

**JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN THE
DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA
AND THE
AUTHORITY**

THIS AGREEMENT is made and effective as of May____, 2018 by and between the Department of Water Resources of the State of California (“DWR”) and the Delta Conveyance Design and Construction Joint Powers Authority (the “Authority”), each of which is sometimes referred to below as “Party” and which are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Delta Reform Act of 2009, set forth in Water Code § 85000, *et seq.* (“Delta Reform Act”) recognizes the close connection that exists between the ecosystem health of the Sacramento-San Joaquin Delta (the “Delta”) and the ability to secure reliable water supplies transported through the Delta from its tributaries for water users throughout the State; and

WHEREAS, DWR is a department within the State of California Natural Resources Agency and is responsible for constructing, operating, and maintaining the State Water Resource Development System, more commonly known as the State Water Project (“SWP”); and

WHEREAS, DWR desires to design and construct a new Delta water conveyance facility (the “Conveyance Project”) described by the Specifications as defined in this Agreement, to be designed and constructed by the Authority under the supervision of DWR and owned and operated by DWR, that would convey water from the Sacramento River in the north Delta through the Delta directly to the existing SWP and federal Central Valley Project (“CVP”) pumping plants located in the South Delta; and

WHEREAS, the design and construction of the Conveyance Project necessarily includes all actions necessary to be implemented before the Conveyance Project can be operated; and

WHEREAS, the legislature has granted DWR broad discretion to implement the authority that it has under the Central Valley Project Act (Water Code section 11100 *et seq.*) and the Burns-Porter Act (*id.*, section 12930 *et seq.*), the provisions of which are to be construed liberally to effectuate the purposes of such acts for the benefit of the people of the State of California (Water Code section 11126); and

WHEREAS, the Authority is a separate public agency organized pursuant to the Joint Exercise of Powers Act (California Government Code Sections 6500, *et seq.*) pursuant to a joint powers agreement, effective May _____, 2018, to actively participate with DWR in the design and construction of the Conveyance Project in coordination with DWR, and under the control and supervision of DWR; and

WHEREAS, the Authority consists of public water agencies that contract for, or are comprised of public water agencies that contract for, water supplies from the SWP, the CVP or both; and

WHEREAS, DWR and the member agencies of the Authority wish to complete the Conveyance Project in a timely and efficient manner; and

WHEREAS, the Joint Exercise of Powers Act provides that public agencies may enter into agreements providing for the joint exercise of powers held in common by such agencies; and

WHEREAS, DWR and the Authority each have the power to build water works and do all things necessary and appropriate in the accomplishment thereof; and

WHEREAS, the design and construction of the Conveyance Project would require DWR to significantly increase the number of personnel in its employment in order to undertake the activities contemplated by this Agreement; and

WHEREAS, much of the increased workload requires skilled and professional employees that would take a significant amount of time to identify and hire and the Oroville Dam emergency response and recovery effort has already placed significant demands on DWR's human resources available to design and construct major water projects, in addition to the numerous ongoing duties and obligations DWR anticipates in the next 10-20 years; and

WHEREAS, these circumstances would authorize DWR to seek relief under Government Code sections 19130 *et seq.*; and

WHEREAS, DWR has determined that the timely and efficient design and construction of the Conveyance Project will require additional resources not available to DWR and that, therefore, it is in the best interest of the State of California and its citizens to partner with the Authority through this Agreement; and

WHEREAS, this Agreement is intended to obtain cost savings by allowing the Parties to explore and implement more flexible means of staffing, designing, contracting, constructing, and financing the Conveyance Project; and

WHEREAS, DWR and the Authority intend that the Authority will undertake those activities required to complete the design and construction of the Conveyance Project and upon acceptance of the Conveyance Project by DWR, the Authority will be dissolved.

NOW, THEREFORE, the Authority and DWR agree as follows:

AGREEMENT

1. Designation and Authorization. The Authority is hereby designated as the administering agency for the Conveyance Project under this Agreement and is authorized by

DWR to design and construct, or cause the design and construction of, the Conveyance Project in accordance with this Agreement and the Specifications.

