

**Amendment No. 5 to the
Cost Share Agreement for
Los Vaqueros Reservoir Expansion Project Planning**

The Cost Share Agreement for Los Vaqueros Reservoir Expansion Project Planning between Contra Costa Water District (CCWD); Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7); Alameda County Water District (ACWD); East Bay Municipal Utility District (EBMUD); Grassland Water District (GWD); San Francisco Public Utilities Commission (SFPUC); San Luis & Delta-Mendota Water Authority (SLDMWA); and Santa Clara Valley Water District (Valley Water) (collectively, “JPA Members”) and the Los Vaqueros Reservoir Joint Powers Authority (JPA)¹, dated April 30, 2019, and amended by Amendments Nos. 1, No. 2, No. 3, and No. 4, dated June 22, 2020, December 2, 2020, November 1, 2021, and December 27, 2022, respectively (referred to hereafter as the “Agreement”), shall hereby be amended by this amendment (“Amendment No. 5”). The Agreement, together with Amendment No. 1, No. 2, No. 3, No. 4, and this Amendment No. 5, may be referenced hereafter as the “Agreement as amended.”

RECITALS

WHEREAS, the Los Vaqueros Reservoir Joint Powers Authority and the JPA Members (collectively, “Parties”) entered into the Agreement to provide for the cost-sharing of the funding requirements for the planning of the Los Vaqueros Reservoir Expansion Project (“Project”); and

WHEREAS, pursuant to Sections 5 and 17 of the Agreement, the Parties amended the Agreement on June 22, 2020, December 2, 2020, November 1, 2021, and December 27, 2022, which amendments, among other modifications, collectively extended the term of the Agreement to the earlier of (i) the completion of the work contemplated therein, or (ii) June 30, 2023, unless the term is further modified consistent with Section 17 of the Agreement.

WHEREAS, the Parties wish to again amend the Agreement to: (1) further extend the term of the Agreement as provided for herein; (2) replace the Scope of Work and Budget for the activities funded by Amendment No. 4 with the revised Scope of Work and Budget for activities funded by this Amendment No. 5, attached and incorporated herein as Exhibits A-5 and B-5, respectively; (3) amend the cost and payment terms of the Agreement as provided herein; (4) supersede and functionally replace the Administrative Agreement, dated January 11, 2022, between CCWD and the JPA which provided for CCWD to serve as initial administrator of the JPA per Amendment No. 3; and (5) include an additional purpose in Section 1 of the Agreement and additional roles and responsibilities of certain Parties of Section 2 of the Agreement as provided herein;

NOW, THEREFORE, the Parties agree that the above recitals are incorporated in and made part of the Agreement, and, pursuant to Section 17 of the Agreement, do hereby amend the Agreement as follows:

¹ The JPA was added as a party to the Cost Share Agreement in Amendment No. 4 and was not a party to the original Agreement or Amendment Nos. 1 through 3. The JPA shall be subject to the terms of the Agreement, as previously amended and amended under this Amendment No. 5, as if it were a party to the original Agreement.

1. Section 1 (Purpose)

In addition to the purposes a through t as provided for in the Agreement as amended, the following two purposes shall be included in the Agreement as amended:

- u) Complete the transition of JPA administration and financial management from CCWD to the JPA.
- v) Fund JPA work pursuant to the Agreement as amended, consistent with the adopted Fiscal Year 2024 JPA budget.

As of the effective date of Amendment No. 5 to the Agreement, Purposes a, b, c, d, f, g, j, l, m, and o as provided for in the Agreement, have been achieved and do not require additional funding.

Work to achieve Purposes e, h, i, k, n, p, q, r, s, t, u, and v will be advanced under the Agreement as amended. Work completed by the Consultant Team, the JPA, and CCWD staff to achieve these purposes will be partially funded by this Amendment No. 5 to the Agreement.

A detailed revised Scope of Work and Budget for activities funded by this Amendment No. 5 are included in Exhibit A-5 and Exhibit B-5, respectively, which are attached hereto and incorporated herein as if fully set forth in this Amendment No. 5 to the Agreement.

