# FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA (CALIFORNIA WATER COMMISSION) AND SANTA CLARA VALLEY WATER DISTRICT

**FOR**

**PACHECO RESERVOIR EXPANSION**

**WATER STORAGE INVESTMENT PROGRAM (WSIP) – EARLY FUNDING**

**AGREEMENT NUMBER 4600012891**

**WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014**

**CALIFORNIA WATER CODE 79750, ET SEQ.**

THIS FUNDING AGREEMENT is entered into by and between the California Water Commission of the State of California, herein referred to as the "State" or “Commission” and the Santa Clara Valley Water District, a public agency in the State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Funding Recipient", which parties do hereby agree as follows:

1) <u>PURPOSE.</u> State shall provide funding from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 to Funding Recipient to assist in financing planning related activities for the Pacheco Reservoir Expansion Early Funding (Project) pursuant to Water Code section 79750 and California Code of Regulations, title 23, sections 6000-6015.

2) <u>TERM OF FUNDING AGREEMENT.</u> The term of this Funding Agreement begins on the date this Funding Agreement is executed by State, through final payment plus three (3) years unless otherwise terminated or amended as provided in this Agreement. However, all work shall be completed by December 31, 2021, and no funds may be requested after March 31, 2022. Execution date is the date the State signs this Funding Agreement indicated on page 6.

3) <u>PROJECT COST.</u> The reasonable cost of the Project is estimated to be $50,920,000.

4) <u>FUNDING AMOUNT.</u> The maximum amount payable by the State under this Agreement shall not exceed $24,200,000.

5) <u>NON-PROGRAM COST SHARE.</u> Funding Recipient agrees to fund the difference between the actual Total Project Cost, as estimated Exhibit B (Budget), and the amount specified in Paragraph 4 (Funding Amount), if any. Funding Recipient is required to provide a Non-Program Cost Share of at least 50 percent of the Total Project Cost. Non-Program Cost Share may include, but is not limited to, local, federal, or other non-WSIP State funds, as documented in Exhibit B (Budget); see Exhibit G (State Audit Document Requirements) for guidance.

6) <u>FUNDING RECIPIENT'S RESPONSIBILITY.</u> Funding Recipient and its representatives shall:

   a) Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Exhibit B (Budget) and Exhibit C (Schedule).

   b) Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for Water Quality, Supply, and Infrastructure Improvement Act of 2014 financing.

   c) Comply with all applicable California laws and regulations.

   d) Implement the Project in accordance with applicable provisions of the law.

   e) Fulfill its obligations under the Funding Agreement and be responsible for the performance of the Project.

7) <u>BASIC CONDITIONS.</u> State shall have no obligation to disburse money for the Project under this Funding Agreement until Funding Recipient has satisfied the following conditions (if applicable):

   a) An urban or agricultural water supplier that receives funding governed by this funding agreement shall maintain compliance with the Water Code section 10608.56.

   b) Timely submittal of Progress Reports as specified in Paragraph 15 (Submission of Reports).

c) Timely submittal of all deliverables as specified in Exhibit A (Work Plan).

d) Submittal of audited financial statements for the two most recent fiscal years.

8) PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Funding Recipient shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Funding Agreement. Funding Recipient shall be responsible for observing and complying with any applicable federal, state, and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement, and safety laws, rules, regulations, and ordinances. Funding Recipient shall provide copies of permits and approvals to State.

9) RELATIONSHIP OF PARTIES. Funding Recipient is solely responsible for planning, design, and implementation of the tasks contained within the work plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Funding Recipient under this Funding Agreement.

10) DISBURSEMENT OF FUNDS. State will disburse to Funding Recipient the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Funding Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation. Any and all money disbursed to Funding Recipient under this Funding Agreement shall be deposited into a non-interest bearing account and shall be used solely to pay Eligible Project Costs.

11) ELIGIBLE PROJECT COST. Funding Recipient shall apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law and Exhibit B (Budget). Eligible Project Costs include the activities reasonably related to the completion of environmental documentation and permitting. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the Project including the portion of overhead and administrative expenses that are directly related to the Project. Work performed on the Project after August 14, 2017, shall be eligible for reimbursement.

Unless otherwise noted, costs that are not eligible for reimbursement with State funds cannot be counted as Non-Program Cost Share. Costs that are not eligible for reimbursement include but are not limited to the following items:

a) Costs, other than those noted above, incurred prior to August 14, 2017.

b) Operation and maintenance costs, including post construction performance and monitoring costs.

c) Land acquired via eminent domain

d) Purchase of equipment not an integral part of the Project.

e) Establishing a reserve fund.

f) Purchase of water supply.

g) Monitoring and assessment costs for efforts required after project construction is complete.

h) Replacement of existing funding sources for ongoing programs.

i) Travel and per diem costs.

j) Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirements).

k) Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of the Project, as set forth and detailed by engineering and feasibility studies.

l) Overhead not directly related to project costs. “Indirect Costs” means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the funded project (i.e., costs that are not directly related to the funded project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Funding Recipient; non-project-specific accounting and personnel services performed within the Funding Recipient’s organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; and, generic overhead or markup. This prohibition applies to the Funding Recipient and any subcontract or sub-agreement for work on the Project that will be reimbursed pursuant to this Agreement.

12) <u>METHOD OF PAYMENT.</u> After the disbursement requirements in Paragraph 7 (Basic Conditions) are met, State will disburse the whole or portions of State funding to Funding Recipient, following receipt of a signed invoice for costs incurred, including Non-Program Cost Share, and timely Progress Reports as required by Paragraph 15 (Submission of Reports). Payment will be made no more frequently than monthly, in arrears, upon receipt of an invoice bearing the Funding Agreement number. State will notify Funding Recipient, in a timely manner, whenever, upon review of an Invoice, State determines that any portion or portions of the costs claimed are not eligible costs or is not supported by documentation or receipts acceptable to State. Funding Recipient may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Funding Recipient fails to submit adequate documentation curing the deficiency(ies), State will adjust the pending invoice by the amount of ineligible or unapproved costs.

Invoices submitted by Funding Recipient shall include the following information:

a) Costs incurred for work performed in implementing the Project during the period identified in the particular invoice.

b) Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for the Project during the period identified in the particular invoice for the implementation of the Project.

c) Invoices shall be submitted on forms provided by State and shall meet the following format requirements:

(1) Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.

(2) Invoices must be itemized based on the categories (i.e., tasks) specified in the Exhibit B (Budget). The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).

(3) One set of sufficient evidence (i.e., receipts, vendor invoices, payroll records) must be provided for all costs included in the invoice.

(4) Each invoice shall clearly delineate those costs claimed for reimbursement from the State's funding amount, as depicted in Paragraph 4 (Funding Amount) and those costs that represent Funding Recipient's costs, as applicable, in Paragraph 5 (Non-Program Cost Share).

All invoices submitted shall be accurate and signed under penalty of perjury. Any and all costs submitted pursuant to this Agreement shall only be for the tasks set forth herein. The Funding Recipient shall not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such. Any eligible costs for which the Funding Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is illegal and constitutes fraud. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements of Program funds and/or termination of this Agreement requiring the repayment of all funds disbursed hereunder plus interest. Additionally, the State may request an audit pursuant to Paragraph D.5 (Audits) and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability. (Civil Code, sections 1572-1573; Penal Code, sections 470, 489-490.)

13) <u>WITHHOLDING OF DISBURSEMENTS BY STATE.</u> If State determines that the Project is not being implemented in accordance with the provisions of this Funding Agreement, or that Funding Recipient has failed in any other respect to comply with the provisions of this Funding Agreement, and if Funding Recipient does not remedy any such failure to State's satisfaction, State may withhold from Funding Recipient all or any portion of the State funding and take any other action that it deems necessary to protect its interests. Where a portion of the State funding has been disbursed to the Funding Recipient and State notifies Funding Recipient of its decision not to release funds that have been withheld pursuant to Paragraph 14 (Default Provisions), the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Funding Recipient, as directed by

State. State may consider Funding Recipient's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Paragraph 14 (Default Provisions). If State notifies Funding Recipient of its decision to withhold the entire funding amount from Funding Recipient pursuant to this paragraph, this Funding Agreement shall terminate upon receipt of such notice by Funding Recipient and the State shall no longer be required to provide funds under this Funding Agreement and the Funding Agreement shall no longer be binding on either party.

