DRAFT CHARTER AGREEMENT BETWEEN THE DEPARTMENT OF WATER RESOURCES AND STATE WATER PROJECT CONTRACTORS

TO ESTABLISH AND IMPLEMENT A STATE WATER RESOURCES DEVELOPMENT SYSTEM FINANCE COMMITTEE

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THIS CHARTER AGREEMENT to establish and implement a State Water Resources Development System Finance Committee ("**Agreement**") is made between the State of California, acting by and through its Department of Water Resources ("**DWR**"), and those public agencies whose signatures appear below (**"Contractors"**), herein referred to collectively as "**Parties**."

RECITALS

1. **WHEREAS**, DWR is responsible for constructing, operating and maintaining the State Water Resources Development System ("**SWRDS**"), the primary component of which is commonly referred to as the State Water Project ("**SWP**"); and

2. **WHEREAS**, Contractors have long-term contracts (**"Contracts"**) with DWR to receive water from the SWP, which Contracts are similar in all material respects; and

3. **WHEREAS**, pursuant to such Contracts, Contractors are obligated to reimburse DWR for water supply-related SWP costs; and

4. **WHEREAS**, DWR and Contractors have agreed to extend such Contracts and to amend certain other terms relating primarily to SWP and SWRDS financial matters ("**Contract Amendments**"); and

5. **WHEREAS**, DWR and Contractors understand and agree that it is in their mutual interests to ensure that the SWP and SWRDS remain financially viable which, in turn, requires that revenues and expenditures be properly managed; and

6. **WHEREAS**, DWR and Contractors believe that such management can best be accomplished through cooperative efforts and joint oversight; and

7. **WHEREAS**, this Agreement is intended to provide a framework for such cooperative efforts and joint oversight, and is a material part of the consideration that forms the basis of the Contract Amendments.

AGREEMENT

NOW THEREFORE, DWR and Contractors agree as follows:

I. EFFECTIVE DATE AND TERM

This Agreement shall be binding on DWR and those Contractors who signatures appear below; provided, however, that the Agreement shall only take effect and be binding as to an individual Contractor upon that Contractor's execution of a Ccontract Aamendment taking effect. The SWRDS Finance CommitteeAgreement shall remain in effect as long as the contract amendment remains in effectuntil expiration of the Contracts, and any extensions thereto, unless terminated earlier by mutual consent of DWR and Contractorsall the Parties. The Agreement may be amended by the mutual consent of all the Parties.

II. SWRDS FINANCE COMMITTEE

A. Establishment

1. A State Water Resources Development System (SWRDS) Finance Committee is hereby established by and among DWR and Contractors.
2. The SWRDS Finance Committee shall remain in effect until expiration of the Contracts, and any extensions thereto, unless terminated earlier by mutual consent of DWR and Contractors.

B. General Scope and Intent

1. As set forth more fully below, the SWRDS Finance Committee is intended to promote coordination, communication and cooperation among DWR and Contractors regarding SWRDS financial policies, work plans and reports. More specifically, the SWRDS Finance Committee is expected to provide the formal guidance necessary to effectively coordinate and execute comprehensive financial management of SWRDS.
2. The SWRDS Finance Committee inis not intended or expected to address specific SWRDS budget line items, individual project budgets or individual transactions, but rather shall address those financial matters that are broad in scope and applicability.

C. Composition, Selection and Terms

1. The SWRDS Finance Committee shall be composed of and governed by representatives from both DWR and Contractors.
2. Members:
   a) DWR shall select five representatives to serve as its official members of the SWRDS Finance Committee ("**DWR Members**"). DWR also shall select five (5) representatives to serve as alternates ("**DWR Alternates**") in the event one or more of the DWR

Members areis absent or otherwise unable to participate on the Committee.

b) Each Contractor may designate one representative to a Contractors' pool ("**Contractor Representative**"). From that pool, Contractors shall select five Contractor rRepresentatives to serve as their official members of the SWRDS Finance Committee ("**Contractor Members**"). Contractors also shall select twofive representatives from that pool to serve as alternates ("**Contractor Alternates**") in the event one or more of the Contractor Members areis absent or otherwise unable to participate on the Committee.

c) Members and Alternates shall be appointed to serve one-year terms commencing on January 1 of each year. Members and Alternates may serve multiple terms, but shall be appointed or re-appointed each year as appropriate.

d) By December 15 of each year, DWR and Contractors shall exchange lists of the Members and Alternates that have been selected to serve on the SWRDS Finance Committee for the following year. Such lists shall include the name, title and contact information for each Member and Alternate on the list.

