

MEMORANDUM OF AGREEMENT
FOR THE PRECONSTRUCTION PHASE OF THE
PHASE 2 LOS VAQUEROS RESERVOIR EXPANSION PROJECT

AND

SHARING OF COSTS

By and Between

United States Department of the Interior

Bureau of Reclamation, California-Great Basin

and

Contra Costa Water District

This Memorandum of Agreement (MOA) is made and entered into by and between the United States Department of the Interior, Bureau of Reclamation, California-Great Basin (Reclamation), and the Contra Costa Water District (CCWD) (Parties) for the purposes of undertaking and completing preconstruction activities (post-feasibility activities) for the Phase 2 Los Vaqueros Reservoir Expansion Project (Project).

WHEREAS, Reclamation in coordination with CCWD developed a Final Feasibility Report (FFR) for the Project, which was delivered to Congress on August 12, 2020, by the Secretary of the Interior (Secretary) notifying Congress of the Secretary's determination and concurrence of feasibility as specified in the WIIN Section 4007(c); and

WHEREAS, on August 11, 2017, CCWD submitted a Proposition 1 Water Storage Investment Program funding application for the Project and on July 24, 2018, the California Water Commission determined that the Project was eligible for up to \$459 million of funding; and

WHEREAS, CCWD and the Local Agency Partners have entered into a "Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning" dated April 30, 2019, and subsequently amended on September 11, 2020, (the "Multiparty Agreement") which provides for specified financial contributions and in-kind services by CCWD and the Local Agency Partners to fund Project development; and

WHEREAS, CCWD and Reclamation desire to enter into an MOA for the Project as defined by the scope in Article 5(c) of this MOA; and

WHEREAS, Reclamation is hereby joining CCWD in conducting and advancing the Project, and each entity recognizes the unique relationships and opportunities, mutual and exclusive needs and dependencies, Federal and non-Federal standards and procedures, potential outcomes and

applications of the preconstruction activities, and related decision-making and approval processes; and

WHEREAS, Reclamation is the lead agency for purpose of compliance with the National Environmental Policy Act and CCWD is the lead agency for purpose of compliance with the California Environmental Quality Act; and

WHEREAS, Reclamation is the lead agency for compliance with the Endangered Species Act (ESA) for the purpose of the planning, design, construction and coordinated operations of the Project with the Central Valley Project and will initiate consultations under Section 7 of ESA; and CCWD is the lead agency for the purpose of operations and maintenance of the completed Project and will initiate consultations under Section 10 of ESA as necessary; and

WHEREAS, CCWD is the lead agency for the purpose of compliance with Section 401 and 404 of the Clean Water Act; and

WHEREAS, Reclamation and CCWD will coordinate with each other and jointly with the State Water Resources Control Board (SWRCB) on any changes to existing water rights required to enable Project operations; and

WHEREAS, Reclamation and CCWD have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing in the preconstruction phase of the Project in accordance with the terms of this MOA subject to the Feasibility Report delivered to Congress and appropriations.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions: The following terms shall have the following meanings when used in this MOA:

- 1(a) Parties: Shall mean Reclamation and CCWD.
- 1(b) Cost-Sharing: Shall mean the Parties' contribution as in-kind services as further defined in Articles 1(c) and 5(a) of this MOA, and contributed funds, if a separate Contributed Funds Agreement is executed by the Parties.
- 1(c) In-Kind Service: Shall mean eligible donated time and effort, real and personal property, and goods and services, as defined by the Department of the Interior. In-kind services may be used as a cost-share, but the value of the in-kind contributions must be evaluated and documented. Valuation of in-kind services shall be in accordance with 2 CFR Part 200.
- 1(d) Confidential Information: Shall mean any information that is privileged or protected from public release under the Freedom of Information Act (FOIA), 5 USC 552(b), or the California Public Records Act (CPRA), California Government Code § 6250 et. seq.
- 1(e) Intellectual Property: Shall mean any information that is legally protected through patents, copyrights, trademarks, and trade secrets, or otherwise protectable under

Title 35 of the United States Code, under 7 USC § 2321, et. seq., or under the patent laws of a foreign country.