14) DEFAULT PROVISIONS. Funding Recipient will be in default under this Funding Agreement if any of the following occur:

a) Substantial breaches of this Funding Agreement, or any supplement or amendment to it, or any other agreement between Funding Recipient and State evidencing or securing Funding Recipient's obligations.

b) Making any false warranty, representation, or statement with respect to this Funding Agreement or the application filed to obtain this Funding Agreement.

c) Failure to make any remittance required by this Funding Agreement.

d) Failure to submit timely progress reports.

e) Failure to routinely invoice State.

f) Failure to meet any of the requirements set forth in Paragraph 7 (Basic Conditions).

Should an event of default occur, State shall provide a notice of default to the Funding Recipient and shall give Funding Recipient at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the Funding Recipient. If the Funding Recipient fails to cure the default within the time prescribed by the State, State may do any of the following:

g) Declare the funding be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.

h) Terminate any obligation to make future payments to Funding Recipient.

i) Terminate the Funding Agreement.

j) Take any other action that it deems necessary to protect its interests.

In the event State finds it necessary to enforce this provision of this Funding Agreement in the manner provided by law, Funding Recipient agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

15) SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Funding Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager. If requested, Funding Recipient shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F (Report Formats and Requirements). The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State, of a Project Completion Report is a requirement for the release of any funds retained for the Project.

a) Progress Reports: Funding Recipient shall submit Progress Reports to meet the State's requirement for disbursement of funds. Progress Reports shall, in part, provide a brief description of the work performed, Funding Recipients activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Funding Agreement during the reporting period. The first Progress Report shall be submitted to the State no later than 90 calendar days after the effective date of this Agreement. with future reports then due, at least, on successive three-month increments based on the invoicing schedule and this date.

b) Project Completion Report: Upon completion of the Project, Funding Recipient shall provide a final written report in a format as directed by the State in Exhibit F (Report Formats and Requirements). Funding Recipient shall submit the Project Completion Report within ninety (90) calendar days of project completion. The Project Completion Report shall include, in part, a description of actual work done, any changes or amendments to the Project, and a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during a project.

16) NOTIFICATION OF STATE. Funding Recipient shall promptly notify State, in writing, of the following items:

a) Events or proposed changes that could affect the scope, budget, or work performed under this Funding Agreement. Funding Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the scope of work, schedule or term, and budget.

b) Any public or media event publicizing the accomplishments and/or results of this Funding Agreement and provide the opportunity for attendance and participation by State's representatives. Funding Recipient shall make such notification at least 14 calendar days prior to the event.

c) Discovery of any potential archaeological or historical resource. Should a potential archaeological or historical resource be discovered during while undertaking any task set forth in Exhibit A (Work Plan), the Funding Recipient agrees that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State has determined what actions should be taken to protect and preserve the resource. The Funding Recipient agrees to implement appropriate actions as directed by the State.

d) The initiation of any litigation or the threat of litigation against the Funding Recipient regarding the Project or that may affect the Project in any way.

17) NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing. Notices may be transmitted by any of the following means:

a) By delivery in person.

b) By certified U.S. mail, return receipt requested, postage prepaid.

c) By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.

d) By electronic means.

e) Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing.

Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

18) PROJECT REPRESENTATIVES. The Project Representatives during the term of this Funding Agreement are as follows:

Joseph Yun, Executive Officer
California Water Commission
P. O. Box 942836
Sacramento California 94236-0001
joseph.yun@water.ca.gov

Norma J. Camacho
Chief Executive Officer
Santa Clara Valley Water District
5750 Almanden Expressway
San Jose, CA 95118

Direct all inquiries to the Project Manager:

Amy Young
California Water Commission
P. O. Box 942836
Sacramento California 94236-0001
amy.young@water.ca.gov

Christopher Hakes
Assistant Operations Officer, Water Utility Capital Division
Santa Clara Valley Water District
5750 Almanden Expressway
San Jose, CA 95118
chawkes@valleywater.org

Either party may change its Project Representative or Project Manager upon written notice to the other party.

19) STANDARD PROVISIONS. The following Exhibits are attached and made a part of this Funding Agreement by this reference:

Exhibit A – Work Plan

Exhibit B – Budget

Exhibit C – Schedule

Exhibit D – Standard Conditions

Exhibit E – Funding Recipient Resolution

Exhibit F – Report Formats and Requirements

Exhibit G – State Audit Document Requirements

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement.

STATE OF CALIFORNIA

California Water Commission

Joseph Yun
Executive Officer

Date 12/10/18

Santa Clara Valley Water District

Norma J. Camacho
Chief Executive Officer

Date 12/05/18

Approved as to Legal Form and Sufficiency

Holly Stout

Counsel to the Commission

Date 12/10/18

**Exhibit A**

**Work Plan**

# TASK 1 SCVWD TASKS

The following scope of services describes the services to be performed by the SCVWD staff as described below.

## 1.1 Consultant Procurement Services

SCVWD will procure the services of a Program Management Consultant (PMC) and a Planning, Design, Environmental and Permitting Support Consultant (PDEC). Activities include, but will not be limited to:

- Develop comprehensive scopes of work consistent with the CWC findings in awarding the WSIP funding to the SCVWD
- Advertise, select, and negotiate consultants consistent with SCVWD procedures and other applicable regulations
- Award and execute contracts consistent with SCVWD procedures and other applicable regulations

*Deliverables:*

- Awarded Program Management Consultant Contract
- Awarded Planning, Design, Engineering, and Permitting Support Consultant Contract

## 1.2 Permitting Oversight and Coordination

SCVWD will have the ultimate responsibility to permit and implement the project. Oversight and coordination activities related to the environmental studies and permitting include, but will not be limited to:

- Oversee all project deliverables such that they meet the requirements necessary to maintain SCVWD's eligibility to receive the WSIP funding conditionally awarded by the CWC for the Project
- Coordinate communications and oversee relationships with other State agencies administering the WSIP funding
- Integrate relationships with the Project Partners, Pacheco Pass Water District (PPWD) and the San Benito County Water District (SBCWD)
- Review all deliverables as the responsible agency prior to release to third parties such as potential funding agencies, regulatory agencies, or others as required by the applicable regulations
- Take Board Actions necessary to approve the California Environmental Quality Act (CEQA) documentation
- Submit all applicable fees for approvals and permits.

*Deliverables:*

- Quarterly Reports,

- Final Report.

## 1.3 Permissions-to-Enter

SCVWD will acquire right-of-entry permits for access onto private property needed to investigate and define physical, cultural, and biological characteristics necessary to complete the feasibility studies, design, and permitting for the Project. SCVWD staff will work with property owners to negotiate terms and agreements for access onto the various properties. There also may be fees associated with establishing right-of-entry permits.

*Deliverables:*

- Final list of Permissions to Enter.

# TASK 2 ENVIRONMENTAL DOCUMENTATION AND PERMIT SUPPORT

For the purpose of Early Funding, the following scope of services describes the Planning, Design, Environmental and Permitting services to be performed by the PDEC to complete the Draft CEQA documentation prior to WSIP regulatory deadline of January 1, 2022.

## 2.1 Project Management

The purpose of this task is for the PDEC to manage services outlined in all tasks such that the work is completed within budget and in accordance with the Project Schedule (Exhibit C), while ensuring that all services and deliverables by the Consultant meet SCVWD, WSIP, and Project requirements.

Services/activities include, but will not be limited to:

- Preparation of a Project Planning and Design Work Plan
- Preparation of status reports on services performed
- Coordination and attendance at progress meeting and workshops, including agendas and minutes
- One-on-one meetings with SCVWD, including agendas and minutes
- Coordination and communication with external agencies
- Support for public outreach activities
- Management of sub-consultant team

*Deliverables:*

- Progress reported in Quarterly Reports in Task 1.2

## 2.2 Data Review and Problem Definition

The purpose of this task is to review existing information, perform studies, conduct site visits, and perform analysis to establish existing conditions then define and confirm the problems and deficiencies.

