

COST SHARE AGREEMENT FOR CONSULTANT SERVICES RELATED TO LEGISLATIVE SUPPORT FOR BIG DRY CREEK RESERVOIR OPERATIONAL CHANGES

This Agreement is entered into on this 13th day of July, 2021 (Effective Date), by and between the Fresno Irrigation District (FID), the City of Clovis (Clovis), the City of Fresno (Fresno), and the County of Fresno (County) (herein each individually called a Party and collectively the Parties).

WITNESSETH:

WHEREAS, the Fresno Metropolitan Flood Control District (FMFCD) operates the Big Dry Creek Dam and Reservoir for flood protection in accordance with the 1994 Water Control Manual under a Local Cooperation Agreement with the US Army Corps of Engineers; and

WHEREAS, the Parties and FMFCD are signatories to an agreement that allows for the disposal of waters from Big Dry Creek Reservoir into FID's canal system for flood protection and distribution to basin and recharge facilities to benefit the region; and

WHEREAS, the Parties and FMFCD desire to reevaluate the operational requirements of Big Dry Creek Dam and Reservoir to allow for increased conservation storage; and

WHEREAS, the Parties desire to support FMFCD's initial efforts to add language to the United States Congress 2020 Water Resources Development Act to allow for the study of the reoperation of Big Dry Creek Reservoir and to work with the United States Army Corp of Engineers to complete initial studies regarding the reoperation of Big Dry Creek Reservoir; and

WHEREAS, the Parties and FMFCD have met with Austin Ewell (Consultant) and the Parties desire to hire Consultant to assist with gaining legislative support for the reoperation of Big Dry Creek Reservoir; and

WHEREAS, FID previously hired the Consultant to assist with getting the required language added to the 2020 Water Resources Development Act (Previous Project), for a total cost of \$50,000, and Clovis, Fresno, and County desire, in connection with the engagement of the Consultant for gaining legislative support for the reoperation of Big Dry Creek Reservoir, to contribute a share of FID's costs to hire the Consultant for that work.

The Parties and FMFCD therefore agree as follows:

- 1. Retention of Consultant by FID.** FID shall retain the services of Consultant to assist with making key legislative contacts to gain legislative support for the reoperation of Big Dry Creek Reservoir (Current Project).
- 2. Period of Consultant's Retention.** Within 15 days of the Effective Date of this Agreement, FID shall retain Consultant on the Current Project for a period of up to 12 months, in any case not extending beyond December 31, 2021, at a total cost not to exceed \$3,000 per month.

The Parties agree that Consultant's costs shall include his travel, phone, mileage, postage, copying and other charges, all of which are included in the \$3,000 per month cap.

3. **Cost Sharing.** FID, Clovis, Fresno, and the County shall equally share in the cost of the Consultant for the Current Project, with each Party paying 25% of the cost of the Consultant for the Current Project. As additional consideration for FID's engagement of the Consultant for the Current Project, each of Clovis, Fresno, and the County shall pay \$12,500 to FID, which amount is 25% of the cost that FID paid to the Consultant for the Previous Project.
4. **Invoices and Payment.** FID shall invoice Clovis, Fresno, and the County monthly at the addresses specified in Section 6 below, for their respective portions of the cost. FID shall submit each invoice within 60 days after the month in which the Consultant performs services on the Current Project. The first invoice shall include the additional consideration (\$12,500) that Clovis, Fresno, and the County have each agreed to pay to FID under the second sentence of Section 3 above.

Clovis, Fresno, and the County shall pay each correctly completed and timely submitted invoice within 45 days after receipt at the address for FID specified in Section 6 below. Payments under this Agreement are not contingent upon Consultant obtaining the desired result.

Alternately, each of Clovis, Fresno, and the County, at the respective sole discretion of each, may pay its portion of the invoices in one lump sum of nine thousand dollars and zero cents (\$9,000.00) covering Consultant expenses for the length of the agreement (12 months), plus the additional consideration (\$12,500) that Clovis, Fresno, and the County have each agreed to pay to FID under the second sentence of Section 3 above.

5. **Further Agreements.** The Parties acknowledge that additional agreements will be necessary to provide for the actual evaluation and study of the reoperation of Big Dry Creek Dam and Reservoir, as well as any potential construction improvements. The Parties commit to negotiate such agreements in a timely fashion and in good faith.
6. **Notices.** The persons and their addresses having authority to give and receive notices, invoices, and payments provided for or permitted under this Agreement include the following:

For FID:
Bill Stretch
General Manager
Fresno Irrigation District
2907 S. Maple Ave.
Fresno, CA 93725

For Fresno:
Michael Carbajal
Director of Public Utilities
City of Fresno, Public Utilities Dept.
2600 Fresno Street, Room 4019
Fresno, CA 93721

For Clovis:
Scott Redelfs
Director of Public Utilities
City of Clovis
155 Sunnyside Avenue
Clovis, CA 93611

For County:
Steve White
Director of Public Works and Planning
County of Fresno
2220 Tulare Street, 6th Floor
Fresno CA 93721

Any Party may change the information above by giving notice as provided in this Section 6.

All notices and invoices provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by Portable Document Format (PDF) document attached to an email.