- 1(f) Confidential Business Information: Shall mean trade secrets or commercial or financial information that is privileged or confidential under the meaning of FOIA, 5 USC § 552(b)(4), or the CPRA. Information shall be marked or identified as provided for in Article 7(c) of this MOA.
 - 1(g) Key Personnel: Shall mean team members involved in the administration, management, or performance of the preconstruction activities as defined in this MOA.
 - 1(h) Subject Invention: Shall mean any invention or other intellectual property conceived or first reduced to practice under this MOA which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC § 2321, et. seq., or under the patent laws of a foreign country.
 - 1(i) Project Management Plan (PMP): Shall mean the document prepared by Reclamation in coordination with CCWD, and routinely updated by Reclamation throughout the duration of the Project to reflect the current project schedule and approach that serves as a guideline describing how Reclamation and CCWD will manage and conduct the Project.
 - 1(j) Preconstruction Activities: Those initial activities that include, but are not limited to, planning, engineering, design, environmental permitting, and water rights change petitions that occur after the Secretary of the Interior notifies Congress of its determination of feasibility and before the first award of a contract for construction.
 - 1(k) Non-Federal Proportionate Cost-Share: The percentage of the total construction cost of the Project assigned to the non-Federal partner, CCWD, in accordance with Article 5(a) of this MOA.
 - 1(l) Federal Proportionate Cost-Share: The percentage of the total construction cost of the Project assigned to the Federal Government, in accordance with Article 5(a) of this MOA.
 - 1(m) Non-Federal Partners: All non-Federal parties participating in the Project including CCWD, Local Agency Partners, and the California Water Commission.
 - 1(n) Local Agency Partners may include: Alameda County Water District, East Bay Municipal Utility District, Bay Area Water Supply Conservation Agency, the City of Brentwood, Byron Bethany Irrigation District, Del Puerto Water District, Grassland Water District, Panoche Water District, San Francisco Public Utilities Commission, San Luis Delta & Mendota Water Authority, Santa Clara Valley Water District, Westlands Water District, and Zone 7 Water Agency.
2. Purpose of MOA: The Parties agree that the purpose of this MOA is to clearly define the obligations and responsibilities of the Parties to complete Preconstruction Activities and

specified documents consistent with the Final Feasibility Report, PMP, and any Project authorizing legislation, if any, and to share costs as outlined herein, consistent with the authorizations identified in Article 3 of this MOA and other pertinent Federal, State, and local laws and policy.

3. Authority for MOA: Reclamation is authorized to enter into this MOA pursuant to the Water Infrastructure Improvements for the Nation Act, 2016 (P.L. 114-322) or any subsequent legislation.
4. Roles and Responsibilities of Reclamation and CCWD
 - 4(a) Executive Steering Committee (ESC): Each Party to this MOA will assign an executive-leadership-level representative to participate on the ESC for the duration the term of this MOA. Members of the ESC will provide both program and project leadership, address issues affecting Project progress, and identify and strategize resolution of evolving issues or conditions. The ESC will meet on an as-needed basis.
 - 4(b) A Project Management Team (PMT): A PMT shall be established. Each Party will identify a Project Manager and representatives to participate on the PMT, and any technical teams and subgroups. Meetings will be held as needed and only if necessary beyond the responsibilities of the Project Development Team (Article 4(c)) and used to track the status of the preconstruction activities, coordinate reviews of documents, share both Parties' perspectives on various topics, prepare briefings for the ESC, and any other items the Parties wish to discuss related to the Project. The PMT shall, on a quarterly basis, share an accounting of the actual expenses incurred by each Party under this MOA in accordance with Article 5 of this MOA.
 - 4(c) Project Development Team (PDT): A PDT shall be established to provide day-to-day oversight and review of work products. Each Party will identify representatives to participate on the PDT. The PDT is expected to meet as needed to maintain the progress of the Project.
 - 4(d) Reservoir Operations Team (ROT): A Reservoir Operations Team (ROT) shall be established as a sub-group to PDT. Each Party will identify representatives to participate on the ROT. The purpose of the ROT is to assist CCWD in developing an operating plan for the Project that identifies proposed reservoir operations, Delta intake operations, effects, if any, on Central Valley Project and State Water Project operations, and effects to any other parties not a signatory to this MOA. Participation in the ROT is not limited to the Parties. Non-party stakeholders may participate in and be a member of the ROT if it is agreed upon by the Parties and the non-party stakeholder has special expertise with respect to any operational impact involved in the Project. The ROT is expected to meet biweekly to maintain the progress of the Project.
 - 4(e) Water Rights Team (WRT): A Water Rights Team (ROT) shall be established as a subgroup to PDT. Each Party will identify representatives to participate on the WRT. The purpose of the WRT is to coordinate change petitions for water rights held by

CCWD and those held by Reclamation. Participation in the WRT is not limited to the Parties. Non-party stakeholders may participate in and be a member of the WRT if it is agreed upon by the Parties. The WRT is expected to meet as needed to maintain the progress of the Project.