2. Section 2 (Roles & Responsibilities)

In addition to the existing roles and responsibilities of the Parties as described in the Agreement, the following additional roles and responsibilities for certain Parties shall be included in the Agreement as amended.

2.1 Contra Costa Water District Responsibilities

As of the effective date of Amendment No. 5, CCWD Responsibilities b, e, g, j, k, s, u, and x, out of CCWD responsibilities a-hh, as provided for in the Agreement, have been achieved and do not require additional funding.

CCWD Responsibility aa shall be amended and replaced in its entirety with the following:

- aa) will inspect the Transfer Pipeline and conduct a hydraulic evaluation of the Contra Costa Canal between Pumping Plant No. 2 and No. 4 as required in support of the design of Pumping Plant No. 1.

CCWD Responsibilities shall be amended to include the following additional responsibilities:

- ii) assist, as needed, the JPA in the preparation of a loan application for submittal to the U.S. Environmental Protection Agency (U.S. EPA) as allowed for under the Water Infrastructure Finance and Innovation Act (WIFIA).
- jj) continue to assist the JPA with negotiating the contracts for administration of public benefits with California Department of Water Resources (DWR) and California

Department of Fish and Wildlife (CDFW).

- kk) provide presentations and technical information to support JPA Board and committee meetings, as needed.
- ll) support the JPA's preparation for meetings with elected officials, project stakeholders, media, and others and participate in these meetings and events, as requested by the JPA, acting through its Executive Director or their designee, to achieve the common Project objectives of CCWD and the JPA. Collaborate and coordinate in a timely manner with the JPA on outreach and messaging, including through the sharing of CCWD materials used in CCWD communications on the Project. CCWD and the JPA will coordinate at the appropriate management level to ensure clear and consistent messaging, particularly with respect to state and federal elected officials.
- mm) transition hosting of the JPA website and public communications support to the JPA.
- nn) upon request, provide technical support of JPA agreement development with state and federal agencies as appropriate.
- oo) compile monthly progress reports, in such format and to include such information as is mutually agreed upon by CCWD and JPA to enable the JPA, acting through its Executive Director or their designee, to ensure substantiation of CCWD's costs, for work performed by CCWD and CCWD's consultants and submit such reports to the JPA to support the draft and final monthly JPA Treasurer's Reports and other financial reports prepared by the JPA.
- pp) prepare Fiscal Year 2023 year-end financial statements, including final summary of contingency use and carryover funding available for FY24, and submit to the JPA to support Fiscal Year 2023 audit.
- qq) provide assistance to the JPA as required to complete full implementation of the Financial Transition Plan, by September 1, 2023.
- rr) upon request, assist the JPA with negotiating a final funding agreement with California Water Commission, and a construction funding agreement with Bureau of Reclamation.

2.9 Los Vaqueros Reservoir Joint Powers Authority Responsibilities

JPA Responsibilities a-f as described in Amendment No. 4 to the Agreement shall remain unmodified and the following additional responsibilities shall be included in the Agreement as amended:

- g) negotiate and execute the contracts for administration of public benefits with California Department of Water Resources (DWR) and California Department of Fish and Wildlife (CDFW).
- h) negotiate and execute a final funding agreement with California Water Commission.

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- i) negotiate a construction funding agreement with Bureau of Reclamation.
- j) negotiate, for and on behalf of all JPA Members, all agreements with and between the EBMUD and CCWD that are required under this Agreement as amended and the JPA Agreement, including, but not limited to, the Service Agreement.
- k) coordinate and collaborate with CCWD in the negotiations over items (g) and (j).
- l) prepare for and participate in meetings with elected officials, project stakeholders, media, and others as appropriate.
- m) collaborate and coordinate in a timely manner with CCWD on outreach and messaging, including the sharing of JPA materials used in JPA communications on the Project. JPA and CCWD will coordinate at the appropriate management level to ensure clear and consistent messaging, particularly with respect to state and federal elected officials.
- n) host and maintain the JPA website.
- o) develop public information such as Project factsheets, presentation slides, and other materials as required.
- p) administer state and federal agreements as required to advance development of the Project.
- q) manage the consultant team procured and funded by the JPA.
- r) prepare draft and final monthly JPA Treasurer's Reports.
- s) review and provide input on monthly progress reports ~~invoices~~ for work performed by CCWD and CCWD's consultants.
- t) develop policies and procedures for accounting and project controls.