3. Chair and Vice-Chair:

a) The SWRDS Finance Committee shall have a Chair and Vice-Chair, who shall be appointed to serve one-year terms in January of each year.

b) A DWR representative shall serve as the Chair and shall be selected by and from the DWR Members appointed to serve on the Committee for that year.

c) A Contractor representative shall serve as the Vice-Chair and shall be selected by and from the Contractor Members who have been appointed to serve on the Committee for that year.

D. Meetings and Agendas

1. The SWRDS Finance Committee shall meet as frequently as is necessary to carry out its responsibilities, but no less than two times annually, at such times and locations as determined by the Committee Chair and Vice-Chair. The Chair and Vice-Chair each shall have the authority to call a meeting and shall do so upon their own motion or upon the request of any Member of the Committee. Each Member shall endeavor to attend all scheduled meetings or ensure that an Alternate attends in his/her absence.

2. Prior to each meeting of the SWRDS Finance Committee, the Chair or Vice-Chair shall prepare a written agenda. Proposed agenda items shall be submitted in writing to the Chair or Vice Chair prior to the meeting for consideration. The proposalEach proposed agenda item shall follow a standard format (SWRDS Finance Committee Proposal Template) that includes the following sections:

a) A description of the issue or matter to be considered by the Committee, including, if applicable, attempts that have been made to resolve disputes.

b) A justification of why the issue or matter is within the Committee's scope and purpose.

c) A discussion of at least two alternative solutions intended to resolve the issue or matter under consideration and the consequences of inaction.

d) The preferred alternative or recommendation.

e) The name and contact information for the sponsor(s) of the issue.

If a proposed agenda item is deemed to be consistent with the intent of this Agreement by either the Chair or the Vice-Chair, then it shall be placed on the agenda.

3. In addition to the ten (10) designated Members, Tthe meetings of the SWRDS Finance Committee shall be open to all designated Contractors Representatives and DWR alternates. [and appropriate support staff]. However, each Contractor may designate only one representative ("**Contractor Representative**") to formally participate in the meetings on its behalf. Each Contractor shall provide the Committee with the name, title and contact information for its designated Contractor Representative, if any. Other subject matter experts, contractor staff, and/or DWR staff may be invited by the Chair or Vice Chair, as needed, to provide relevant and material input pertaining to individual issues brought to the Committee. All designated representatives can participate in discussions based on procedures and rules in Section G below.

E. Quorums and Voting

1. A quorum of the SWRDS Finance Committee shall consist of six Members. In the absence of a quorum, the Committee may receive information, but shall not take any actions, issue any directives, make any recommendations, or engage in any other business or activities.

2. Each Member shall have one vote on SWRDS Finance Committee. The results of the voting will be recorded and forwarded to the Director with the recommendation.

F. Minutes

DWR The Chair or Vice Chair shall be responsible for the keeping of minutes of each SWRDS Finance Committee meeting. Copies of the minutes shall be provided to the Committee Members and all Contractor Representatives within two weeks after a meeting.

G. Procedures and Rules

The SWRDS Finance Committee may adopt such procedures and rules as it determines are necessary or convenient to govern the conduct of the Committee or to assist the Committee in carrying out its responsibilities. Procedures and Rules will be established as mutually agreed upon by members of the Committee/by a simple majority vote of the Committee.

H. Technical or Ad Hoc Committees

The SWRDS Finance Committee may establish such technical, ad hoc or other sub-committees as it determines are necessary or convenient to assist the Committee in carrying out its responsibilities.

I. Recommendations to the DWR Director

1. SWRDS Finance Committee shall submit any recommendations it has in writing to the Director. The recommendations shall indicate which members concur and which members do not concur. or to the Director's delegate responsible for the area under consideration by the Committee. If any Members concur in or disagree with the SWRDS Finance

~~Committee's recommendations, that fact also shall be noted. Individual Contractor Representative may submit comment letters on the recommendation to the Director.~~

1. ~~The DWR Director may accept or reject the SWRDS Finance Committee's recommendations in his or her sole discretion. The Director shall provide the Committee with a written response and, in the case of a rejection of the recommendation, an explanation of the specific reasons for his or her rejection. [DWR to draft template proposal]~~

1. After discussion of a given issue or matter, the Committee will designate a Member or Members to prepare a written recommendation for the Director. All Members who concur will sign the recommendation indicating concurrence.