- 4(f) Cooperative Partnership: The Parties will participate cooperatively as both cost-share and Project partners to complete the preconstruction activities effectively and efficiently, with intent to manage and perform joint and/or separate activities; monitor and account for actions; produce documents for review, revision, and distribution to support decision-making, approval, and related actions. The Parties commit to sharing all required documents (e.g., technical memoranda, draft and final reports, supporting materials, work products, and summaries of expenditures and expenses) within their respective authorities. Each Party is responsible for ensuring their respective policy, technical, and legal requirements are met.
- 4(g) Coordination with Local Water Agencies: CCWD will coordinate with the local water agencies if and when any additional parties sign an MOA with CCWD with the intent to perform joint and/or separate activities needed to contribute to the Project, including but not limited to development of local water supply demands and reservoir facilities and operations.

5. Financial Obligations

- 5(a) Cost-Sharing: Reclamation and CCWD will share the eligible costs of the preconstruction activities and any supporting documentation within the Scope of the Project. The proportionate cost-share between CCWD and Reclamation is established by the total construction cost assignment percentage split between the Federal assigned percentage and the non-Federal assigned percentage published in the Final Feasibility Report. The assigned proportionate cost-share is subject to change from the published Final Feasibility Report to an updated assignment if during preconstruction Project benefit calculations or categories are changed. Reclamation's proportionate cost-share for a State-led storage facility shall not exceed 25% of the total Project cost. CCWD may include Local Agency Partners contributions as specified in the Multiparty Agreement towards its share of eligible costs consistent with Article 5 of this Agreement.
 - 5(a)(1) In accordance with Reclamation Directives and Standards, CCWD shall account for the actual expenses incurred by CCWD including Local Agency Partners. These expenses shall be provided to Reclamation on a quarterly basis. Requirements of such accounting shall, at a minimum, include the following:
 - 5(a)(1)(i) An explanation, in the form of a progress report, of the work performed for each activity completed during the reported quarter.

- 5(a)(1)(ii) Progress reports shall include a summary of all costs incurred by CCWD including Local Agency Partners. Allowable costs include payroll costs, contract costs, overhead costs, expense vouchers, and other costs as provided in the applicable Office of Management and Budget regulations. Each activity should be supported by reports from CCWD's financial system as well as the local water agencies' financial systems providing a breakdown of actual costs incurred for the current submission and total costs to date for each activity.
- 5(a)(1)(iii) A cover letter or memorandum signed by an authorized representative of CCWD should accompany the submission. The cover letter shall reference this MOA and any enclosures (i.e. progress report, expenses/payroll summary).
- 5(b) Financial Obligations: This MOA is not a funding document and does not obligate or transfer funds between the Parties. Reclamation, subject to the availability of funds through the Federal appropriations process for this Project, shall expend funds on federally authorized preconstruction activities pursuant to Federal laws, regulations, and policies, or may enter into a Financial Assistance Agreement with CCWD for the purpose of sharing costs for those activities led by CCWD.
- 5(c) Scope of the Project: The Final Feasibility Report, PMP, any Federal authorizing legislation, and any relevant Reclamation Directive and Standard for Preconstruction and/or Construction, detail the initial scope of work and level of effort. When the Parties identify new tasks, specific scopes and requirements will be negotiated between the Parties. The PMP can be routinely updated by Reclamation as required and CCWD and any other non-Federal cost-share partners will be notified as appropriate.
- 5(d) In-Kind Services: Submission of documentation for in-kind services shall be submitted quarterly. Quarterly accounting must detail work done for agreed-upon items. Only costs incurred against a cost-share agreement need to be documented and submitted for approval. Project numbers must be used to distinguish various tasks and work phases. Items required for proper verification of work done include certified payroll, applicable contract numbers (i.e., consultant contracts), quarterly reports that coincide with Federal reporting requirements and generally accepted accounting principles, identification of cost-share partners, and scopes of work. Services cannot be included in any other Federal award in a current or prior period and their value must be based upon current market prices.
- 5(e) Following the termination of this MOA, Reclamation shall perform a final accounting in accordance with Article 5 of this MOA to determine the contributions provided by CCWD and to determine whether CCWD has met its proportionate cost-share obligation.