3. Section 3 (Cost & Payment)

Section 3 shall be amended such that the following terms 3(a) through 3(d) inclusive shall supersede and replace Section 3, as amended in Amendment No. 4, in its entirety. The payment is intended to provide sufficient funding for advancing the completion of the additional Scope of Work as provided for in Exhibit A-5 and the Budget provided for in Exhibit B-5. As provided for in Exhibits A-5 and B-5, CCWD's labor and services represent approximately 75 percent of the total scope of work and budget associated with this Amendment No. 5.

- a) Total costs to fund work hereunder are identified in Exhibit B-5. The JPA Members' collective total share of the cost, for work funded through this Amendment No.5, shall not exceed \$8,673,000 ("Total Cost Share").
- b) Notwithstanding anything to the contrary in the Agreement as amended, the JPA Members, excluding GWD, shall be responsible for providing the Total Cost Share in accordance with Exhibit B-5. In no event shall any Party's individual share of the Total Cost Share exceed

\$1,239,000, excluding GWD. Timing and quantity of payment for each Party shall not vary from what is set forth in Exhibit B-5 unless the Parties voluntarily agree to modifications pursuant to Sections 3(d)(vi) and 17 of the Agreement. The Total Cost Share described herein is exclusive of any joint defense or litigation cost share amounts which may be determined in a subsequent written agreement entered into pursuant to Section 9 of the Agreement. CCWD will cooperate with any reasonable request from the JPA, acting through its Executive Director or their designee, for review of cost information that supports amounts to be paid to CCWD under the Agreement, as amended.

c) City and County of San Francisco – Specific Terms

- (i) Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. The SFPUC's payments as a JPA Member under the Agreement as amended are subject to and contingent upon the budget and fiscal provisions of the Charter of the City and County of San Francisco (City). Charges will accrue only after prior written authorization certified by the City's Controller, and the amount of the SFPUC's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. The SFPUC's financial obligations under this Agreement will terminate without penalty, liability, or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the SFPUC's financial obligations under this Agreement will terminate, without penalty, liability or expense of any kind to City at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. As to the SFPUC only, this Section 3(c)(i) controls against any conflicting provision of the Agreement as amended.
 - (ii) Guaranteed Maximum Costs. The SFPUC's payment obligation to the JPA cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to the JPA under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and, if necessary, the Parties having modified this Agreement as provided in Section 17 of this Agreement.
 - (iii) Prohibition on Use of Public Funds for Political Activity. In performing work under this Agreement as amended, the recipient of City funds shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement as amended from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The recipient of City funds is subject to the enforcement and penalty provisions in Chapter 12G.
- d) The JPA Members, excluding GWD, will split the Total Cost Share equally. The JPA will invoice each of the JPA Members for their individual shares of the Total Cost Share detailed in Exhibit B-5.