2. If there are competing recommendations for a given issue or matter, multiple written recommendations may be prepared for the Director's consideration. Members will sign the appropriate recommendation indicating their support.

3. Within thirty (30) business days after receipt of a recommendation or recommendations, the Director will issue a written decision of acceptance or rejection and an explanation of the specific reasons for his/her decision. If the Director needs additional information and time, the Finance Committee will be notified.

III. DESIGNATION OF SWRDS CHIEF FINANCIAL MANAGER

A. ~~To the extent permitted by State personnel rules and regulations, Consistent with state personnel rules and regulations,~~ Consistent with state personnel rules and regulations, DWR shall create and fill a new position to be known as the SWRDS Chief Financial Manager (CFM). ~~{TO BE DISCUSSED}~~

Comment [DWR1]: Keep this in.

B. The CFM shall serve as the single point of authority over all SWRDS financial matters. The CFM shall have the responsibility and authority throughout DWR to oversee and implement, in a timely manner, all SWRDS financial policies and shall report directly to the DWR Director or the Deputy Director in charge of the SWP.

C. Working with the SWRDS Finance Committee, the CFM shall develop and enhance those financial policies, work plans and administrative measures necessary or appropriate to provide comprehensive and cost effective financial management of SWRDS.

D. The SWRDS Finance Committee and CFM shall coordinate and cooperate with each other at all times in carrying out their respective responsibilities.

E. Until DWR creates and fills the new CFM position, it shall designate the SWP Deputy Director who shall serve in the same capacity as described above.

IV. CONSIDERATION OF SWRDS FINANCIAL POLICIES MATTERS

A. The SWRDS Financial Committee shall serve as a forum for discussions ~~between DWR and Contractors~~ regarding financial policy matters applicable to the construction, operation and maintenance of SWRDS facilities and as a channel for making recommendations to the DWR Director concerning such matters.

B. In general, the types of financial policy matters that should be brought to the SWRDS Finance Committee for consideration are ones that are broad in nature and that cannot be resolved more effectively in another forum such as an existing Contractor technical committee. Characteristics of SWRDS financial policy matters that would properly be brought to the SWRDS Finance Committee include those that:

1. affect a group of Contractors, rather than individual contractors;
2. potentially apply to multiple projects, rather than individual projects; and
3. involve potentially large transactions or a large number of transactions.

In weighing these factors, an important consideration shall be whether the SWRDS financial policy matter at issue would potentially merit ultimate resolution by the DWR Director.

C. Contractors understand and acknowledge that although the SWRDS Finance Committee is charged with providing financial policy recommendations to the DWR Director, the DWR Director shall retain final discretion on whether or not to accept such recommendations.

V. DEVELOPMENT AND APPROVAL OF SWRDS FINANCIAL ENHANCEMENT WORK PLANS

A. The SWRDS Finance Committee shall guide the development of the SWRDS financial enhancement work plans ("SWRDS Work Plans") in cooperation and coordination with the CFM.

B. The SWRDS Finance Committee shall review and approve all SWRDS Work Plans prior to implementation. For purposes of this Section, "approve" shall mean a vote of the Committee that includes at least four affirmative votes of DWR Members and at least four affirmative votes of Contractor Members.

C. The SWRDS Finance Committee also shall provide input and recommendations to the DWR Director regarding implementation of such work plans.

D. Once a work plan is approved, approved, the SWRDS CFM, or the SWP Deputy Director if the CFM is not yet appointed, shall be responsible for ensuring the SWRDS Work Plans are implemented in a timely manner.

VI. REVIEW OF SWRDS FINANCIAL INFORMATION AND REPORTS

A. DWR and Contractors acknowledge and agree that the SWRDS Financial Committee must be provided with timely and accurate financial information and financial management reports regarding SWRDS ("Financial Information and Reports") in order to function properly and to provide meaningful input and recommendations to the DWR Director.

B. During the term of the Contracts, it is anticipated that the needs of the SWRDS Finance Committee will change. Accordingly, the SWRDS Finance Committee will determine, on an ongoing basis, the nature, scope and frequency of the Financial Information and Reports to be provided by DWR to the Committee.