2. Specifications.

(a) DWR, in coordination with entities that comprise the Authority, has developed comprehensive project specifications and administrative parameters applicable to the design and construction of the Conveyance Project, hereinafter referred to as the “Specifications.” As of the effective date of this agreement, the Specifications consist of the Conceptual Engineering Report, dated July 1, 2015 and the Mitigation Monitoring and Reporting Plan (“MMRP”), dated July 2017, both incorporated by reference; the Performance Standards, attached as Exhibit A; the Preliminary Budget, attached as Exhibit B; and the Schedule, attached as Exhibit B. The Specifications may be refined over time by the Authority without amendment of this Agreement when such refinement(s) are not a material change (as defined below) or are not otherwise subject to concurrence, coordination or approval by DWR pursuant to this section or other sections of this Agreement, as the design and construction of the Conveyance Project progresses. The Authority, at its discretion, may present the 30%, 70% and 100% design packages for DWR’s review and approval as revisions to the Specifications; additional design detail and other packages may also be submitted to DWR for approval. The Authority shall at all times maintain a list of the then operative Specifications as well as the Specifications themselves.

(b) No material change in the Specifications shall be made by the Authority without the prior written approval of DWR, which shall not be unreasonably withheld. Prior to developing any material changes in the Specifications, the Authority shall consult with DWR to obtain DWR’s concurrence on the proposed changes. From time to time, DWR may request the Authority make changes in the Specifications and/or incorporate additional features or elements into the Conveyance Project, and such changes, additional features or elements shall become a part of the Conveyance Project for purposes of this Agreement upon, but only upon, written acceptance of responsibility therefore by the Authority, which shall not be unreasonably withheld.

(c) For purposes of this section, a “material change” means:

1. Any actions, including without limitation any agreement or series of related contracts for work to be performed in connection with the design, construction or implementation of the Conveyance Project, which in the reasonable judgment of DWR or the Authority cumulatively would cause more than a five percent (5%) increase in budgeted costs (not including escalation) for any individual design feature and management cost as listed as a line item in Exhibit B hereto;
2. Any actions that, in the reasonable judgment of DWR or the Authority, could cumulatively add 6 months to the Conveyance Project schedule previously approved by the Parties;
3. Any actions that, in the reasonable judgment of DWR or the Authority, could impact the water delivery capability, reduce

- project life, or significantly increase operations and maintenance costs of the Conveyance Project; or
4. Any actions that, in the reasonable judgement of DWR or the Authority would be inconsistent with, or would require an amendment of, a Permit.

3. Cooperation and Coordination.

(a) Delta Conveyance Office. There is within DWR a Delta Conveyance Office. The Delta Conveyance Office shall be responsible for managing this Agreement on behalf of DWR. The Delta Conveyance Office shall be the Authority's primary point of contact within DWR for all matters relating to this agreement. Wherever in this Agreement it is provided that DWR shall or may take any action, or make any decision (e.g. "approve" or "concur"), and in each case whether mandatory or discretionary, such decision or action shall be done or made through the Delta Conveyance Office. The Delta Conveyance Office shall be supervised by a chief who is a Deputy Director of DWR and overseen by the Director of DWR.

(b) Workgroups. It is anticipated that the Authority will form multiple workgroups to address specific aspects of the Conveyance Project and the Parties activities under this Agreement. To facilitate coordination and oversight, the Authority shall advise DWR upon the formation of any such workgroup. DWR shall appoint at least one representative to each such workgroup who shall regularly participate therein on behalf of DWR. Workgroups, at a minimum, will include a Technical Review Workgroup for purposes of reviewing and resolving technical design issues at the staff level. It is the intent of the Parties that these workgroups be focused in nature and that such workgroups may be formed and dissolved from time to time depending upon the subject matter of the workgroup and the status of the Conveyance Project.

(c) The Parties acknowledge that design and construction of the Conveyance Project and the other activities contemplated by this Agreement will require frequent interaction between them. The Parties shall at all times work cooperatively, diligently and in good faith to accomplish the goals of this Agreement and the construction of the Conveyance Project. Each Party shall act with diligence and shall make their respective staffs available to each other as needed to efficiently implement this Agreement. Each Party shall designate a principal contact person for that Party, which in the case of DWR shall be the Deputy Director in the Delta Conveyance Office, who may be changed from time to time, and such other appropriate staff members and consultants to participate on such Party's behalf in activities undertaken pursuant to this Agreement. The principal contact person for each Party shall be responsible for coordinating meetings and other activities under this Agreement with the principal contact person for the other Party. Meetings not specifically required by this Agreement shall occur as the principal contacts determine are necessary, and each Party shall make its expertise and resources reasonably available for activities under this Agreement.

