant shall take all necessary measures to protect Confidential or Sensitive Information to which it or its Affiliates gain access from unauthorized access (accidental or intentional), modification, destruction, or disclosure. These measures may include but are not limited to password protection of electronic data, encrypted transmission of electronic data, secure mailing and locked storage of paper and taped copies. Such measures may also include the establishment of secure workstations and maintenance of a secure workstation access log. Consultants shall also apply appropriate security patches and upgrades and keep virus software up to date on all systems on which Confidential or Sensitive Information may be used.

8. Consultants shall ensure that all media, including electronic media, containing Confidential or Sensitive Information, to which they are given access are protected at the level of the most confidential or sensitive piece of data on the media.

9. Consultant and Affiliate personnel allowed access to Confidential and Sensitive Information shall be limited to those persons with a demonstrable business need for such access. Consultant shall maintain a current listing of all Consultant and Affiliate personnel with access to Confidential and Sensitive Information.

10. Consultant shall notify DCA promptly if a security breach involving Confidential or Sensitive Information occurs or if Consultant becomes legally compelled to disclose any Confidential Information.

11. Consultant shall comply with all State policies and laws regarding use of information resources and data, including, but not limited to, California Government Code section 11019.9 and Civil Code sections 1798 et seq. regarding the collection, maintenance and disclosure of personal and confidential information about individuals.

12. If Consultant obtains access to Confidential Information containing personal identifiers, such as name, social security number, address, date of birth, race/ethnicity and gender of individuals, Consultant shall substitute non-personal identifiers as soon as possible.

13. All data, reports, information, inventions, improvements and discoveries used, compiled, developed, processed, stored or created by Consultant or Consultant's Affiliates using Confidential and/or Sensitive Information shall be treated as Confidential and/or Sensitive Information by the Consultant and Consultant's Affiliates. No such data, reports, information, inventions, improvements or discoveries shall be released, published or made available to any person (except to the DCA) without prior written approval from the DCA.
14. At or before the termination date of the Contract, Consultant shall either (a) destroy all Confidential and Sensitive Information in accordance with approved methods of confidential destruction; or (b) return all Confidential and Sensitive Information to the DCA; or (c) if required by law to retain such information beyond the termination date of the contract, provide for the DCA's review and approval a written description of (i) applicable statutory or other retention requirements; (ii) provision for confidential retention in accordance such requirements and the terms of this Exhibit and (iii) provision for eventual destruction in accordance with all applicable provisions of State and federal law using approved methods of confidential destruction.
15. Consultant shall cooperate with the DCA's Information Security Officer or his or her designee in carrying out the responsibilities set forth in this Exhibit.
16. Failure to adhere to these requirements may be grounds for termination of the Contract and for imposition of civil and criminal penalties.

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Confidential and Sensitive Information is provided to me pursuant to the terms and restrictions of the **Protection of Confidential and Sensitive Information**, Exhibit E to Agreement No.230035 between Bradner Consulting, LLC. and the Delta Conveyance Design and Construction Joint Powers Authority. I hereby agree to be bound by those terms and restrictions. I understand that all Confidential and Sensitive Information, as defined in the **Protection of Confidential and Sensitive Information**, and any notes or other memoranda, or any other form of information, electronic or otherwise that copies or discloses Confidential Information, shall not be disclosed to anyone other than in accordance with this Exhibit E. I acknowledge that a violation of this certificate may result in termination of the Contract and/or imposition of civil or criminal penalties.

Name of Consultant:

Signed:

By:

Its:

Date:

BOARD OF DIRECTORS OF THE DELTA CONVEYANCE DESIGN AND CONSTRUCTION AUTHORITY

RESOLUTION NO. 24-__xx__

Introduced by Director: xx

Seconded by Director: xx

AGREEMENT FOR EXECUTIVE DIRECTOR SERVICES

Whereas, the Delta Conveyance Design and Construction Authority (DCA) recently completed a procurement for Executive Director services; and

Whereas, the DCA wishes to execute an Agreement for Executive Director Services with Bradner Consulting, LLC (Agreement); and

Now, therefore, be it resolved that the findings stated above are true and correct and are hereby adopted by the DCA Board.

Be it further resolved that the DCA Board authorizes the President to execute the attached Agreement for Executive Director Services as Exhibit A and incorporated by this reference. The President is further authorized to execute any agreement or amendment to agreement to document that the Agreement supersedes any existing agreement for Executive Directors services with Bradner Consulting, LLC.

* * * * *

This Resolution was passed and adopted this 8^h day of March, 2024, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Sarah Palmer, Board President

Attest:

Gary Martin, Board Secretary

General Counsel's Report

Contact: Josh Nelson, General Counsel

Agenda Date: March 8, 2024, Board Meeting

Item No. 7a

Subject: Status Update

Summary:

The General Counsel continues to assist the DCA on legal matters as requested.

Detailed Report:

The General Counsel continues to provide legal assistance as requested. This has included assisting with the Executive Director-related items on the agenda. As noted last month, please remember that annual Form 700s are due by April 2, 2024. Please contact Ms. Rodriguez or me with any questions.

Action:

Information, only.