- (i) The JPA will issue two invoices to JPA Members according to the schedule below:
 - 1. September 1, 2023
 - 2. January 5, 2024
- (ii) Payment from the JPA Members shall be remitted within sixty (60) days after invoice submittal.
- (iii) Funds contributed by the JPA Members shall be committed by the JPA and expended only for work required to further the purposes of the Agreement as amended.
- (iv) By electronic transfer, CCWD will, within 10 days of the effective date of this Agreement as amended, transfer \$1,425,000 to the JPA to support contracts administered by the JPA.
- (v) The JPA will submit two progress payments of \$2,913,000 each to CCWD to fund CCWD staff and CCWD managed contracts according to schedule below:
 - 1. November 1, 2023
 - 2. March 9, 2024
- (vi) If one or more JPA Members withdraw from the Agreement such that the JPA Members' individual cost shares change substantially, or the individual cost shares exceed the maximum financial responsibility for each JPA Member (determined herein as \$1,239,000), each remaining JPA Member, at its sole discretion consistent with Section 3(b) of this Agreement, shall determine whether to withdraw from the Agreement. The JPA Members who do not choose to withdraw will work together within the JPA to develop an amendment that substantially conforms to this Agreement. If no mutually agreeable amendment can be developed, the remaining JPA Members will terminate this Agreement.
- (vii) If a new JPA Member is added, consistent with Section 12 of this Agreement, each subsequent invoice for each JPA Member will be adjusted to reflect the cost share of the new JPA Member and the total number of JPA Members. The adjustments contemplated herein shall reflect any "catch-up" contribution required of the newly added JPA Member in addition to the contributions to be made on a prospective basis. "Catch-up" contributions shall be calculated based on the then total value of the of the JPA Members' individual monetary shares paid pursuant to the Agreement as amended prior to the date of the new JPA Member's signing of the Agreement.
- (viii) If funds remain after work under this Agreement as amended is completed, each JPA Member will determine whether its pro-rata share of the remaining funds shall be returned or contributed to future work consistent with Section 7 of the Agreement. Each JPA Member shall advise the JPA of its determination within sixty (60) days of receiving notice from the JPA of the completion of the work, or the remaining funds shall automatically be contributed towards future work.

- (ix) In-kind services may include labor costs and overhead costs for staff who are providing in-kind services for Project activities under this Agreement, including but not limited to data collection, document review, communications, stakeholder outreach, management of third-party consultant contracts, and attending Project meetings. In-kind services will contribute toward the non-State funding match required by the Early Funding Agreement, as it may be amended from time to time. In-kind services, pursuant to Section 2.7(d) of this Agreement, are contributed at the discretion of each JPA Member with no minimum or maximum in-kind contribution limits.
- (x) A portion of the funding provided to CCWD includes contingency funding as shown in Exhibit C-5. CCWD and the JPA will notify each other whenever contingency funds are used. CCWD and the JPA will manage their funds, including contingencies, consistent with their respective board policies. Interagency transfers of contingency may be required depending on the needs of CCWD and the JPA.
- (xi) CCWD will contribute \$294,000 of in-kind services.

4. Section 5 (Term)

Section 5 shall be amended such that the following term shall modify the corresponding term in the Agreement as amended:

The Agreement as amended shall terminate on the earliest occurring of the following events:

- (i) completion of the work contemplated herein; or (ii) June 30, 2024, unless the Term is further modified consistent with Section 17 of this Agreement.

Effective date of Amendment No. 5.

Amendment No. 5, including the financial contribution provisions herein, shall be effective as of the date of signature by CCWD and the JPA, but no earlier than July 1, 2023, and that effective date shall apply retroactively to each subsequent party signatory.

Except as amended by this Amendment No. 5, the Agreement as previously amended shall continue in full force and effect. This Amendment is not intended to have any precedential or preemptive effect on any subsequent agreement between CCWD and the JPA. This Amendment No. 5 may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute Amendment No. 5. The parties agree to the use of electronic signatures.

[Signature Page on Next Page]

HANDOUT: AGENDA 4.1.

Ed Stevenson, General Manager
Alameda County Water District

Date

Rachel Murphy, General Manager
Contra Costa Water District

Date

Clifford C. Chan, General Manager
East Bay Municipal Utility District

Date

Ric Ortega, General Manager
Grassland Water District

Date

Taryn Ravazzini, Executive Director
Los Vaqueros Reservoir Joint Powers Authority

Date

Dennis J. Herrera, General Manager
San Francisco Public Utilities Commission

Date

Approved as to Form
Deputy City Attorney, San Francisco

Date

Federico Barajas, Executive Director
San Luis & Delta-Mendota Water Authority

Date

Rick L. Callender, Esq., Chief Executive Officer
Santa Clara Valley Water District

