

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

This Agreement is entered into on this ____ day of _____ 2022, 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 efforts to add language to the United States Congress's 2022 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 previously agreed to share the cost for FID to hire Austin Ewell (Consultant) to assist with making key legislative contacts to gain legislative support for the reoperation of Big Dry Creek Reservoir, through a period not extending beyond December 31, 2021, and that agreement has now expired; and

WHEREAS, the Parties desire to continue sharing in the cost for FID to hire Consultant, retroactively to January 1, 2022, to continue to assist with gaining legislative support for the reoperation of Big Dry Creek Reservoir; and

The Parties and FMFCD therefore agree as follows:

- 1. Effective Date.** The "Effective Date" of this agreement is the date on which the last Party signs this Agreement, according to the dates set forth under each Party's signature on this Agreement.
- 2. Retention of Consultant by FID.** FID has retained the services of Consultant for the period of January 1, 2022, through December 31, 2022, to assist with making key legislative contacts to gain legislative support for the reoperation of Big Dry Creek Reservoir (Project).

- 3. Consultant's Compensation.** FID represents that the maximum compensation payable to Consultant under FID's retention agreement with Consultant is a flat fee of \$5,000 per month, which includes all services and all costs and expenses of Consultant, and Consultant is not entitled to any additional compensation for costs or expenses. The maximum compensation payable to Consultant under FID's retention agreement with Consultant is \$60,000 for the 12-month term of this Agreement.
- 4. Cost Sharing.** FID, Clovis, Fresno, and the County shall equally share in the cost of the Consultant for the Project, with each Party paying 25% of the cost of the Consultant for the Project.
- 5. Extension of Agreement.** The Parties agree that FID may enter into no more than three additional one-year retention agreements with Consultant, for the same services and the same compensation as under FID's current retention agreement with Consultant. So that the Parties may continue sharing costs, the term of this Agreement may be extended for no more than three additional one-year periods (that is, for calendar years 2023, 2024, and 2025) as provided in this section 5, coterminous with each additional one-year retention agreement between FID and Consultant.

 - A. If FID intends to enter into another one-year retention agreement with Consultant, then FID must, no later than 60 days before the first day of the next one-year extension period, provide written notice of that intention to the Authorized Representatives of the other Parties. This Agreement may then be extended for the next one-year extension period only upon written approval of all Parties, and written notice from FID to the other Parties that Consultant has agreed in writing to the next optional one-year extension, at least 30 days before the first day of the next one-year extension period.
 - B. Each Party hereby authorizes its Authorized Representative to sign such written approval on behalf of that Party. Nothing in this section 5 precludes the Authorized Representatives of the Parties from conferring earlier than 60 days before the first day of the next one-year extension period on whether FID will enter into another one-year retention agreement with Consultant and whether the Parties wish to extend this Agreement for the next one-year extension period.
 - C. The Parties understand and agree that any change to the services or compensation of the Consultant will require a timely amendment to this Agreement.
 - D. The Parties understand and agree that this Agreement may only be amended before it expires or terminates.
- 6. Invoices and Payment.** FID shall invoice Clovis, Fresno, and the County monthly at the addresses specified in Section 8 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 Project, except that the first invoice shall also include the cost of all services performed retroactive to January 1, 2022. Each invoice from FID to Clovis,

Fresno, or the County must include a copy of the invoice or invoices from Consultant to FID for the relevant period.

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 7 below. An invoice from FID to another Party that does not include the relevant invoice or invoices from Consultant is not “correctly completed” for purposes of this paragraph. Payments from Clovis, Fresno, and the County to FID under this Agreement are not contingent upon Consultant obtaining the desired result.

Alternately, upon receiving the first invoice from FID, or the first invoice in any one-year extension period under section 5 of this Agreement, each of Clovis, Fresno, and the County, at the respective sole discretion of each, may, within the 45-day period provided in the paragraph above, pay one lump sum of fifteen thousand dollars and zero cents (\$15,000.00) covering its share of the cost of the Consultant for the 12-month term of this Agreement, or the one-year extension period in which the payment is made. If this Agreement is terminated before the end of the 12-month term, or before the end of any one-year extension period, FID shall refund any unused amount to the Party that paid it, in a pro rata share based on the number of months remaining after the early termination of this Agreement.

The maximum compensation payable by Clovis, Fresno, or the County to FID under this Agreement is \$15,000 for the 12-month term of this Agreement, and \$15,000 for each one-year extension period that is authorized under section 5 of this Agreement.

7. **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 will negotiate such agreements in a timely fashion and in good faith.
8. **Notices.** The persons and their addresses having authority to give and receive notices, invoices, and payments provided for or permitted under this Agreement (“Authorized Representatives”) include the following:

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

For Fresno:
Brock Buche
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

For County:
Steve White
Director of Public Works and Planning
County of Fresno

155 Sunnyside Avenue
Clovis, CA 93611

2220 Tulare Street, 6th Floor
Fresno CA 93721

Any Party may change the information above by giving notice as provided in this Section 8.

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 business hours, then such delivery is deemed to be effective at the next beginning of a 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).

9. 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.

10. 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.

11. 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 all 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.
- 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]

2022 Cost Share Agreement – Legislative Support Services
Big Dry Creek Operational Changes
Austin Ewell

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: _____
Georgeanne A. White, City Manager

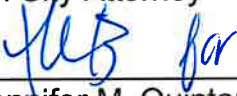
Brian Pacheco, Chairman of the Board
of Supervisors of the County of Fresno

Date: _____

Date: _____

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

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

By:  _____
Jennifer M. Quintanilla Date
Senior Deputy City Attorney 11/15/22

ATTEST:
Todd Stermer, CMC
City Clerk

By _____ Date _____
Deputy

By: _____ Date _____
Deputy

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: _____

Title: _____

Date: _____