Activities include, but will not be limited to:

- Research and review available project documentation and information
- Identify data needs
- Determine access for investigations
- Conduct studies and perform analyses to define and confirm problems and deficiencies
- Produce Project Maps
- Identify and establish Project Requirements

*Deliverables:*

- Problem Definition Report

## 2.3 Alternatives Analysis

The purpose of this task is to further develop and evaluate the feasible alternatives in order to prepare the Alternative Matrix. This will establish the basis for identifying a Staff-Recommended Alternative.

Activities include, but will not be limited to:

- Develop feasible alternatives
- Develop Assessment Methodology and conduct assessment with SCVWD and external input
- Prepare an Alternative Matrix for scoring and ranking the alternatives

*Deliverables:*

- Project Alternatives Technical Memoranda (TM)

## 2.4 Staff-Recommended Alternative

The purpose of this task is to develop the staff-recommended alternative in more detail with preliminary 10% design level plans, estimate of costs, and a preliminary construction schedule.

Activities include, but will not be limited to:

- Develop Recommended Alternative to preliminary design (10%) Level
- The Staff-Recommended Alternative will be developed to a level of sufficient detail to prepare an opinion of probable construction cost commensurate with an AACE International Class 4 estimate with key major items at the Class 3 level.

*Deliverables:*

- Preliminary Design (10%)
- Staff-Recommended Alternative report

## 2.5 Planning Study Report and State Feasibility Report

The purpose of this task is to summarize the activities of the planning phase process in the Planning Study Report, including the problem definition, the development and evaluation of the conceptual and feasible alternatives, selection of the recommended alternative, and the development of the preliminary design. The State Feasibility Report will be updated, consistent with the WSIP regulations.

Activities include, but will not be limited to:

- Develop life-cycle operation and maintenance costs, anticipated real estate needs, estimated construction costs, schedule, and funding
- Document the planning phase processes
- Technical studies specific to the State feasibility study process, including: economic evaluations for Project benefits; evaluation and comparison of alternatives consistent with WSIP requirements; and evaluations to support State feasibility determination for the Project, including technical, environmental, economic and financial feasibility

*Deliverables:*

- Planning Study Report
- State Feasibility Report

## 2.6 Environmental Documentation and Regulatory Compliance

The purpose of this task is to provide CEQA compliance analyses of the proposed Project and to support the acquisition of permits to enable Project construction. Environmental documents that comply with the requirements of the CEQA will be prepared. Only the efforts to complete the Draft CEQA document prior to January 1, 2022 are included in this Early Funding Scope of Services.

### 2.6.1 Environmental Investigation and Studies

Environmental Investigations and Studies will include assessments needed to evaluate environmental impacts of the Project as required by CEQA and other applicable laws and regulations. Existing environmental data will be reviewed and summarized, setting and baseline conditions will be determined and additional studies in support of the CEQA and regulatory compliance process will be proposed.

*Deliverables:*

- Final TM for existing environmental conditions
- Final TM for field investigations for biological investigations, cultural investigations, and numerical modeling tools
- Final TM for aesthetics, Phase 1 hazardous substance assessment, transportation/traffic, and noise/vibration

### 2.6.2 CEQA Documentation

CEQA compliance activities will include but not be limited to development of a CEQA project description, draft Environmental Impact Report, Mitigation, Monitoring and Reporting Program, impact assessment in all applicable resource areas, Project scoping, and all applicable public noticing requirements

*Deliverables:*

- Draft Environmental Impact Report

**2.6.3 Regulatory Permitting and Mitigation Monitoring Plan**

The purpose of this task is to produce permit applications, alternative analyses, environmental documents and other supporting material needed for Project implementation.

*Deliverables:*

- Final Mitigation Monitoring Plan Documentation

**2.6.4 CEQA and Permitting for Field Investigations**

CEQA documentation and regulatory permits will be developed to conduct geotechnical and subsurface cultural field investigations for the Project. Activities will include cultural and biological field investigations, preparation of CEQA documentation, and obtaining other regulatory clearances for each phase of geotechnical and subsurface cultural field investigations.

*Deliverables:*

CEQA and regulatory permitting documentation for field investigations

## 2.7 Geotechnical Data Collection and Investigations

The purpose of this task is to research, review, and use Planning Phase information as a basis for the design, as well as to conduct necessary geotechnical field investigations to help characterize ground conditions and prepare reports that will shape the planning, preliminary design and eventually the final design activities.

Services/activities include, but will not be limited to:

- Conduct initial Geotechnical/Subsurface Investigations
- Perform Laboratory Testing of sampled materials
- Conduct supplemental Geotechnical/Subsurface Investigations
- Produce a Geotechnical Investigations/Data Report

*Deliverables:*

- Final Geotechnical Investigation/Data Report

## 2.8 Basis of Design Report

The purpose of this task is to perform the engineering analyses, calculations, and interpretations that are required to support and develop the Basis of Design Report for the Project. The Basis of Design Report will consist of a series of technical memoranda and reports that define the technical requirements and parameters to be used for the Project including the fields of civil, geotechnical, structural, hydrologic, hydraulic, mechanical, electrical, instrumentation, controls, maintenance, and others, as appropriate.

Technical memoranda will be prepared and combined in a 30% Basis of Design Report and submitted to DSOD for review with the 30% design package.

*Deliverables:*

- Basic Criteria and Project Facilities TM
- 30% Basis of Design Report

**Exhibit B**

**BUDGET**

Funding recipient shall be reimbursed based on the ratio of Program cost share and non-Program cost share, also referred to as concurrent draw down. The CWC will reimburse no more than $24,200,00 under this Funding Agreement, also known as Program cost share. The non-Program cost share is $26,720,000.

| Task | Total Costs |
|---|---|
| **Task 1 SCVWD Tasks** | $8,880,000 |
| **Task 2 Environmental Documentation And Permit Support** | $42,040,000 |
| **Totals** | $50,920,000 |

CWC approves invoices at the overarching task-level. Subtasks are provided in the Work Plan and Schedule for additional detail, and guidance for the project manager to be aware of when administering the Funding Agreement.

Reimbursement of costs will commence after this Funding Agreement is executed as described above. The proportion (or percentage) of Program cost share is the maximum funding amount of this funding agreement divided by the total project cost; which is 48%. If the first invoice received contains eligible costs for the period of August 14, 2017 to the execution date of the agreement, at CWC's discretion, these costs, or a portion thereof, may be directly deducted from the non-Program cost share and the concurrent drawdown percentage may be modified accordingly.

# Exhibit C

## SCHEDULE

**Exhibit C- Anticipated Schedule** | **Early Funding Work Plan** | **Pacheco Reservoir Expansion Project**

| ID | Task # | Task Name |
|---|---|---|
| 1 | 1.1 | Consultant Procurement Services |
| 2 | 1.1 | NTP for Program Management Consultant |
| 3 | 1.1 | NTP for Planning, Design, Environmental, and Permitting Support Consultant |
| 4 | 1.2 | Permitting Oversight and Coordination |
| 5 | 1.3 | Permissions-to-Enter |
| 6 | 2.1 | Project Management - Environmental Documentation and Permitting |
| 7 | 2.2 | Data Review |
| 8 | 2.2 | Problem Definition |
| 9 | 2.3 | Alternatives Analysis |
| 10 | 2.4 | Staff-Recommended Alternative Report |
| 11 | 2.5 | Planning Study Report |
| 12 | 2.5 | State Feasibility Report |
| 13 | 2.6 | Environmental Documentation and Regulatory Compliance |
| 14 | 2.6.1 | Environmental Investigation and Studies |
| 15 | 2.6.2 | CEQA Documentation |
| 16 | 2.6.2 | Draft EIR |
| 17 | 2.6.3 | Regulatory Permitting and Mitigation Monitoing Plan |
| 18 | 2.6.4 | CEQA and Permitting for Field Investigations |
| 19 | 2.7 | Geotechnical Data Collection and Investigations |
| 20 | 2.8 | Basis of Design Report - Technical Memoranda |