Date

Valerie Pryor, General Manager
Zone 7 Water Agency

Date

Exhibit A-5
Amendment No. 5 Scope of Work²

The following tasks describe the work efforts by Contra Costa Water District (CCWD), the JPA, and the JPA Members under the Amendment No. 5 to the Agreement for the purpose of advancing the Phase 2 Los Vaqueros Reservoir Expansion (LVE) Project. CCWD is the lead agency for permitting, water rights, and design of CCWD constructed and operated facilities for the LVE Project as defined in the JPA Agreement. CCWD will be supported by the consultant and legal services team that are under contract to CCWD and managed by CCWD, and the JPA will be supported by consultants under contract to the JPA and managed by the JPA, acting through its Executive Director or their designee. References to joint work efforts by Reclamation are described as appropriate but are not intended to imply that Reclamation is a party to the Agreement as amended.

Task 1 Project Management

Task 1.1 Funding Agreement Administration

CCWD will continue to administer the Early Funding Agreement executed by CCWD and the California Water Commission (CWC), including meeting reporting and invoicing requirements of the Early Funding Agreement, coordinating with CWC staff as needed to respond to questions and data requests, and managing cost commitments. The Early Funding Agreement will terminate December 31, 2023.

CCWD will continue to administer the Assistance Agreement executed by CCWD and Reclamation, including meeting reporting and invoicing requirements of the Assistance Agreement, and coordination with Reclamation staff as needed to respond to questions, data requests, or other inquiries. The Assistance Agreement will terminate December 31, 2023.

CCWD will compile and submit to the JPA monthly progress reports concerning invoices of work performed by CCWD, including documentation substantiating such work and work performed by CCWD's consultants, to the JPA. CCWD will provide financial statements and other supporting documentation as requested by the JPA, acting through its Executive Director or their designee.

The JPA will be responsible for administering any subsequent state and federal funding agreements.

Deliverables:

- Progress reports ~~invoices~~ and associated backup documentation
- Monthly & Quarterly Progress Reports (for CWC and Reclamation)

² See Exhibit C-5 for a breakdown of the use of funds budgeted for JPA services, CCWD services, and CCWD labor with respect to the scope of work covered by Amendment No. 5.

Task 1.2 Project Management Activities

This task includes project management activities performed by CCWD, the JPA and its Members, consultants, and other agencies related to, but not limited to, managing staff, invoicing, budgeting, scheduling, procuring consultants and technical services, reviewing submittals, holding meetings and conference calls, and coordinating and reporting project activities that are within the objectives of the Project and of this Agreement.

Deliverables:

- ☐ Summary updates on project management activities in Monthly Progress Reports

Task 1.3 Joint Powers Authority Formation

This task has been completed.

Task 1.4 JPA Administration

CCWD has transitioned its responsibilities as the Interim Administrator of the JPA to the JPA Executive Director pursuant to the Agreement as amended. The JPA will continue with necessary actions related to its administration, including conducting Board of Directors' and committee meetings and procurement of professional and other services as described herein. The JPA was invited to apply for a loan under the U.S. EPA WIFIA Loan program, and the JPA will take all actions necessary to procure that loan, which will include preparation and submittal of an application, and obtaining required credit rating(s), among other necessary tasks.

The JPA will host and maintain the JPA website and will be responsible for development of all public communications related to the Project.

The JPA will work with the JPA Members to develop all agreements that the JPA will enter into including but not limited to Interim Funding Agreement (if required), Service Agreement between the JPA and the JPA Members, state and federal funding agreements, contracts to procure services, contracts for administration of public benefits with CDFW and DWR, design and construction agreements with CCWD and EBMUD, facilities usage agreements with CCWD and EBMUD, operations and maintenance agreements with CCWD and EBMUD.