4. Commencement of Work. The Authority shall commence work pursuant to this Agreement only upon written authorization by DWR.

5. Permits, Environmental Compliance.

(a) The Parties acknowledge that the design and construction of the Conveyance Project will require numerous third party consents, permits, orders and/or agreements or other regulatory authorizations (the “Permits”) and compliance therewith, including without limitation those listed on Exhibit C attached hereto and incorporated herein by this reference. The Parties further acknowledge that DWR has already obtained or may obtain in the future for the Conveyance Project, certain of the Permits, which are identified on Exhibit C. DWR hereby authorizes the Authority to act as DWR’s agent under those Permits DWR has already obtained and as applicable to construction related activities or requirements to the extent such authorization is allowed by the relevant Permits and applicable law and provided further that the Authority has first issued written notice to the issuer of the relevant Permit. DWR hereby authorizes the Authority to act as DWR’s agent to obtain certain construction-related Permits, as set forth on Exhibit C, that have not already been obtained by DWR to the extent permitted by law. The Authority shall promptly and diligently pursue all such Permits and shall submit all such proposed Permits to the Delta Conveyance Office for approval prior to finalization by the issuer of the Permit. Any permits that cannot be issued to the Authority as the agent for DWR shall be promptly and diligently pursued, and after issuance to DWR, administered by DWR or the Authority, as appropriate. Subject to Section 3(b) of this Agreement, the Authority shall satisfy all terms and conditions in all Permits required for design and construction of the Project and all provisions of Exhibit C identified as Authority responsibilities. All Permits issued for the design and construction of the Conveyance Project, including compliance with all terms and conditions of those permits, and all provisions of Exhibit C identified as Authority responsibilities, will be administered in cooperation with DWR.

(b) In carrying out its obligations under this Agreement, and without regard to the named Permit holder, the Authority and its agents shall comply with all conditions of all applicable federal, State, or local Permits issued for design and construction of the Conveyance Project. Compliance with these conditions includes implementation of all measures required to be complete prior to conclusion of construction activities and commencement of operation of the Conveyance Project, including mitigation measures and environmental commitments in the MMRP and the Permits. For implementation of certain measures or Permit conditions that require restoration, the obligations of the Authority under this provision include design, construction, and management of restoration sites prior to transfer of title to DWR or its designee, to the extent approved by the issuer of the Permit. The Authority shall be solely liable for any and all penalties or other costs associated with any enforcement actions related associated with to alleged violation of conditions or requirements of any Permit any such laws. Where DWR is the named holder of the Permit or is named as a party in any civil or criminal suit or administrative proceeding for violation or alleged violation of Permits, the Authority shall fully indemnify, defend and hold DWR harmless for all costs, including attorney and expert witness fees, accrued and monetary penalties issued to DWR or any of its officers, employees, or agents.

(c) In carrying out its obligations under this Agreement, the Authority and its agents shall comply with all applicable federal, State, or local laws existing during the term of this Agreement, including those pertaining to the use, storage, transportation and disposal of any hazardous substance as that term is defined in such applicable law. The Authority shall be liable

for any and all penalties or other enforcement actions associated with violation of any such laws by the Authority or any of its officers, employees, contractors, or agents and shall indemnify, defend and hold DWR harmless for all associated costs accrued and penalties issued to DWR or any of its officers, employees, or agents.

6. Performance and Procurement of Services.

(a) The Authority shall perform the work described in this Agreement through its employees, agents, consultants and contractors. As soon as practicable following execution of this Agreement, the Authority shall develop and submit a project management plan to DWR for its approval.

(b) The Authority may enter into contracts for work to be performed under this Agreement; provided, that the Authority shall be fully responsible for all contracted work, including its quality and timeliness. For public works agreements, as defined in section 1101 of the Public Contract Code, relating to the Conveyance Project the Authority shall comply with all applicable provisions of the Public Contract Code and other applicable laws, and where additional requirements exist which are not in conflict with the law governing the Authority, with the provisions of the State Contract Act, Public Contract Code sections 10100 et seq. For service and consulting service agreements, as defined in Section 10335.5 of the Public Contract Code, relating to the Conveyance Project, the Authority shall solicit multiple competitive bids or proposals pursuant to applicable provisions of the Public Contract Code and other applicable laws. For architectural, landscape architectural, engineering, environmental, land surveying or construction project management services agreements, the Authority must solicit for such services in accordance with the provisions of sections 4525 et seq. of the Government Code. Notwithstanding the authorization in section 4, the Authority shall not enter into contracts as the agent of DWR without a separate written delegation of such authority to the Authority from DWR. All contracts issued by the Authority shall name DWR as a third-party beneficiary and shall inform the counterparty of the existence of this Agreement and of DWR's rights under this section 6. Notwithstanding anything herein, and where authorized by law, the Authority may utilize alternative project delivery methods for design and construction of the Conveyance Project.