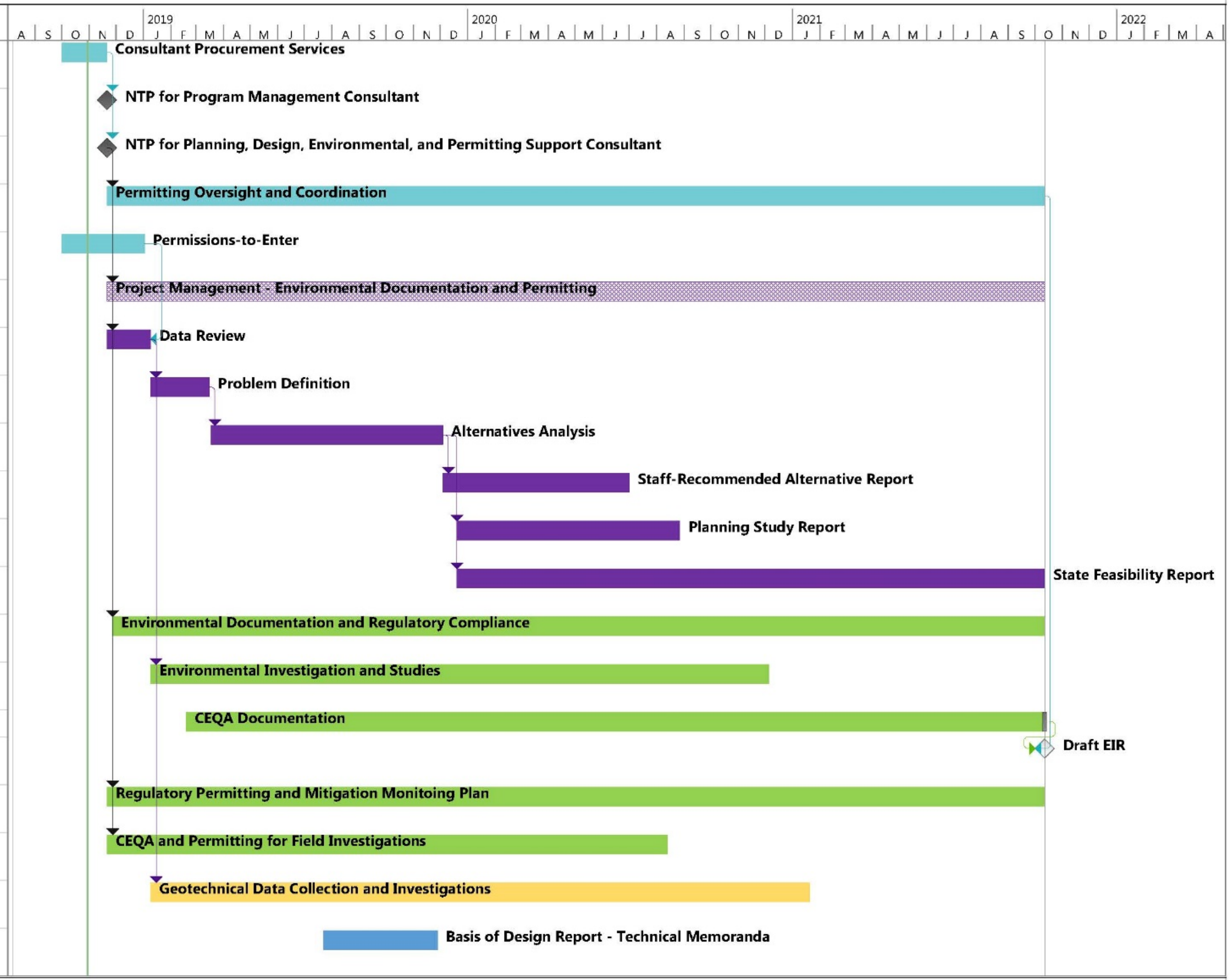


**Exhibit D**

**STANDARD CONDITIONS**

D.1) ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

a) Separate Accounting of Funding Disbursements and Interest Records: Funding Recipient shall account for the money disbursed pursuant to this Funding Agreement separately from all other Funding Recipient funds. Funding Recipient shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Funding Recipient shall keep complete and accurate records of all receipts and disbursements on expenditures of such funds. Funding Recipient shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.

b) Disposition of Money Disbursed: All money disbursed pursuant to this Funding Agreement shall be deposited in a non-interest bearing account, administered, and accounted for pursuant to the provisions of applicable law.

c) Remittance of Unexpended Funds: Funding Recipient shall remit to State any unexpended funds that were disbursed to Funding Recipient under this Funding Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Funding Recipient of funds or, within thirty (30) calendar days of the expiration of the Funding Agreement, whichever comes first.

D.2) ACKNOWLEDGEMENT OF CREDIT AND SIGNAGE: Funding Recipient shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Funding Agreement. Signage shall be posted in a prominent location at Project site(s) (if applicable) or at the Funding Recipient's headquarters and shall include the California Water Commission color logo and the following disclosure statement: "Funding for this project has been provided in full or in part from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and through an agreement with the California Water Commission." The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.

D.3) AMENDMENT: This Funding Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Funding Recipient for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.

D.4) AMERICANS WITH DISABILITIES ACT: By signing this Funding Agreement, Funding Recipient assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. Code 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

D.5) AUDITS: State reserves the right to conduct an audit at any time between the execution of this Funding Agreement and the completion of the Project, with the costs of such audit borne by State. After completion of the Project, State may require Funding Recipient to conduct a final audit to State's specifications, at Funding Recipient's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may elect to pursue any remedies provided in Paragraph 15 (Default Provisions) or take any other action it deems necessary to protect its interests.

Pursuant to Government Code section 8546.7, the Funding Recipient shall be subject to the examination and audit by the State for a period of three (3) years after final payment under this Funding Agreement with respect of all matters connected with this Funding Agreement, including but not limited to, the cost of administering this Funding Agreement. All records of Funding Recipient or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after receipt of the final disbursement under this Agreement. If an audit reveals any impropriety, the Bureau of State Audits or the State Controller's Office may conduct a full audit of any or all of the Funding Recipient's activities. (Water Code section 79708(b))

D.6) BUDGET CONTINGENCY: If funding for any fiscal year after the current year covered by this Funding Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Funding Agreement with no liability occurring to State, or offer a Funding Agreement amendment to Funding Recipient to reflect the reduced amount. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Funding Agreement. In this event, State shall have no liability to pay any funds whatsoever to Funding Recipient or to furnish any other considerations under this Funding Agreement and Funding Recipient shall not be obligated to perform any provisions of this Funding Agreement. Nothing in this Funding Agreement shall be construed to provide Funding Recipient with a right of priority for payment over any other Funding Recipient.

D.7) CALIFORNIA ENVIRONMENTAL QUALITY ACT: Activities funded under this Funding Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act. (Public Resources Code section 21000 et seq.)

D.8) CHILD SUPPORT COMPLIANCE ACT: The Funding Recipient acknowledges in accordance with Public Contract Code section 7110, that:

a) The Funding Recipient 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 Family Code section 5200 et seq.; and

b) The Funding Recipient, 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.

D.9) CLAIMS DISPUTE: Any claim that the Funding Recipient may have regarding performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the State's Project Manager, within thirty (30) days of the Funding Recipient's knowledge of the claim. State and Funding Recipient shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.

D.10) COMPETITIVE BIDDING AND PROCUREMENTS: Funding Recipient shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.

D.11) COMPUTER SOFTWARE: Funding Recipient certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Funding Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

D.12) CONFLICT OF INTEREST: All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to Government Code section1090 and Public Contract Code sections 10410 and 10411, for State conflict of interest requirements.

a) Current State Employees: No State 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. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

b) Former State Employees: 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. 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 twelve-month period prior to his or her leaving State service.

c) Employees of the Funding Recipient: Employees of the Funding Recipient shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act (Government Code section 87100 et seq.).

d) Employees and Consultants to the Funding Recipient: Individuals working on behalf of a Funding Recipient may be required by the State to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

D.13) <u>DELIVERY OF INFORMATION, REPORTS, AND DATA:</u> Funding Recipient agrees to expeditiously provide throughout the term of this Funding Agreement, such reports, data, information, and certifications as may be reasonably required by State.