- A. A notice delivered by personal service is effective upon service to the recipient.
- B. A notice delivered by first-class United States mail is effective three business days after deposit in the United States mail, postage prepaid, addressed to the recipient.
- C. A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.
- D. A notice delivered by PDF document attached to an email is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery is deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission.

For all claims arising from or related to this agreement, nothing in this Agreement establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

- 7. Termination for Non-Allocation of Funds.** The terms of this Agreement are contingent upon the approval of funds by the appropriating government agencies. If sufficient funds are not allocated, then any Party, upon at least 30 days' advance written notice to the other parties may terminate this Agreement.
- 8. State Audit Requirements.** If the compensation to be paid by any public entity under this Agreement exceeds \$10,000, each Party subject to Government Code section 8546.7, shall be subject to the examination and audit of the California State Auditor for a

period of three years after final payment under this Agreement. This section survives the termination of this Agreement.

9. General Provisions.

- A. This Agreement is binding upon and shall inure to the benefit of any successors or assigns of the Parties.
- B. No Party to this Agreement may assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other Parties.
- C. Any dispute not resolvable by informal arbitration between the Parties to this Agreement shall be adjudicated in a court of law under the laws of the State of California.
- D. This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall only be in California. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought and maintained in the Fresno County Superior Court.
- E. This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.
- F. This Agreement may not be modified or altered except by writing signed by all Parties.
- G. If any part of this Agreement is found by a court of competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in full force and effect, and the Parties shall make best efforts to replace the unlawful or unenforceable part of this Agreement with lawful and enforceable terms intended to accomplish the Parties' original intent.
- H. In the event any Party commences any action, arbitration or legal proceeding for the enforcement of this Agreement, the prevailing Party, as determined by the court or arbitrator, shall be entitled to recover its attorney's fees and court costs included in the action brought thereon.
- I. Each Party represents and warrants that the individual signing this Agreement is duly authorized to do so and their signature on this Agreement legally binds that Party to the terms of this Agreement.
- J. Section headings are provided for convenience only and are not part of this Agreement.

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- K. This Agreement does not and is not intended to create any rights or obligations for any person or entity except for the Parties.
- L. This Agreement may be signed in counterparts, each of which is an original, and all of which together constitute this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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In witness whereof, is executed on this day and year first above written.

FRESNO IRRIGATION DISTRICT (FID)

By: William R. Stretch

Name: Bill Stretch

Title: General Manager

Date: 5-18-2021

CITY OF FRESNO,
A California municipal corporation

By: _____
Thomas C. Esqueda, City Manager

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ Date _____
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____ Date _____
Deputy

CITY OF CLOVIS (CLOVIS)

By: _____

Name: _____

Title: _____

Date: _____

COUNTY OF FRESNO

Steve Brandau
Steve Brandau, Chairman of the Board
of Supervisors of the County of Fresno

Date: July 13, 2021

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: Josie Cuyf July 13, 2021
Deputy Date

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In witness whereof, is executed on this day and year first above written.

FRESNO IRRIGATION DISTRICT (FID)

By: _____

Name: _____

Title: _____

Date: _____

CITY OF FRESNO,
A California municipal corporation

By: _____

Thomas C. Esqueda, City Manager

Date: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____

Senior Deputy City Attorney

Date

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____

Deputy

Date

CITY OF CLOVIS (CLOVIS)

By:  _____

Name: Scott Redelfs

Title: Public Utilities Director

Date: 5/18/2021

COUNTY OF FRESNO

Steve Brandau, Chairman of the Board
of Supervisors of the County of Fresno

Date: _____

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By _____

Deputy

Date

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In witness whereof, is executed on this day and year first above written.

FRESNO IRRIGATION DISTRICT (FID)

CITY OF CLOVIS (CLOVIS)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

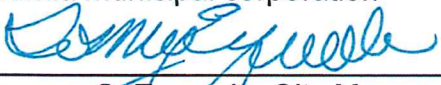
Title: _____

Date: _____

Date: _____

CITY OF FRESNO,
A California municipal corporation

COUNTY OF FRESNO

By: 
Thomas C. Esqueda, City Manager

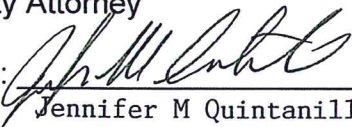
Steve Brandau, Chairman of the Board
of Supervisors of the County of Fresno

Date: _____

Date: _____


APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By:  5/18/21
Jennifer M Quintanilla Date
Senior Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By _____ Date _____
Deputy

By:  5/19/2021
Deputy Raven Dinko Date

FOR ACCOUNTING USE ONLY

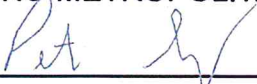
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ACCOUNT NO. 7295
FUND NO. 0001
SUBCLASS NO. 10000

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Acknowledgment of Agreement

The Fresno Metropolitan Flood Control District recognizes that it is not a party to, and has no rights or obligations under, the “COST SHARE AGREEMENT FOR CONSULTANT SERVICES RELATED TO LEGISLATIVE SUPPORT FOR BIG DRY CREEK RESERVOIR OPERATIONAL CHANGES” above, but acknowledges that agreement by its signature below.

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

By: 

Name: Peter Sanchez

Title: Interim General Manager-Secretary

Date: 05/19/2021