(c) At all times DWR reserves the right to enter into contracts relative to the design and construction of the Conveyance Project in accordance with applicable law; provided, that any such contracts shall be complementary to the work of the Authority or of a review capacity, shall be coordinated with the Authority and shall not be administered by the Authority without prior written acceptance of the contract by the Authority. Section 12 of this Agreement shall not apply to contracts entered into by DWR pursuant to this paragraph.

(d) By written notice to the Authority and if good cause is shown, DWR reserves the right to participate in any phase of work described in this Agreement. For purposes of this section, "good cause" means (1) a threatened or actual material breach of this Agreement or (2) or an action or anticipated action inconsistent with, or that would require an amendment of, a Permit. If good cause exists, DWR shall provide written notice to the Authority and a reasonable opportunity to cure. If not cured, after additional reasonable notice to the Authority

by DWR, DWR may participate to any extent it deems necessary in the matter or matters giving rise to the good cause including, but not limited to, drafting specifications, participating in contractor selection, evaluating work performance, reviewing contracts prior to issuance, administering contracts and resolving contract claims, requiring the Authority to terminate contracts, and enter into new contracts. DWR may also require prior approval of specifications, solicitation documents, drawings, data, addenda, change orders, and contracts by written notice to the Authority. Approval of any of these documents shall not subject DWR to any liability nor liability under sections 5 and 17 of this Agreement. In exercising its rights under this section, DWR shall take all reasonable feasible steps to minimize or avoid any delay to the design, permitting and construction schedule.

(e) Should DWR determine, in its sole discretion and after exhaustion of the dispute resolution provision herein, that the Authority has failed or is likely to fail to construct the Conveyance Project or any facility thereof in accordance with the budget and schedule for the Conveyance Project or any facility thereof, upon written notice to the Authority, DWR may terminate the Authority's role in construction and take full charge and control of construction. All contracts issued by the Authority related to the subject matter of this Agreement shall provide for assignment to DWR upon written notice from DWR stating that it has exercised its rights under this section. At the election of DWR, all costs and expenses of any nature whatsoever incurred by DWR in the exercise of its rights under this section, including the cost of completion or abandonment of all or part of the Conveyance Project shall be paid by the Authority and billed as a Conveyance Project cost.

(f) Construction of the Conveyance Project shall not interfere with the operation or maintenance of existing State Water Project facilities. Before undertaking any activity that could reasonably be expected to have the potential to interfere with the operation or maintenance of existing State Water Project facilities, the Authority and its contractors shall obtain the DWR's written approval, which may be subject to conditions deemed necessary or desirable by DWR.

7. Project Design.

(a) Prior to the period that the Authority advertises for bids for any facilities to be built pursuant to this Agreement, the Authority shall furnish to the Delta Conveyance Office copies of all prepared contract drawings, specifications, drainage and grading plans, and data concerning said facilities and during the period the Authority advertises for bids, any significant changes thereto. The Delta Conveyance Office shall review all said documents to ensure compliance with the Specifications in accordance with Section (c) hereof. All of the Authority's drawings and specific actions shall be prepared under the responsible charge of a registered professional engineer as defined in Section 6701 of the California Business and Professions Code. Proposed changes must be submitted to DWR on drawings in the same manner that the original contract drawings are submitted. Such drawings, specifications, and data shall be submitted to DWR in a sequence that will allow their review in an orderly manner. Ten legible copies of each drawing and ten sets of specifications and data shall be furnished to DWR. Specifications, data and drawings shall be submitted to:

Delta Conveyance Office
901 P Street, Room 413, Sacramento, CA 94236

(b) DWR shall notify the Authority in writing of its comments and suggestions on original drawings, specifications, data, addenda, and proposed changes as soon as practicable after their receipt but, in no event, later than thirty (30) business days thereafter for initial submissions and fifteen (15) business days thereafter for changes to initial submissions. The comment periods may be extended by mutual consent of the Parties. The Authority shall only be obligated to consider DWR's comments made after the applicable comment period elapses to the extent reasonable under the circumstances. The Authority shall not commence construction of any facilities for which the drawings, specifications, addenda, change orders, and data have not been reviewed by DWR and discussed with the Authority unless the applicable comment period has expired without DWR commenting; provided, however, that the Authority shall first notify DWR in writing of the absence of comment from DWR and its proposed commencement of construction. Review of any drawings, specifications, or data shall not subject DWR to any liability nor shall such action modify or qualify the Authority's liability under this Agreement. Upon completion of the Conveyance Project and within one year of DWR's acceptance of the work, the Authority shall furnish to the DWR reproducible prints of as-built drawings for the facilities constructed under this Agreement.

8. Property Acquisition.

(a) The Parties acknowledge that the construction of the Conveyance Project will require the acquisition of a substantial amount of real and personal property ("Acquired Property") and the goal of the parties is to acquire such properties as efficiently and expeditiously as possible while meeting all applicable State requirements. Real property constituting Acquired Property may be acquired in the form of fee title, easements, or as other interests and shall be acquired according to process described in the Property Acquisition Plan attached hereto as Exhibit D, to the extent the same is not in conflict with this Section 8. The initial responsibility for identifying property that will become Acquired Property shall be the Authority's. DWR shall appoint an individual within its Real Estate Services Department as its Acquisition Coordinator who shall be the point of contact for DWR for matters relating to the selection and acquisition of Acquired Property. The Acquisition Coordinator shall be empowered to bind DWR with respect to such matters under this Agreement.

(b) From time to time, the Authority shall identify the property it believes should be Acquired Property and conduct a thorough evaluation of such property, including (as appropriate) (i) a description of the property, (ii) an analysis of the condition of title to the property, (iii) environmental studies of the property (including without limitation a Phase 1 and if recommended or if requested by DWR, a Phase 2 environmental report), (iv) an appraisal of the property conducted in accordance with the applicable State of California requirements, (v) the Authority's recommended offering price and terms for the property and (vi) any other factors or circumstances the Authority or DWR believes to be relevant. To the extent practical, all evaluations shall be in a standard form developed by the Authority in cooperation with the Acquisition Coordinator.

(c) Within fifteen (15) business days after the presentation of any negotiated sale agreement of a property proposed by the Authority to be Acquired Property, the Acquisition Coordinator shall either (i) approve the proposed acquisition at the negotiated terms, in which case the Authority shall thereafter proceed to purchase the property on terms no less favorable to the Authority and DWR than those approved by the Acquisition Coordinator without any further approval from the Acquisition Coordinator or DWR, (ii) request more information about the property, in which case the Authority shall promptly develop and submit such information after which, the Acquisition Coordinator shall begin a new ten (10) business period of review for the Acquisition Coordinator under this Section 8(c), or (iii) deny the proposed acquisition, in which case the Authority and Acquisition Coordinator shall promptly meet and confer to determine if revisions in the proposed acquisition can be made that will allow the Acquisition Coordinator to approve the proposed acquisition.

(d) Upon approval of the proposed acquisition by the Acquisition Coordinator, the Authority shall acquire property from willing sellers in the name of DWR. The Authority shall use the acquisition procedures attached hereto as Exhibit E, as applicable.

(e) Where feasible, all Acquired Property shall be purchased from willing sellers. However, if any property proposed as Acquired Property by the Authority and approved for acquisition by the Acquisition Coordinator cannot be purchased from the owner on a willing seller basis, the Acquisition Coordinator may direct that DWR will proceed to eminent domain proceedings to acquire such property. Should such proceedings be required, they will be conducted entirely by DWR and the Authority shall cooperate fully with DWR in connection therewith as a part of the Authority's services under this Agreement.

(f) Notwithstanding anything to the contrary in this section 8, where the acquisition of property or an interest in property is required by a Permit, the terms and conditions of the Permit shall control to the extent the process described in this section 8 is inconsistent with the terms or conditions of such Permit, unless otherwise approved in writing by the issuer of the Permit.

9. Budget and Schedule.

(a) The Authority shall be reimbursed, at the Authority's actual cost, for all work performed, supervised and/or contracted for by the Authority under this Agreement to implement and construct the Conveyance Project, including without limitation all administrative costs incurred by the Authority to perform its obligations under this Agreement.