D.14) <u>DISPOSITION OF EQUIPMENT:</u> Funding Recipient shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than $5,000.00 per item. Within 60 calendar days of receipt of such inventory State shall provide Funding Recipient with a list of the items on the inventory that State will take title to. All other items shall become the property of Funding Recipient. State shall arrange for delivery from Funding Recipient of items that it takes title to. Cost of transportation, if any, shall be borne by State.

D.15) <u>DRUG-FREE WORKPLACE CERTIFICATION:</u> Certification of Compliance: By signing this Funding Agreement, Funding Recipient, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code section 8355.

b) Establish a Drug-Free Awareness Program, as required by Government Code section 8355 to inform employees, contractors, or subcontractors about all of the following:

   i) The dangers of drug abuse in the workplace,

   ii) Funding Recipient'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, contractors, and subcontractors for drug abuse violations.

c) Provide, as required by Government Code section 8355, that every employee, contractor, and/or subcontractor who works under this Funding Agreement:

   i) Will receive a copy of Funding Recipient's drug-free policy statement, and

   ii) Will agree to abide by terms of Funding Recipient's condition of employment, contract or subcontract.

D.16) <u>GOVERNING LAW:</u> This Funding Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

D.17) <u>INCOME RESTRICTIONS:</u> The Funding Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Funding Recipient under this Agreement shall be paid by the Funding Recipient to the State, to the extent that they are properly allocable to costs for which the Funding Recipient has been reimbursed by the State under this

Agreement. The Funding Recipient shall also include in each of its contracts for work under this Agreement a provision that incorporates the requirements stated within this Paragraph.

D.18) INDEMNIFICATION: Funding Recipient shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement. Funding Recipient shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.

D.19) INDEPENDENT CAPACITY: Funding Recipient, and the agents and employees of Funding Recipients, in the performance of the Funding Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

D.20) INSPECTION OF BOOKS, RECORDS, AND REPORTS: During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Funding Recipient to comply with this provision shall be considered a breach of this Funding Agreement, and State may withhold disbursements to Funding Recipient or take any other action it deems necessary to protect its interests.

D.21) INSPECTIONS OF PROJECT BY STATE: State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Funding Agreement. This right shall extend to any subcontracts, and Funding Recipient shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Funding Agreement with State.

D.22) LABOR CODE COMPLIANCE: The Funding Recipient agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: https://www.dir.ca.gov/lcp.asp. For more information, please refer to DIR's *Public Works Manual* at: https://www.dir.ca.gov/dlse/PWManualCombined.pdf.

The Funding Recipient affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and the Funding Recipient affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

D.23) MODIFICATION OF OVERALL WORK PLAN: At the request of the Funding Recipient, the State may at its sole discretion approve non-material changes to the portions of Exhibit A (Work Plan) which concern the budget (Exhibit B) and schedule (Exhibit C) without formally amending this Funding Agreement. Non-material changes with respect to the budget are changes that only result in reallocation of the budget and will not result in an increase in the amount of the State Funding Agreement. Non-material changes with respect to the Project schedule are changes that will not extend the term of this Funding Agreement. Requests for non-material changes to the budget and schedule must be submitted by the Funding Recipient to the State in writing and are not effective unless and until specifically approved by the State's Program Manager in writing.

D.24) NONDISCRIMINATION: During the performance of this Funding Agreement, Funding Recipient and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Funding Recipient and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Funding Recipient and its contractors or subcontractors shall comply with the provisions of the California Fair Employment and Housing Act (Government Code section12990) and the applicable regulations promulgated there under (California Code of Regulations, title 2 section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Funding Recipient and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Funding Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

D.25) OPINIONS AND DETERMINATIONS: Where the terms of this Funding Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

D.26) PRIORITY HIRING CONSIDERATIONS: If this Funding Agreement includes services in excess of $200,000, the Funding Recipient shall give priority consideration in filling vacancies in positions funded by the Funding Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section10353.

D.27) PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: The Funding Recipient shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Funding Recipient's service of water, without prior permission of State. Funding Recipient shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Funding Recipient meet its obligations under this Funding Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.

D.28) PROJECT ACCESS: The Funding Recipient shall ensure that the State, the Governor of the State, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the Term of this Agreement.

D.29) REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of this Funding Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

D.30) RETENTION: The State shall withhold ten percent (10%) of the funds requested by the Funding Recipient for reimbursement of Eligible Project Costs. Withheld funds may be released upon either completion of milestones or deliverables identified in Exhibit A (Work Plan) or when the Project is completed, and the Final Report is approved by the State. Any retained amounts due to the Funding Recipient will be promptly disbursed to the Funding Recipient, without interest, upon completion of the Project.

D.31) RIGHTS IN DATA: Funding Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Funding Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act (Government Code section 6250 et seq.). Funding Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Funding Agreement, subject to appropriate acknowledgement of credit to State for financial support. Funding Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.

D.32) SEVERABILITY: Should any portion of this Funding Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Funding Agreement shall continue as modified.

D.33) SUSPENSION OF PAYMENTS: This Funding Agreement may be subject to suspension of payments or termination, or both, and Funding Recipient may be subject to debarment if the State determines that:

a) Funding Recipient, its contractors, or subcontractors have made a false certification, or

b) Funding Recipient, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Funding Agreement.

D.34) SUCCESSORS AND ASSIGNS: This Funding Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Funding Agreement or any part thereof, rights hereunder, or interest herein by the Funding Recipient shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

D.35) TERMINATION BY FUNDING RECIPIENT: Subject to State approval which may be reasonably withheld, Funding Recipient may terminate this Agreement and be relieved of contractual obligations. In doing so, Funding Recipient must provide a reason(s) for termination. Funding Recipient must submit all progress reports summarizing accomplishments up until termination date.

D.36) TERMINATION FOR CAUSE: Subject to the right to cure under Paragraph 14 (Default Provisions), the State may terminate this Funding Agreement and be relieved of any payments should Funding Recipient fail to perform the requirements of this Funding Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 14 (Default Provisions).

D.37) TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on 30 calendar days advance written notice. The Funding Recipient shall be reimbursed for all reasonable expenses incurred up to the date of termination.

D.38) THIRD PARTY BENEFICIARIES: The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.

D.39) TIMELINESS: Time is of the essence in this Funding Agreement.

D.40) UNION ORGANIZING: Funding Recipient, by signing this Funding Agreement, hereby acknowledges the applicability of California Government Code sections 16645 through 16649 to this Funding Agreement. Furthermore, Funding Recipient, by signing this Funding Agreement, hereby certifies that:

a) No State funds disbursed by this Funding Agreement will be used to assist, promote, or deter union organizing.

b) Funding Recipient shall account for State funds disbursed for a specific expenditure by this Funding Agreement to show those funds were allocated to that expenditure.

c) Funding Recipient shall, where State funds are not designated as described in (b) above, allocate, on a pro rata basis, all disbursements that support the program.

If Funding Recipient makes expenditures to assist, promote, or deter union organizing, Funding Recipient will maintain records sufficient to show that no State funds were used for those expenditures and that Funding Recipient shall provide those records to the Attorney General upon request.

D.41) VENUE: The State and the Funding Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Funding Recipient hereby waives any existing sovereign immunity for the purposes of this Agreement.

D.42) WAIVER OF RIGHTS: None of the provisions of this Funding Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Funding Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Funding Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

## Exhibit E

## AUTHORIZING RESOLUTION

**BOARD OF DIRECTORS**

**SANTA CLARA VALLEY WATER DISTRICT**

**RESOLUTION NO. 17-51**

**AUTHORIZING ACTIONS RELATED TO THE APPLICATION FOR PROPOSITION 1 FUNDING FOR PACHECO RESERVOIR EXPANSION PROJECT AND DESIGNATING AUTHORIZED REPRESENTATIVE TO ACT ON BEHALF OF THE SANTA CLARA VALLEY WATER DISTRICT FOR THE PROPOSITION 1 FUNDING**

WHEREAS, at its February 28, 2017 meeting, the Santa Clara Valley Water District (SCVWD) Board authorized execution of a consultant agreement with Stantec, Inc. to prepare a Proposition 1 Application for the Pacheco Reservoir Expansion Project; and

WHEREAS, the Application will be submitted under the State's Water Storage Investment Program (WSIP), as authorized under Water Quality, Supply, and Infrastructure Improvement Act of 2014; and

WHEREAS, Pacheco Pass Water District (PPWD) owns and operates Pacheco Reservoir (Pacheco Reservoir) in Santa Clara County, California; and

WHEREAS, the SCVWD, PPWD and San Benito County Water District (SBCWD) recognize that expansion of Pacheco Reservoir (Project) could potentially benefit their respective jurisdictions; and

WHEREAS, the PPWD and SBCWD support the SCVWD's submittal of a Proposition 1 Water Storage Investment Program funding application (Application) to the California Water Commission to help fund the potential expansion of Pacheco Reservoir that will allow achievement of their respective interests; and

WHEREAS, the Project team, consisting of SCVWD staff, Stantec, and other consultants, is currently working to complete the Application; and

WHEREAS, the Application, which is due to the California Water Commission on August 14, 2017, requires a "signed resolution from the authorized representatives or governing authority of the applicant designating an authorized representative to submit the application and execute an agreement with the State for Program funding" to be included with the Application.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the SCVWD as follows:

1. That Application be made to the California Water Commission to qualify for 2017 Water Storage Investment Program funding pursuant to Title 23, Division 7, Chapter 1 of the California Code of Regulations.