- 5(f) CCWD shall not use Federal funds to meet CCWD's share of the preconstruction costs under this MOA.

6. Term and Termination

- 6(a) Term: This MOA shall take effect on January 1, 2021. Unless terminated per Article 6(e), this MOA will expire 5 years from the date of Reclamation's signature to this MOA or upon a final accounting of all Preconstruction Activities in accordance with Article 5, whichever is earlier.
- 6(b) Amendment: If either Party desires a modification to this MOA, the Parties shall confer in good faith to determine the desirability of such modification. Any amendment must be mutually agreed upon in writing by Reclamation and CCWD. Any such modification shall not be effective until a written amendment to this MOA is signed by Reclamation and CCWD.
- 6(c) Addition of non-Federal Cost-Share Partners by CCWD: CCWD retains sole discretion to add local water agencies as signatories to the Cost-Share Agreement for Los Vaqueros Reservoir Expansion Project Planning, or to any subsequent joint powers agreement, for the purpose of considering these agencies as potential partners in Project implementation, including appropriate cost-share arrangements. Addition of local water agencies shall be consistent with CCWD Board Principles, if applicable to completion of the Project. CCWD shall notify Reclamation of such negotiations, if they occur.
- 6(d) Addition of Federal Cost-Share Partners by Reclamation: Reclamation retains sole discretion to add Federal agencies for the purpose of considering these agencies as potential partners in project implementation, including appropriate cost-share arrangements. Reclamation shall notify CCWD of such negotiations, if they occur.
- 6(e) Termination: Prior to the expiration of this MOA, and upon no fewer than sixty (60) calendar days written notice to the other Party, either Party may elect to terminate this MOA or to suspend future performance under this MOA without penalty. In the event that either Party elects to terminate this MOA pursuant to this Article, the Parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article 5 of this MOA. Any termination of this MOA in accordance with this Article shall not relieve the Parties of liability for any obligation previously incurred.
- 6(f) Suspension: If either Party suspends its performance, the other Party is relieved of any obligation to perform under this MOA until the suspension is terminated. Any such suspension shall remain in effect until either Reclamation or CCWD terminates this MOA, the MOA terminates per Article 6(a), or the suspending Party notifies the other Party of its intent to end the suspension and perform in accordance with this MOA. Any suspension of future-performance under this MOA in accordance with this Article shall not relieve the Parties of liability for any obligation previously

incurred. Financial Obligations and payment for in-kind services to the date of suspension or termination shall be satisfied.

7. Publications, Reports, and Confidentiality

7(a) Publications: The Parties understand and agree that this MOA may be disclosed to the public in accordance with either FOIA or the CPRA. Subject to the requirements of confidentiality, intellectual property, and preservation of rights in Subject Inventions, as further described in Articles 1(d), 1(e), 1(f), and 1(h) herein, either Party may publish the results of the Project described in this MOA. Any formally published or publicly shared report, memorandum, whitepaper, technical report, or other document must be consistent with applicable Department of the Interior and Reclamation procedures, requirements, and policy, provided:

7(a)(1) The other Party is allowed to review the proposed publications(s) at least sixty (60) days prior to submission for publication by submission to the authorized agent.

7(a)(2) The final decision as to the publication content rests with the Party that writes the publication(s).

7(b) Reports: The results of the science, engineering, operations, and technology data that are collected, compiled, and evaluated pursuant to this MOA, including interim administrative drafts, and final draft reports and/or supporting documents, shall be shared and mutually interchanged by the Parties, consistent with Article 4 of this MOA, and pertinent Reclamation directives, standards, and policy.

7(c) Confidentiality: Any Confidential Information or Confidential Business Information used in implementing this MOA shall be clearly marked “CONFIDENTIAL” or “PROPRIETARY” by the submitter, and shall not be disclosed by the recipient without permission of the owner in accordance with applicable law (for example, Executive Order 12600) and this MOA. To the extent either Party orally submits such Confidential Information or Confidential Business Information to the other Party, the submitting Party will prepare a document marked “CONFIDENTIAL” or “PROPRIETARY” embodying or identifying in reasonable detail such orally submitted information and provide the document to the other Party within thirty (30) days of disclosure.