(b) The Parties shall conduct annual budget review meetings. At the first annual budget meeting and at the budget meeting of each subsequent calendar year, the Authority shall present an annual budget and schedule, a five-year forecast, and the overall Conveyance Project budget forecast and schedule for the approval of DWR. The budget presented by the Authority shall include, at a minimum, individual contract estimates with a contingency amount. In developing the schedule, the Authority shall coordinate closely with DWR regarding activities that are anticipated to require significant DWR participation (e.g. eminent domain).

(c) Both DWR and the Authority shall provide oversight of the Conveyance Project budget with all final budgetary decisions residing with DWR.

10. Invoicing and Payment. Invoices with sufficient detail to justify payment shall be submitted by the Authority in triplicate no more frequently than monthly in arrears to:

Delta Conveyance Office
901 P Street, Room 413, Sacramento, CA 94236

Each invoice must identify this Contract by the DWR Number and the applicable phase of work specified in Exhibit B and include receipts for materials, supplies and work accomplished by the Authority and its contractors. Billings must be in accordance with the cost breakdown in Exhibit B. Subject to the availability of funding for the Conveyance Project, DWR shall make payments on the undisputed portions of invoices as soon as State invoice processing procedures allow. For purposes of this Agreement funding is available (i) if and when DWR, in compliance with applicable law, legal decisions and contracts in each case as determined by DWR, issues and sells revenue bonds for the purpose of constructing and implementing the Conveyance Project or (ii) if sufficient funds have been contributed to DWR by the Authority, its member agencies or another entity comprised of agencies that receive water from the SWP or CVP sufficient to pay invoices as such invoiced become due for payment. Ten percent of payments for each invoice shall be withheld pending satisfactory completion of each phase as set forth in Exhibit B. Should DWR, in the exercise of its rights under section 6 of this Agreement, participate in any work described in this Agreement, the cost of such participation shall be reimbursed by the Authority and billed as a Conveyance Project cost.

11. Annual Report and Status Reports.

(a) The Authority shall provide detailed written reports to DWR at least monthly regarding progress made toward completing the Conveyance Project, including (i) actual and forecasted expenditures, (ii) the Authority's review of expenditures and forecasts against the approved budget, and (iii) progress relative to the approved schedule.

(b) Not later than March 1 of each calendar year, the Authority shall prepare and provide to DWR a draft annual report describing the Authority's activities under this Agreement during the immediately preceding calendar year as well as the status of the Conveyance Project. Upon receipt of such draft report, DWR shall have fifteen (15) business days within which to provide written comments on the draft report to the Authority, which shall consider such comments and incorporate those it determines to be appropriate. Within fifteen (15) business days after the receipt of DWR's comments, the Authority shall produce the final draft of the annual report for the relevant calendar.

12. Indemnity. Notwithstanding Government Code Section 895.2, the Authority agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all liability, claims, and losses including attorney and expert witness fees, accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person,

firm, or corporation furnishing or supplying work services, design services, consultant, or any other services, material or supplies in connection with the performance of this Agreement, and from any and all claims and losses including attorney and expert witness fees, accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Authority, its officers, agents, employees, contractors, subcontractors, suppliers, and laborers in connection with the performance of this Agreement, including without limitation liability, claims and losses including attorney and expert witness fees, accruing or resulting as a result of the Authority's use, storage, transportation, or disposal of any hazardous material, including any petroleum derivative. Where the Authority is found in breach of this provision due to the issuance of a government order directing the Authority to cease and desist any illegal action in connection with a hazardous substance, or to remedy a contaminated condition caused by the Authority or any person acting under its direction, control or authority, the Authority shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by DWR in connection with or response to such government order. Nothing herein shall be interpreted as obligating the Authority to indemnify, defend, and hold harmless the State its officers, agents, and employees against State's sole negligence or willful misconduct.

13. Notices. Written communications concerning this Agreement shall be delivered in person to the following person or deposited in the United States mail, postage prepaid, addressed to the other Party at the following addresses:

Delta Conveyance Office
901 P Street, Room 413, Sacramento, CA 94236

14. Term. The term of this Agreement shall be from the date first above written until DWR's final acceptance of the Conveyance Project; provided, that this Agreement shall not become effective until approved by the Department of General Services.