2. That SCVWD may enter into an agreement with the State to receive funding for the Pacheco Reservoir Enlargement Project.

3. That the SCVWD's Chief Executive Officer, or designee, is hereby authorized and directed to prepare the necessary data, conduct investigations, file such Application, execute a funding agreement and any amendments thereto, and sign invoices with the California Water Commission.

Authorizing Actions Related to the Application for Proposition 1 Funding for Pacheco Reservoir Expansion Project and Designating Authorized Representative to act on Behalf of the Santa Clara Valley Water District for the Proposition 1 Funding

Resolution No. 17-51

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District by the following vote on July 25, 2017:

AYES: Directors G. Kremen, R. Santos, T. Estremera, N. Hsueh, B. Keegan, L. LeZotte, J. Varela

NOES: Directors None

ABSENT: Directors None

ABSTAIN: Directors None

SANTA CLARA VALLEY WATER DISTRICT

By: John L. Varela

JOHN L. VARELA
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

Michele L King

Clerk/Board of Directors

RL14119.docx

## Exhibit F

## REPORT FORMATS AND REQUIREMENTS

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

### PROGRESS REPORTS

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information. For each project, discuss the following at the task level, as organized in Exhibit A (Work Plan):

- Estimate of percent complete
- Discussion of work accomplished during the reporting period
- Milestones or deliverables completed/submitted during the reporting period
- Meetings held or attended
- Scheduling concerns and issues encountered that may delay completion of the task
- Work anticipated for the next reporting period
- Estimated reimbursable costs for the next reporting period

### PROJECT COMPLETION REPORT

Provide a report summarizing the following:

- Summary of deliverables as identified in scope of work
- Summary of expenditures
- Permits obtained and date of approval

**Exhibit G**

**STATE AUDIT DOCUMENT REQUIREMENTS**

The following provides a list of documents typically required by State Auditors and general guidelines for Funding Recipients. List of documents pertains to both State funding and Funding Recipient's Non-Program Cost Share and details the documents/records that State Auditors would need to review in the event of this Funding Agreement is audited. Funding Recipients should ensure that such records are maintained for each funded project.

<u>Internal Controls</u>
1. Organization chart (e.g., Agency's overall organization chart and organization chart for the State funded Program/Project).
2. Written internal procedures and flowcharts for the following:
    a) Receipts and deposits
    b) Disbursements
    c) State reimbursement requests
    d) Expenditure tracking of State funds
    e) Guidelines, policy, and procedures on State funded Program/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on the State funded Program/Project.

<u>State Funding:</u>
1. Original Funding Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants, loans, other funds, or subventions received from the State.
3. A listing of all other funding sources for each Program/Project.

<u>Contracts:</u>
1. All subcontractor and consultant contracts and related or partners documents, if applicable.
2. Contracts between the Agency and member agencies as related to the State funded Program/Project.

<u>Invoices:</u>
1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Funding Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related Funding Agreement budget line items.
3. Reimbursement requests submitted to the State for the Funding Agreement.

<u>Cash Documents:</u>
1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the Program or loans.
4. Bank statements showing the deposit of the receipts.

<u>Accounting Records:</u>
1. Ledgers showing entries for funding receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for Funding Agreement reimbursement.

<u>Administration Costs:</u>
1. Supporting documents showing the calculation of administration costs.

<u>Personnel:</u>
1. List of all contractors and Agency staff that worked on the State funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to the program

<u>Project Files:</u>
1. All supporting documentation maintained in the project files.
2. All Funding Agreement related correspondence.

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA (CALIFORNIA WATER COMMISSION) AND**

**SANTA CLARA VALLEY WATER DISTRICT**

**FOR**

**PACHECO RESERVOIR EXPANSION**

**WATER STORAGE INVESTMENT PROGRAM (WSIP) – EARLY FUNDING**

**AGREEMENT NUMBER 4600012891 AMENDMENT 1**

**WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014**

**CALIFORNIA WATER CODE 79750, ET SEQ.**

Pursuant to Standard Condition D.3), Agreement Number 4600012891 is amended as follows:

Paragraph 2. TERM OF FUNDING AGREEMENT is revised from requiring all work to be completed by December 31, 2021 to December 31, 2023 and is revised from requiring funds to be requested by March 31, 2022 to March 31, 2024.

Paragraph 18. PROJECT REPRESENTATIVES is revised from naming Norma J. Camacho as Chief Executive Officer to Rick L. Callender, Esq., and updates the title and division for Christopher Hakes from Assistant Operations Officer to Deputy Operating Officer and Water Utility Capital Division to Dam Safety and Capital Delivery Division.

Signature block is revised from naming Norma J. Camacho as a signatory to Rick L. Callender, Esq.

The Exhibit A Work Plan is replaced in its entirety with the attached revised Exhibit A.

The Exhibit B Budget is replaced in its entirety with the attached revised Exhibit B.

The Exhibit C Schedule is replaced in its entirety with the attached revised Exhibit C.

All other terms and conditions of the Agreement shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment 1.

STATE OF CALIFORNIA
California Water Commission

Joseph Yun

Joseph R. Yun
Executive Officer
Date 12/27/2021

Santa Clara Valley Water District

Rick Callender

Rick L. Callender, Esq.
Chief Executive Officer
Date 12/27/2021

Approved as to Legal Form and Sufficiency

Holly Stout

Holly Geneva Stout
Counsel to the Commission
Date 12/27/2021

**Exhibit A - Revised**

**Work Plan**

# TASK 1 SCVWD TASKS

The following scope of services describes the services to be performed by the SCVWD staff as described below.

## 1.1 Consultant Procurement Services

SCVWD will procure the services of a Program Management Consultant (PMC) and a Planning, Design, Environmental and Permitting Support Consultant (PDEC). Activities include, but will not be limited to:

- Develop comprehensive scopes of work consistent with the CWC findings in awarding the WSIP funding to the SCVWD
- Advertise, select, and negotiate consultants consistent with SCVWD procedures and other applicable regulations
- Award and execute contracts consistent with SCVWD procedures and other applicable regulations

*Deliverables:*

- Awarded Program Management Consultant Contract
- Awarded Planning, Design, Engineering, and Permitting Support Consultant Contract

## 1.2 Permitting Oversight and Coordination

SCVWD will have the ultimate responsibility to permit and implement the project. Oversight and coordination activities related to the environmental studies and permitting include, but will not be limited to:

- Oversee all project deliverables such that they meet the requirements necessary to maintain SCVWD's eligibility to receive the WSIP funding conditionally awarded by the CWC for the Project
- Coordinate communications and oversee relationships with other State agencies administering the WSIP funding
- Integrate relationships with the Project Partners, Pacheco Pass Water District (PPWD) and the San Benito County Water District (SBCWD)
- Review all deliverables as the responsible agency prior to release to third parties such as potential funding agencies, regulatory agencies, or others as required by the applicable regulations
- Take Board Actions necessary to approve the California Environmental Quality Act (CEQA) documentation
- Submit all applicable fees for approvals and permits.

*Deliverables:*

- Quarterly Reports,
- Final Report.