Any Confidential Information or Confidential Business Information disclosed by one Party to the other Party shall remain confidential and protected from disclosure to the maximum extent allowable by applicable law. Neither Party shall be bound by confidentiality if the information received from the other Party:

7(c)(1) Is already available to the public or the recipient.

7(c)(2) Becomes available to the public through no fault of the recipient.

7(c)(3) Is non-confidentially received from another Party legally entitled to it.

It shall not be a breach of this MOA if the recipient of the information is required to disclose the information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either Party under this MOA; provided that the recipient of the information shall provide prompt prior notice thereof to the other Party in order to seek a protective order or otherwise prevent such disclosure, and provide further that the information otherwise shall continue to be confidential.

7(d) Intellectual Property: Unless otherwise agreed by the Parties, custody and administration of inventions, including Subject Inventions, made as a consequence of, or in direct relation to, the performance of activities under this MOA shall remain with the respective inventing Party. In the event that an invention is made jointly by employees of the Parties or an employee of an agency's contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

8. General

8(a) Liability: It is understood and agreed that neither Party to this MOA shall be responsible for any damages or injuries arising out of the conduct of activities governed by this MOA, except to the extent that such damages or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents, or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC § 2671, et seq., while CCWD's liability shall be limited by the California Government Claims Act, California Government Code § 810 et seq. Neither Party shall be liable for the negligent or wrongful acts or omissions of the other Party's employees, agents, or officers.

8(b) Limitations: This MOA sets out the Parties' intentions and objectives and does not apply to any person or entity outside CCWD and Reclamation. This MOA is not intended to and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person, unless expressly stated herein.

8(c) Notices: Notices between the signatories and copies of correspondence shall be sent to the Reclamation and CCWD points of contact below:

General Manager
Contra Costa Water District
1331 Concord Avenue
Concord, CA 94520
Telephone: (926) 688-8060

Regional Director
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825
Telephone: (916) 978-5012

- 8(d) Anti-Deficiency Act: All activities, responsibilities, and communications made under or pursuant to this MOA are subject to the availability of funds and each Parties' budget priorities, as determined by each Party. No provision herein shall be interpreted to require obligation or payment of funds. Further, no provision shall be interpreted in violation of the Anti-Deficiency Act, 31 USC 1341, and no liability shall accrue to the United States in the event that funds are not appropriated or allotted. No liability of one party may be transferred to the other party.
- 8(e) Counterparts: This MOA shall be executed in duplicate and each original, once fully executed, shall be equally effective.
- 8(f) Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other Party, including details of the contract or other arrangement. This requirement is to assure confidentiality is not breached and rights in Subject Inventions are not compromised.
- 8(g) Assignment: Neither Party has the right to assign this MOA, or any of its responsibilities hereunder, without the written consent of the non-signing Party.
- 8(h) Endorsement: CCWD shall not in any way state or imply that this MOA, or the results of this MOA, is an endorsement by the Federal government, Department of the Interior, or Reclamation or its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.
- 8(i) Regulatory Compliance: Both Parties acknowledge and agree to comply with all applicable laws and regulations, including environmental, cultural, and paleontological resource protection laws and regulations, in carrying out the activities or projects under this MOA. These regulatory compliance requirements may include, but are not limited to, the National Environmental Protection Act and applicable implementing regulations, the Clean Water Act, the Endangered Species Act, the National Historic Preservation Act, and consultation with potentially affected federally recognized tribes.
- 8(j) Disputes: Any dispute arising under this MOA which cannot be readily resolved shall be submitted jointly to the Key Personnel officials identified above. Each Party agrees to seek in good faith to resolve the issue through negotiation, or other forms of nonbinding dispute resolution processes, if mutually acceptable to the Parties. Pending the resolution of any dispute or claim, the Parties agree that performance of all obligations shall be pursued diligently.
9. Signatures and Authorities: In Witness Whereof, the Parties execute this MOA on the date and year indicated below.

BUREAU OF RECLAMATION
U.S. DEPARTMENT OF THE INTERIOR

_____ By: _____
Regional Director

CONTRA COSTA WATER DISTRICT

_____ By: _____
General Manager