15. Standard Clauses. The Standard Clauses attached hereto as Exhibit F are incorporated herein by this reference.

16. Insurance Requirements.

(a) During the term of the Agreement, the Authority shall maintain in effect commercial general liability and business automobile liability insurance in accordance with the Standard Clauses – Insurance in accordance with the Standard Clauses – Insurance Requirements attached as Exhibit F and incorporated into this Agreement by this reference. The Authority shall also either maintain and provide evidence to DWR of pollution liability insurance presently in effect for the Authority of not less than \$10,000,000 per occurrence and builder's risk insurance coverage for its public works contracts of not less than \$20,000,000 per occurrence or require its public works contractors to maintain pollution liability insurance and builder's risk coverage pursuant to the provisions of this Agreement.

(b) The Authority shall include in any contracts for public works and hazardous services the following provisions:

“The Contractor shall furnish to the Authority and the State of California (State) a certificate of insurance stating that there is commercial general liability insurance presently in effect for the contractor of not less than \$2,000,000 per occurrence for bodily injury and property damage liability combined and business automobile liability insurance presently in effect for the contractor of not less than \$2,000,000 combined single limit unless otherwise directed by the Authority, pollution liability insurance presently in effect for the contractor of not less than \$2,000,000 per occurrence and builder’s risk insurance of not less than \$2,000,000 per occurrence.

The certificate of insurance must include the following provisions:

1. The insurer will not cancel the insured’s coverage without 30 days prior written notice to the Agency and the State.
2. The Agency and the State of California, its officers, agents, employees and servants are included as additional insureds but only insofar as the operations under this Agreement are concerned.

The Contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract or for a period of not less than one (1) year. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, the Agency may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.”

(c) The Authority shall include in any contracts for architectural landscape architectural, engineering, consultants involved in hazardous waste remediation, and construction project management services the following provision:

“The Contractor shall furnish to the Authority and the State of California (State) a certificate of insurance stating that there is professional liability insurance presently in effect for the contractor of not less than \$2,000,000.

The certificate of insurance must include the following provisions:

1. The insurer will not cancel the insured’s coverage without 30 days prior written notice to the Authority and the State.
2. The Authority and the State of California, their officers, agents, employees, and servants are included as additional insureds but only insofar as operations under this contract are concerned.

Contractor agrees that the professional liability or errors and omissions insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time during the term of this contract, contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than (1) year. In the event contractor fails to keep in effect at all times insurance coverage as herein provided, the Agency may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such an event.”

(d) With the exception of the requirement for commercial general liability insurance, the Parties may modify or eliminate any of the insurance requirements specified in this Section 16. The Authority shall provide DWR with documentation showing compliance with the provisions of this Section. Failure by the Authority to comply with this section may be grounds for termination of this Agreement by DWR in addition to any other remedies it may have.

17. Risk of Loss. Until formal acceptance of the Conveyance Project by DWR, the Authority and any contractors it retains for the purposes of constructing the Conveyance Project shall bear all risk of loss or damage to any facilities, and all financial responsibility for construction of the Conveyance Project consistent with the Specifications.

18. Authority. The signatories for the Authority represent that they are appropriately authorized to enter into this Agreement. A certified copy of a resolution or minute order authorizing the Authority to enter into this Agreement shall be delivered to DWR at the time the Authority executes the Agreement.

19. No Agency. The relationship of the Parties under this Agreement is solely that of contracting parties and, where expressly specified, as principal and agent. No new public agency is created hereby.

20. No Waiver of Sovereign Authority. Nothing herein shall constitute a waiver or relinquishment of the sovereign authority of any Party with respect to any decision related hereto, including, but not limited to, the decision to participate in any action hereunder or to participate in an action separate and apart here from. Each Party retains all authorities and powers granted to it by law.

21. Amendment. This Agreement may be amended only by an agreement executed by the Parties.

22. Assignment and No Third-Party Beneficiaries. Except as expressly set forth in this Agreement, no rights and duties of any of the Parties under this Agreement may be assigned or delegated without the express prior written consent of all the other Parties, and any attempt to assign or delegate such rights or duties without such consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns

of the Parties. Except for such assignments, this Agreement does not create enforceable rights in favor of any person or entity other than the Parties.

