

AGREEMENT
 BETWEEN THE DEPARTMENT OF WATER RESOURCES AND [CONTRACTOR]
 TO WAIVE THE PENDING LITIGATION CONTINGENCY FOR THE CONTRACT EXTENSION AMENDMENT

THIS AGREEMENT is made between the Department of Water Resources of the State of California ("DWR") and _____ ("Contractor") pursuant to the Implementing and Administrative Provisions ("Implementing Provisions") of Amendment No. _____ to Water Supply Contract for Continued Service and the Terms and Conditions Thereof ("Contract Extension Amendment"). As used in this Agreement, the term "Contract Extension Amendment" refers individually and collectively to each such amendment that has been executed between DWR and Contractor or between DWR and any other State Water Project ("SWP") Contractor as of the date of this Agreement.

RECITALS

- A. Pursuant to Paragraph 1(a)(ii) of the Implementing Provisions, if a legal action is filed challenging the validity of the Contract Extension Amendment in whole or in part ("Legal Action"), then the amendment will not take effect until a final judgment from a court of competent jurisdiction has been entered affirming its validity ("Final Judgment").
- B. However, pursuant to Paragraph 1(f) of the Implementing Provisions, during the pendency of any such Legal Action, if DWR and a minimum of 24 SWP Contractors with an aggregate maximum annual Table A amount exceeding 3,950,000 acre feet have executed or committed to execute the Contract Extension Amendment, then they may agree in writing to (1) waive any limitation barring the Contract Extension Amendment from taking effect until a Final Judgment has been entered, and (2) allow the Contract Extension Amendment to take effect as to such SWP Contractors, subject to any conditions as they may agree upon.
- C. On December 11, 2018, DWR filed a validation action in the Sacramento County Superior Court to confirm the legality and validity of the Contract Extension Amendment (*California Department of Water Resources v. All Persons Interested in the Matter of the State Water Project Water Supply Contract Amendments for Continued Service and the Terms and Conditions Thereof*, Case No. 34- 2018-0246183).
- D. In January 2019, two groups filed petitions for writ of mandate in the Sacramento County Superior Court challenging DWR's approval of the Contract Extension Amendment based on alleged non-compliance with the California Environmental Quality Act, Delta Reform Act and the public trust doctrine (*North Coast Rivers Alliance ("NCRA") v. Department of Water Resources*, Case No. 34-2019-80003047; *Planning and Conservation League ("PCL") v. California Department of Water Resources*, Case No. 34-2019-80003053).
- E. On April 22, 2022, the Sacramento County Superior Court entered judgments in favor of DWR in the validation action and two writ actions (collectively, "Contract Extension Lawsuits"). As of the date of this Agreement, five notices of appeal have been filed with

the Court of Appeal for the Third District from the judgments in the Contract Extension Lawsuits. As of the date of this Agreement, the appellate proceedings are pending, and no final appellate judgment has been entered in these proceedings.

- F. Pursuant to Paragraph 1(f) of the Implementing Provisions, DWR and Contractor desire to allow the Contract Extension Amendment to take effect before Final Judgments are entered in the Contract Extension Lawsuits.

NOW, THEREFORE, IT IS MUTUALLY AGREED that:

1. Pursuant to Paragraph 1(f)(1) of the implementing Provisions, DWR and Contractor agree to waive the limitation set forth in Paragraph 1(a)(ii) of the Implementing Provisions barring the Contract Extension Amendment from taking effect during the pendency of the Contract Extension Lawsuits and agree to allow the Contract Extension Amendment to take effect before Final Judgments have been entered.
2. If any part of the Contract Extension Amendment is determined in a Final Judgment to be invalid or unenforceable and if prior to the entry of such Final Judgment DWR has issued any form of indebtedness with maturity dates after December 31, 2035, in reliance on the effectiveness of the Contract Extension Amendment, then DWR and Contractor further agree:
 - (a) to waive the “no force and effect” provision in Paragraph 1(b) of the Implementing Provisions; and
 - (b) that all the remaining provisions of the Contract Extension Amendment shall remain in full force and effect to the extent consistent with such Final Judgment and DWR’s obligations to holders of indebtedness issued in reliance on the effectiveness of the Contract Extension Amendment.
3. If the Contract Extension Amendment is determined in a Final Judgment to be invalid or unenforceable in its entirety or to such extent that the Director of DWR determines that DWR will have insufficient revenue to meet its obligations related to the State Water Resources Development System, then Contractor hereby reaffirms its election to receive continued service pursuant to Article 4 of the Contractor’s Water Supply Contract for such time as any bonds issued prior to the date of Final Judgment with maturity dates beyond December 31, 2035, remain outstanding. This election is being made consistent with and in recognition of the election for continued service Contractor made in conjunction with the Contract Extension Amendment.
4. The Contract Extension Amendment shall take effect as to the parties to this Agreement on January 1, 2023 or the earliest date thereafter (“Contract Extension Amendment Effective Date”), provided that (i) DWR and 24 or more SWP Contractors with an aggregate maximum annual Table A amount exceeding 3,950,000 acre feet have executed the Contract Extension Amendment, and (ii) a minimum of 24 SWP Contractors that signed a Contract Extension Amendment have also signed an agreement identical in all material respects to this Agreement with DWR.

Approved as to Legal Form
and Sufficiency:

Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Director

Date

VENTURA COUNTY WATERSHED
PROTECTION DISTRICT

Signature

Title

Date