C. Regardless of the exact nature, scope and frequency, the Financial Information and Reports shall comply with the principles set forth in Section XX of the Contract, as applicable.

[Add a cross reference phrase to connect this section to the Contract]

E. DWR and Contractors acknowledge and agree that the SWRDS Financial Committee must be provided with timely and accurate financial information and financial management reports regarding SWRDS ("Financial Information and Reports") in order to function properly and to provide meaningful input and recommendations to the DWR Director.

F. During the term of the Contracts, it is anticipated that the needs of the SWRDS Finance Committee will change. Accordingly, the SWRDS Finance Committee will determine, on an ongoing basis, the nature, scope and frequency of the Financial Information and Reports to be provided by DWR to the Committee.

G. Regardless of the exact nature, scope and frequency, the Financial Information and Reports shall comply with the following principles, as applicable:

1. Principle 1: Financial reporting shall be generated from the general ledger or data warehouse of the financial information system (system of record). The financial system of record is the authoritative source for financial reporting data values in a system. To ensure data integrity, there shall be one, and only one, system of record for financial reporting values.

2. Principle 2: Financial reporting shall not be limited to annual financial statements, but shall be developed for regular reporting periods.

3. Principle 3: Financial reporting and financial management reporting shall identify unusual items and exceptions, and these items shall be documented, resolved and reviewed by management on a timely basis.

4. Principle 4: Financial management reporting shall identify and analyze significant variances from prior years or budgets.

5. Principle 5: DWR shall use standardized system-wide business rules and utilize a centralized financial system, such as SAP, to provide controls/validations to insure data integrity and reliable reporting.

6. Principle 6: DWR shall use standardized data integrity rules and procedures in the development and publication of reports. Such rules and procedures shall take into account and comport with the following strictures:

a) Data integrity refers to the accuracy and consistency of data stored in a database, data warehouse, data mart or other construct.

b) Data integrity processes verify that data has remained unaltered in transit from creation to reception or remains unaltered in transit from one system to the next. Data used outside of the Enterprise Resource Planning (ERP) systems to meet the reporting needs of the SWP and SWRDS will undergo any number of operations in support of decision-making, such as capture, storage, retrieval, update and transfer. It is important to have confidence that during these operations, the data will be kept free from corruption, modification and remain unaltered.

c) Data with "integrity" has a complete or whole structure. Data values are standardized according to a data model and/or data type. All characteristics of the data must be correct – including business rules, relations, dates, definitions and lineage – for data to be complete.

d) Data integrity is imposed within an ERP database when it is created and is

authenticated through the ongoing use of error checking and validation routines.

e) Data integrity state or condition is to be measured by the validity and reliability of the data values.

Data integrity service and security maintains information exactly as it was input, and is auditable to affirm its reliability.

VII.

VII. DISPUTE RESOLUTION

A. General Applicability

1. All disputes among the Parties (**"Disputing Parties"**) regarding any Party's performance or compliance with this Agreement shall be the subject to the dispute resolution process provided in this Section. The Parties agree that disputes shall be raised in a prompt and timely manner.
2. The Disputing Parties shall devote such resources as are needed and can be reasonably provided to resolve the dispute as expeditiously as possible.
3. The Disputing Parties shall cooperate in good faith to promptly schedule, attend and participate in the dispute resolution.
4. Unless otherwise agreed among the Disputing Parties, each Disputing Party shall bear its own costs for its participation in any dispute resolution process related to the Agreement.
5. Each Disputing Party shall promptly implement any resolution of the dispute, as applicable.

B. Process

1. Dispute Initiation Notice: A Party claiming a dispute shall give written notice of the dispute (**"Dispute Initiation Notice"**). This Dispute Initiation Notice shall be provided to all Committee Members and Contractor Representatives and shall describe: (a) the matter(s) in dispute; (b) the identities of any other Parties alleged to have not performed or complied with this Agreement; and (c) the specific relief sought.
2. Informal Meetings: The Disputing Parties shall hold at least two informal meetings to resolve the dispute, the first of which shall commence within 30 days after the Dispute Initiation Notice.
3. Mediation:
   a) If the dispute is not resolved through the informal meetings, then any Disputing Party may request non-binding mediation of the dispute. Any such request shall be made within 15 days after the conclusion of the last informal meeting the Disputing Parties agreed to hold.
   b) The Disputing Parties shall select a neutral mediator within 30 days of the request to pursue mediation. If the Disputing Parties cannot agree on a neutral mediator, then each Disputing Party may designate two candidates to a mediators' pool; provided,

however, that if the dispute involves DWR, the number of candidates designated to the pool by DWR and Contractors must be equal. From this mediators' pool, a single mediator shall be randomly selected.