23. Inspection and Acceptance. All of the construction authorized by this Agreement shall be subject to inspection by DWR for conformity with the reviewed drawings and specifications. Neither the inspection nor the lack of inspection of any portion of such construction, nor the presence or absence of any party's inspector during such construction, shall waive any of the requirements of the reviewed drawings and specifications. After construction has been completed, a final inspection will be performed by DWR. If the constructed facilities are found to be satisfactory, DWR shall forward to the Authority a formal statement of acceptance. Upon acceptance of the Conveyance Project by DWR, the Authority will be dissolved; provided, however, that the Authority shall not be dissolved while disputes between the Parties or between the Authority and its contractors remain unresolved.

24. Dispute Resolution.

(a) The Technical Review Workgroup shall be used to resolve disputes regarding technical and design issues, and material changes to Specifications. All other disputes should be resolved at the staff level if possible.

(b) If the event dispute cannot be resolved through the Technical Review Workgroup or otherwise, the Parties will describe the basis for the dispute and identify options that may be available to help resolve the matter. The Parties will meet and confer to consider these options and to determine whether agreement can be reached on the matter. If staff is unable to resolve the dispute after five (5) business days, the matter will be automatically escalated to the appropriate managers of each Party. If the managers are unable to resolve the dispute after five (5) business days, the matter will be automatically escalated to the Deputy Director in charge of the Delta Conveyance Office and the Authority's Executive Director. If the Deputy Director and Executive Director are unable to resolve the dispute after a reasonable period of time, not to exceed fifteen (15) business days the matter will be automatically elevated to the Director of DWR and Executive Director of the Authority for resolution.

(c) Outside Review Panel.

At any time, the Parties may initiate a non-binding review process concerning the matter in dispute. The Party initiating such review shall provide written notice of the dispute that describes the nature of the dispute and a proposed approach to resolution. Within fourteen (14) days of the issuance of the written notice of dispute, the Parties will form a three-member panel of experts. One member of the panel will be selected by DWR, one member will be selected by the Authority, and a third member will be selected by mutual agreement of the first two panel members. Upon execution of this Agreement, the Parties will pre-screen panel members and direct their respective selections to pre-screen a third member and thereafter retain such members in a manner that ensures the members are at all times available to serve on the panel within 14 days of the issuance of a written notice of dispute required by this section. If at any time one or more members become unavailable the Party or member responsible for selecting the unavailable member shall promptly identify and retain a substitute member. 21 days after written notice of

dispute, both Parties will submit letter briefs and documentary evidence. No discovery will be allowed. At its discretion, the panel may require rebuttals or responses from the Parties. If so required, the Parties will submit rebuttals or responses within 14 days of the request. Also, at its discretion, the panel may meet and confer with any of the Parties regarding the matter and gather whatever available information it deems necessary and appropriate. Within 14 days of the submittal of the written positions of the Parties, or rebuttals if so required, a non-binding recommendation will be issued by a majority of the panel, in writing, which will include a statement explaining the basis for the recommendation.

(d) In the event that a dispute cannot be resolved as provided in this Agreement, the Director of DWR shall make the final decision, after considering the recommendations of the non-binding Outside Review Panel, as well as any other relevant information concerning the issue at hand. The final decision by the Director of DWR shall not be arbitrary or capricious. Notwithstanding any other provisions of this Agreement, the Authority expressly reserves its right to seek relief from, and appropriate adjustment for, any such arbitrary or capricious decision. Prior to invoking paragraph 25, the procedures in this paragraph must be fully, and finally exhausted.

25. Specific Performance. Notwithstanding any other provisions of this Agreement, the Authority acknowledges and agrees that there can be no adequate remedy at law for any breach, or threatened breach, by the Authority of the terms of this Agreement, that any such breach, or threatened breach, would result in irreparable harm to DWR for which monetary damages would be inadequate to compensate DWR, and that DWR shall have the right, in addition to any other rights available under applicable law, to seek from any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach of, or otherwise to specifically enforce, any covenant or obligation of the Authority under this Agreement, without the necessity of posting any bond or security.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**STATE OF CALIFORNIA DEPARTMENT
OF WATER RESOURCES**

**DESIGN AND CONSTRUCTION
AUTHORITY**

By: _____

By: _____

Karla Nemeth, Director

Tony Estremera, Board President

Approved as to form and consistency

Approved as to form and consistency

By: _____

By: _____

Spencer Kenner, Chief Counsel

_____, General Counsel