Deliverables:

- ☐ Service Agreement
- ☐ Continued funding through Multi-Party Cost Share Agreement amendments
- ☐ WIFIA Loan Application
- ☐ JPA Website hosting and maintenance
- ☐ Public information materials
- ☐ Agreements between JPA and State/Federal Agencies
 - Contract for Administration of Public Benefits
 - Construction Funding Agreement with Reclamation
 - Final Funding Agreement with CWC
- ☐ Agreements between the JPA and CCWD
 - Facilities Usage Agreement

- Design and Construction Agreement
- Operations and Maintenance Agreement
- Agreements between the JPA and EBMUD
 - Facilities Usage Agreement
 - Design and Construction Agreement
 - Operations and Maintenance Agreement

Task 2 Environmental Planning

Task 2.1 Modeling

CCWD will develop new or modify existing modeling tools to support the JPA in establishing operational priorities and the allocation of facility capacity and anticipated benefits to JPA Members for incorporation into the Service Agreement. Refine the model to track terms and requirements of various water rights and permits. Refine the Los Vaqueros daily operations model to accommodate JPA operations, which may serve as a tracking tool in the future for permit reporting, billing, scheduling deliveries, etc.

Deliverables:

- Revised CalSim Model (ongoing)
- Summaries of modeling results (ongoing)

Task 2.2 Public Outreach

CCWD will provide technical assistance to support the JPA's outreach activities to educate and inform the media, elected officials, JPA Member ratepayers, communities in the Los Vaqueros area, environmental organizations, and regional and statewide interests about the purpose, objectives, and results of the technical studies. CCWD and the JPA will continue to coordinate at the appropriate management level to ensure clear and consistent messaging, particularly with respect to state and federal elected officials. JPA will, at least monthly, provide to JPA Members information regarding outreach activities planned to occur over the following 4-6 weeks for information and to allow JPA Members to coordinate such activities in advance. JPA, [acting through its Executive Director or their designee](#), and CCWD will, on at least a monthly basis, meet to coordinate and collaborate on key messages for planned/upcoming outreach activities.

CCWD will continue to post materials to the CCWD hosted project website at ccwater.com. The JPA will be responsible for posting materials to the JPA website and responsible for responding to inquiries received through the website at losvaquerosjpa.com.

Deliverables:

- Stakeholder and public involvement program (ongoing)
- Documentation of outreach activities (as required)

Task 2.3 Environmental Document and Technical Studies

The U.S. Department of the Interior, Bureau of Reclamation, Region 10 – California-Great Basin (Reclamation) is the lead agency under the National Environmental Policy Act (NEPA) for preparation of the EIS and, in conjunction with CCWD, the lead agency under CEQA. Reclamation and CCWD

previously prepared a joint Final EIS/EIR in March 2010 and CCWD completed construction of the first phase of reservoir expansion from 100,000 acre-feet (100 TAF) to 160 TAF in 2012. Reclamation and CCWD previously prepared a joint Supplement to the Final EIS/EIR document to support the second phase of reservoir expansion up to 275 TAF.

The development of the Supplement to the Final EIS/EIR, including the completion of the necessary technical studies in support of this effort culminating with issuance and certification of the Supplement, pursuant to CCWD Resolution 21-006, by CCWD as the lead agency. The studies and data produced adhered to the federal planning and NEPA guidelines, CEQA guidelines, and WSIP guidance. Technical studies were conducted in accordance with the alternatives identified in the Draft Supplement.

If there are project changes proposed, these changes would need to adhere to the CCWD Board Principles and conditions of CCWD Resolutions 03-24, 03-25, and 04-11, as applicable, and may require additional environmental surveys (i.e., aquatic resources, wildlife/botanical, etc.), documentation (i.e., CEQA/NEPA addendum/memo to file/further action by CCWD as lead agency), and permitting efforts (i.e., application/agreement amendments).

All agency meetings and technical workgroup meetings required to support the environmental document and studies are described in Task 1.2 and Task 2.2.

(2.3.1) Post-Draft Supplement Technical Studies and Surveys

This task has been completed.

(2.3.2) Transfer-Bethany Pipeline Alternative Location Evaluation

This task has been completed.