c) The mediation process shall be concluded not later than 90 days after the mediator is selected.

d) The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

e) The fees and expenses of the mediator and any common costs incurred directly in support of the mediation process ("Mediation Costs") shall be divided evenly among the Disputing Parties; provided, however, that if the dispute involves DWR, then DWR shall pay 50 percent of the Mediation Costs, with the remainder of such costs divided evenly among the other Disputing Parties. Apart from sharing Mediation Costs, each Party shall bear its own costs for participating in the mediation process.

4. Dispute Resolution Notice: The Disputing Parties shall provide notice of any resolution of the dispute achieved pursuant to this dispute resolution process (**"Dispute Resolution Notice"**). The Dispute Resolution Notice shall be provided to all Committee Members and Contractor Representatives and shall: (a) restate the disputed matter, as initially described in the Dispute Initiation Notice; (b) describe the alternatives which the Disputing Parties considered for resolution; and (c) state whether resolution was achieved, in whole or part, and what specific relief was agreed to as part of the resolution.

VIII. ENFORCEMENT

A. Equitable Relief Only

This Agreement and any of its terms and provisions may be enforced through an action seeking specific performance or equitable relief. No Party shall be liable for damages for any breach of this Agreement or its terms and provisions.

B. Exhaustion of Remedies

A Party may seek judicial relief for a breach of this Agreement only after exhaustion of the dispute resolution process set forth in Section VII. However, a Party shall not be obligated to comply with any other Party's administrative claim requirements or administrative remedies process before filing or maintaining an action in court pursuant to this Agreement.

IX. GENERAL PROVISIONS

A. Authority

Each Party represents and warrants that: (1) the Party has the authority to enter into this Agreement; (2) the individual signing on behalf of the Party has been duly authorized to execute this Agreement by that Party; and (3) upon execution by such individual, that Party shall be bound by the terms and provisions of this Agreement without any further act, approval or authorization of such Party or its governing body or management.

B. Successors and Assigns

This Agreement and the rights and responsibilities thereunder shall be binding on and inure to the benefit of the Parties and their successors and approved assigns. No Party may voluntarily

assign its rights and responsibilities without the express written consent of the other Parties, which consent shall not be unreasonably withheld. In the event of succession between public agencies, whether by statute, executive order or operation of law, the successor agency shall become a Party to and be bound by this Agreement.

C. Third-Party Beneficiaries

This Agreement is intended to apply solely to its signatories and their successors and approved assigns. This Agreement does not confer any rights or interests on any other private or public persons or entities ("non-Parties"). This Agreement shall not be construed as permitting any non-Party to maintain a suit at law or in equity to enforce the terms of this Agreement or to assert any other claims based on that non-Party's alleged status as a third-party beneficiary.

D. No Waiver

A waiver of any term or provision of this Agreement by any Party shall not constitute or be construed as a waiver of any other term or provision of this Agreement by that Party. No waiver a term or provision of this Agreement shall be binding unless and until executed in writing by the Party providing the waiver.

E. Joint Drafting; Voluntary Execution

This Agreement was drafted jointly by all Parties. Each Party represents and warrants that: (1) it has read and understands the meaning and effect of all terms and provisions of this Agreement; (2) that prior to execution of this Agreement, it had the opportunity to consult with legal counsel regarding the meaning and effect of this Agreement and its terms and provisions; and (3) it is voluntarily entering into this Agreement.

F. Section Titles

The section titles in this Agreement are for convenience of reference and organization only and shall not be used to modify, explain or interpret any terms or provisions of this Agreement.

G. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement; provided, however, that each signing Party shall have received a copy of the signature page(s) signed by every other Party.

H. Governing Law

This Agreement shall be construed in accordance with the laws of State of California.

I. Amendment

This Agreement may not be amended except through the express written consent of all Parties.

[SIGNATURE BLOCKS]

~~The provisions of this charter may be enforced only by an action for equitable relief, not for damages.~~

~~{TO BE DISCUSSED}~~