## 1.3 Permissions-to-Enter

SCVWD will acquire right-of-entry permits for access onto private property needed to investigate and define physical, cultural, and biological characteristics necessary to complete the feasibility studies, design, and permitting for the Project. SCVWD staff will work with property owners to negotiate terms and agreements for access onto the various properties. There also may be fees associated with establishing right-of-entry permits.

*Deliverables:*

- Final list of Permissions to Enter.

# TASK 2 ENVIRONMENTAL DOCUMENTATION AND PERMIT SUPPORT

For the purpose of Early Funding, the following scope of services describes the Planning, Design, Environmental and Permitting services to be performed by the PDEC to complete the necessary CEQA documentation for the Project.

## 2.1 Project Management

The purpose of this task is for the PDEC to manage services outlined in all tasks such that the work is completed within budget and in accordance with the Project Schedule (Exhibit C), while ensuring that all services and deliverables by the Consultant meet SCVWD, WSIP, and Project requirements.

Services/activities include, but will not be limited to:

- Preparation of a Project Planning and Design Work Plan
- Preparation of status reports on services performed
- Coordination and attendance at progress meeting and workshops, including agendas and minutes
- One-on-one meetings with SCVWD, including agendas and minutes
- Coordination and communication with external agencies
- Support for public outreach activities
- Management of sub-consultant team

*Deliverables:*

- Progress reported in Quarterly Reports in Task 1.2

## 2.2 Data Review and Problem Definition

The purpose of this task is to review existing information, perform studies, conduct site visits, and perform analysis to establish existing conditions then define and confirm the problems and deficiencies.

Activities include, but will not be limited to:

- Research and review available project documentation and information
- Identify data needs
- Determine access for investigations
- Conduct studies and perform analyses to define and confirm problems and deficiencies
- Produce Project Maps
- Identify and establish Project Requirements

*Deliverables:*

- Problem Definition Report

## 2.3 Alternatives Analysis

The purpose of this task is to further develop and evaluate the feasible alternatives in order to prepare the Alternative Matrix. This will establish the basis for identifying a Staff-Recommended Alternative.

Activities include, but will not be limited to:

- Develop feasible alternatives
- Develop Assessment Methodology and conduct assessment with SCVWD and external input
- Prepare an Alternative Matrix for scoring and ranking the alternatives

*Deliverables:*

- Project Alternatives Technical Memoranda (TM)

## 2.4 Staff-Recommended Alternative

The purpose of this task is to develop the staff-recommended alternative in more detail with preliminary 10% design level plans, estimate of costs, and a preliminary construction schedule.

Activities include, but will not be limited to:

- Develop Recommended Alternative to preliminary design (10%) Level

- The Staff-Recommended Alternative will be developed to a level of sufficient detail to prepare an opinion of probable construction cost commensurate with an AACE International Class 4 estimate with key major items at the Class 3 level.

*Deliverables:*

- Preliminary Design (10%)
- Staff-Recommended Alternative report

## 2.5 Planning Study Report and State Feasibility Report

The purpose of this task is to summarize the activities of the planning phase process in the Planning Study Report, including the problem definition, the development and evaluation of the conceptual and feasible alternatives, selection of the recommended alternative, and the development of the preliminary design. The State Feasibility Report will be updated, consistent with the WSIP regulations.

Activities include, but will not be limited to:

- Develop life-cycle operation and maintenance costs, anticipated real estate needs, estimated construction costs, schedule, and funding
- Document the planning phase processes
- Technical studies specific to the State feasibility study process, including: economic evaluations for Project benefits; evaluation and comparison of alternatives consistent with WSIP requirements; and evaluations to support State feasibility determination for the Project, including technical, environmental, economic and financial feasibility

*Deliverables:*

- Planning Study Report
- State Feasibility Report

## 2.6 Environmental Documentation and Regulatory Compliance

The purpose of this task is to provide CEQA compliance analyses of the proposed Project and to support the acquisition of permits to enable Project construction. Environmental documents that comply with the requirements of the CEQA will be prepared. This includes efforts to complete both the Draft and Final Environmental Impact Reports (EIRs).

### 2.6.1 Environmental Investigation and Studies

Environmental Investigations and Studies will include assessments needed to evaluate environmental impacts of the Project as required by CEQA and other applicable laws and regulations. Existing environmental data will be reviewed and summarized, setting and baseline conditions will be determined and additional studies in support of the CEQA and regulatory compliance process will be proposed and performed.

*Deliverables:*

- Final TM for existing environmental conditions
- Final TM for field investigations for biological investigations, cultural investigations, and numerical modeling tools
- Final TM for aesthetics, Phase 1 hazardous substance assessment, transportation/traffic, and noise/vibration

#### 2.6.2 CEQA Documentation

CEQA compliance activities will include but not be limited to development of a CEQA project description, draft and final Environmental Impact Reports, Mitigation, Monitoring and Reporting Program, impact assessment in all applicable resource areas, Project scoping, and all applicable public noticing requirements

*Deliverables:*

- Draft Environmental Impact Report
- Final Environmental Impact Report
- Additional CEQA Documentation

#### 2.6.3 Regulatory Permitting and Mitigation Monitoring Plan

The purpose of this task is to produce permit applications, alternative analyses, environmental documents and other supporting material needed for Project implementation.

*Deliverables:*

- Final Mitigation Monitoring Plan Documentation

#### 2.6.4 CEQA and Permitting for Field Investigations

CEQA documentation and regulatory permits will be developed to conduct geotechnical and subsurface cultural field investigations for the Project. Activities will include cultural and biological field investigations, preparation of CEQA documentation, and obtaining other regulatory clearances for each phase of geotechnical and subsurface cultural field investigations.

*Deliverables:*

CEQA and regulatory permitting documentation for field investigations

### 2.7 Geotechnical Data Collection and Investigations

The purpose of this task is to research, review, and use Planning Phase information as a basis for the design, as well as to conduct necessary geotechnical field investigations to help characterize ground conditions and prepare reports that will shape the planning, preliminary design and eventually the final design activities.

Services/activities include, but will not be limited to:

- Conduct initial Geotechnical/Subsurface Investigations
- Perform Laboratory Testing of sampled materials
- Conduct supplemental Geotechnical/Subsurface Investigations
- Produce a Geotechnical Investigations/Data Report

*Deliverables:*

- Final Geotechnical Investigation/Data Reports

## 2.8 Basis of Design Report

The purpose of this task is to perform the engineering analyses, calculations, and interpretations that are required to support and develop the Basis of Design Report for the Project. The Basis of Design Report will consist of a series of technical memoranda and reports that define the technical requirements and parameters to be used for the Project including the fields of civil, geotechnical, structural, hydrologic, hydraulic, mechanical, electrical, instrumentation, controls, maintenance, and others, as appropriate.

Technical memoranda will be prepared and combined in a 30% Basis of Design Report and submitted to DSOD for review with the 30% design package.

*Deliverables:*

- Basic Criteria and Project Facilities TM
- 30% Basis of Design Report

## 2.9 Engineering Design and Analysis

The purpose of this task is to prepare the plans, specifications, and analyses that are required to develop the 30% level design package for the Project. This task is necessary to provide a basis for the Project permitting and continued environmental documentation efforts.

*Deliverables:*

- Final 30% Level Plans
- Final 30% Level Specifications (outline of sections)

**Exhibit B - Revised**

**BUDGET**

Funding recipient shall be reimbursed based on the ratio of Program cost share and non-Program cost share, also referred to as concurrent draw down. The Commission will reimburse no more than $24,200,000 under this Funding Agreement, also known as Program cost share. The non-Program cost share is $26,720,000.

| Task | Total Costs |
|---|---|
| **Task 1 SCVWD Tasks** | $8,880,000 |
| **Task 2 Environmental Documentation And Permit Support** | $42,040,000 |
| **Totals** | $50,920,000 |

Commission approves invoices at the overarching task-level. Subtasks are provided in the Work Plan for additional detail and guidance for the project manager to be aware of when administering the Funding Agreement.