(2.3.3) Final Supplement to the Final EIS/EIR

This task has been completed.

(2.3.4) CEQA Findings and Mitigation Monitoring and Reporting Plan

This task has been completed.

(2.3.5) Record of Decision

It is anticipated that Reclamation will issue a Record of Decision on the Project during the term of this Amendment. CCWD and the JPA will provide appropriate support to Reclamation with any necessary reporting, public meetings, briefings, white papers, and/or presentations.

Deliverables:

- ☐ Record of Decision

Task 2.4 Regulatory Permitting

CCWD is the permit holder and will prepare documentation of environmental regulatory compliance

including the Clean Water Act (CWA) Section 404(b)(1), CWA Section 401, the Federal Endangered Species Act (Section 7), the California Endangered Species Act, Section 1602 of the California Fish and Game Code, the National Historic Preservation Act (NHPA Section 106), and the Fish and Wildlife Coordination Act (FWCA). When possible or beneficial, obtain amendments to existing permits and excess compensation land acquired/managed during the Phase 1 expansion. If not possible to amend existing permits, seek new permits. Coordinate with regulatory agencies to confirm when amendments will be appropriate. In support of this task, several key work efforts (described below) will be completed.

CCWD and its consultant and legal team will conduct reconnaissance-level biological field surveys of any new project areas (if any) to identify the potential for the presence of sensitive biological resources. Conduct a desktop analysis including a database search of the California Natural Diversity Data Base (CNDDB), California Native Plants Society's Inventory of Rare and Endangered Plants, USFWS species lists, and NMFS species lists in order to determine the potential occurrence of special-status plants, animals, and vegetation communities. Conduct site-specific biotic assessments to identify biological resources that are present or have a high likelihood to occur in the study area, and to assess the likely impacts associated with construction and/or long-term operations of the proposed project on biological resources. The results of the reconnaissance survey and analysis will be used to inform the regulatory permitting documents, and resource agency review.

CCWD and its consultant and legal team will prepare the regulatory permit applications for the proposed project. Attend meetings with regulatory agencies. Where pertinent to the Project's needs, CCWD will include [the a JPA representative](#) in such meetings. Develop supporting technical reports, as needed, to support preparation of proposed permit applications. Permit applications and supporting documents to be prepared in support of the project may include: Biological Assessment for Federal Endangered Species Act compliance and Magnuson Stevens Fisheries Conservation and Management Act compliance; Clean Water Act Section 404/Section 10 Individual Permit Application; Clean Water Act Section 401 Clean Water Act Water Quality Certification Application; California Fish and Game Code Section 1602 Streambed Alteration Agreement Application; Section 2081 California Endangered Species Act Incidental Take Permit Application; Fish and Wildlife Coordination Act Report; National Historic Preservation Act Section 106 compliance; and Aquatic Resources Delineation.

Deliverables:

- ☐ Rare plant surveys and report of results (completed)
- ☐ Wetland delineation and mapping, report of results (completed)
- ☐ Administrative Draft Supplement to the Final EIS/EIR (completed)
- ☐ Final Supplement to the Final EIS/EIR (completed)
- ☐ Draft CEQA Findings and MMRP (completed)
- ☐ Final CEQA Findings and MMRP (completed)
- ☐ Permit applications and supporting technical reports, as applicable (in progress)

Task 2.5 Water Rights Permitting

CCWD will coordinate with Reclamation, the Department of Water Resources (DWR), JPA Members, and the State Water Resources Control Board (State Water Board) regarding changes to existing water rights. CCWD and its consultant and legal team will prepare necessary petitions for change for CCWD's water rights permits and will assist Reclamation, DWR, and JPA Members (as requested) with preparation of additional change petitions, as required and appropriate. CCWD and its consultant and

legal team will file necessary CCWD water rights petitions with the State Water Board, assist State Water Board staff with drafting orders and permit amendments as required, respond to any protests that may be filed and seek resolution of those protests, prepare for and participate in hearings as required.