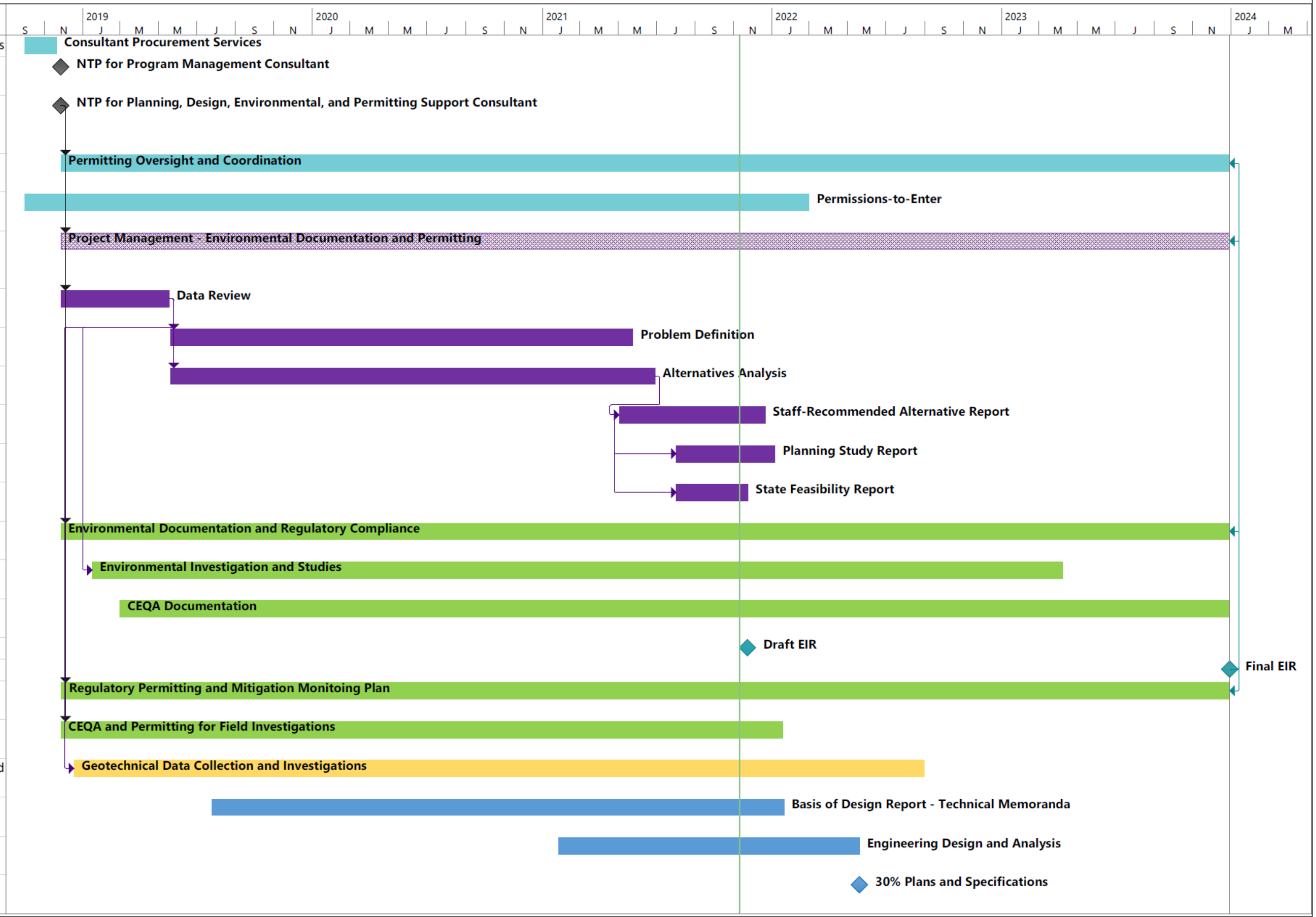
Reimbursement of costs will commence after this Funding Agreement is executed as described above. The proportion (or percentage) of Program cost share is the maximum funding amount of this funding agreement divided by the total project cost; which is 50%. If the first invoice received contains eligible costs for the period of August 14, 2017 to the execution date of the agreement, at Commission's discretion, these costs, or a portion thereof, may be directly deducted from the non-Program cost share and the concurrent drawdown percentage may be modified accordingly.

# Exhibit C - Revised

## SCHEDULE

**Exhibit C- Anticipated Schedule - Amendment 1** | **Early Funding Work Plan** | **Pacheco Reservoir Expansion Project**

| ID | Task # | Task Name |
|---|---|---|
| 1 | 1.1 | Consultant Procurement Services |
| 2 | 1.1 | NTP for Program Management Consultant |
| 3 | 1.1 | NTP for Planning, Design, Environmental, and Permitting Support Consultant |
| 4 | 1.2 | Permitting Oversight and Coordination |
| 5 | 1.3 | Permissions-to-Enter |
| 6 | 2.1 | Project Management - Environmental Documentation and Permitting |
| 7 | 2.2 | Data Review |
| 8 | 2.2 | Problem Definition |
| 9 | 2.3 | Alternatives Analysis |
| 10 | 2.4 | Staff-Recommended Alternative Report |
| 11 | 2.5 | Planning Study Report |
| 12 | 2.5 | State Feasibility Report |
| 13 | 2.6 | Environmental Documentation and Regulatory Compliance |
| 14 | 2.6.1 | Environmental Investigation and Studies |
| 15 | 2.6.2 | CEQA Documentation |
| 16 | 2.6.2 | Draft EIR |
| 17 | 2.6.2 | Final EIR |
| 18 | 2.6.3 | Regulatory Permitting and Mitigation Monitoring Plan |
| 19 | 2.6.4 | CEQA and Permitting for Field Investigations |
| 20 | 2.7 | Geotechnical Data Collection and Investigations |
| 21 | 2.8 | Basis of Design Report - Technical Memoranda |
| 22 | 2.9 | Engineering Design and Analysis |
| 23 | 2.9 | 30% Plans and Specifications |



**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA (CALIFORNIA WATER COMMISSION) AND**

**SANTA CLARA VALLEY WATER DISTRICT**

**FOR**

**PACHECO RESERVOIR EXPANSION**

**WATER STORAGE INVESTMENT PROGRAM (WSIP) – EARLY FUNDING**

**AGREEMENT NUMBER 4600012891 AMENDMENT 2**

**WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014**

**CALIFORNIA WATER CODE 79750, ET SEQ.**

Pursuant to Standard Condition D.3), Agreement Number 4600012891 is amended as follows:

The Exhibit B Budget is replaced in its entirety with the attached revised Exhibit B to reflect the necessary transfer of funds from Task 2 to Task 1 to cover unanticipated permit fees and to correct an error in the percentage of program cost share made in Amendment 1.

All other terms and conditions of the Agreement shall remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment 2.

STATE OF CALIFORNIA

California Water Commission

Joseph Yun

Joseph R. Yun

Executive Officer

Date 3/22/2023

Santa Clara Valley Water District

Rick Callender

Rick L. Callender, Esq.

Chief Executive Officer

Date 3/22/2023

Approved as to Legal Form and Sufficiency

Holly Stout

Holly Geneva Stout

Counsel to the Commission

Date 3/22/2023

**Exhibit B - Revised**

**BUDGET**

Funding recipient shall be reimbursed based on the ratio of Program cost share and non-Program cost share, also referred to as concurrent draw down. The Commission will reimburse no more than $24,200,000 under this Funding Agreement, also known as Program cost share. The non-Program cost share is $26,720,000.

| Task | Total Costs |
|---|---|
| **Task 1 SCVWD Tasks** | $10,750,374 |
| **Task 2 Environmental Documentation And Permit Support** | $40,169,626 |
| **Totals** | $50,920,000 |

Commission approves invoices at the overarching task-level. Subtasks are provided in the Work Plan for additional detail and guidance for the project manager to be aware of when administering the Funding Agreement.

Reimbursement of costs will commence after this Funding Agreement is executed as described above. The proportion (or percentage) of Program cost share is the maximum funding amount of this funding agreement divided by the total project cost; which is 48%. If the first invoice received contains eligible costs for the period of August 14, 2017 to the execution date of the agreement, at Commission's discretion, these costs, or a portion thereof, may be directly deducted from the non-Program cost share and the concurrent drawdown percentage may be modified accordingly.