CCWD will continue to assist SPFUC to secure a new source of water to store in the Project.

Deliverables:

- ☐ Change petitions for CCWD's Los Vaqueros water right (in progress)
- ☐ Change petitions for Reclamation's water rights (in progress)
- ☐ Change petition(s) for DWR's water rights (in progress)
- ☐ Change petition(s) for other water rights, as required

Task 2.6 Compensatory Mitigation

CCWD will identify potential mitigation lands as needed for Task 2.4. Determine preliminary appraisal value of potential mitigation lands. Acquire options to acquire mitigation lands with the concurrence of the JPA.

Deliverables:

- ☐ Identification and preliminary appraisal of potential mitigation sites

Task 2.7 Final Award Hearing Requirements

A series of agreements will be needed to meet the final award hearing requirements of the California Water Commission. Progress on a number of these agreements will commence during the term of this amendment. The agreements necessary to proceed to the final award hearing include but are not limited to: operations coordination agreements between CCWD and Reclamation and between CCWD and the Department of Water Resources; contracts for administration of public benefits between the JPA and DWR, and between the JPA and CDFW; an agreement between CCWD or the JPA and DWR for the tie-in of the Transfer-Bethany Pipeline to the California Aqueduct; a Backstop Water Service Agreement between CCWD and EBMUD (pending EBMUD's determination to proceed with such an agreement); an agreement between CCWD and the JPA for design and construction of Project facilities; an agreement between EBMUD and the JPA for design and construction of Project facilities.

Deliverables:

- ☐ Operations coordination agreement(s) between CCWD and Reclamation and between CCWD and DWR (in progress)
- ☐ Cost-share agreement with Reclamation for pre-construction activities (completed)
- ☐ Agreement between JPA or CCWD and DWR for the tie-in of the Transfer-Bethany Pipeline to the California Aqueduct (in progress)
- ☐ MOU between CCWD and EBMUD for Backstop Water Agreement study (completed)
- ☐ Backstop Water Service Agreement between CCWD, EBMUD, and JPA (pending EBMUD's determination to proceed with such an agreement)

Task 3 Engineering Feasibility

Task 3.1 Financial Evaluation

The JPA will perform a financial evaluation that will assess the costs and merits of the Project. ~~Clean Energy Capital, the LVE Project financial advisor under contract to the JPA,~~ will further develop the Microsoft Excel-based Proforma Financial Model for the Project that incorporates water pricing options and integration with the CalSim model; hold stakeholder meetings and workshops; collect and review stakeholder and local partner comments and inputs to the model; refine model as additional information arises that may affect operations, water pricing, or other financial components of the Project. ~~Clean Energy Capital~~ The JPA will work directly with JPA Members, as needed, to support each agency's understanding and familiarity with the financial evaluation.

~~Clean Energy Capital~~ The JPA will also create a Plan of Finance describing the proposed financing structure and assumptions for financing the Project. The Plan of Finance will take into consideration appropriate debt structures, timing, impact on rates, budgeting, credit ratings, tax laws, availability of grants and other State and Federal funding, JPA Members that may choose to pay upfront in-lieu of participating in JPA financing, and assessment of capital market conditions. Evaluate the funding capabilities of a JPA and associated contractual requirements for partners receiving and paying for services.

Deliverables:

- ☐ Updated Proforma Financial Model (ongoing)
- ☐ Further support for evaluation of Refined Usage Fees (completed)
- ☐ Plan of Finance (in progress)

Task 3.2 Federal Feasibility Report

The Final Federal Feasibility Report was completed in 2020 and was submitted to Congress on August 11, 2020. The Secretary of the Interior and/or Congress may continue to evaluate federal participation in the Project throughout the term of this Amendment. CCWD, with the support of and input from the JPA, acting through its Executive Director or their designee, and JPA Members, will continue to be the lead with securing Reclamation approvals for federal permits and operational agreements.

Additional work may be necessary to secure Congressional budget appropriations for construction activities. CCWD and the JPA, acting through its Executive Director or their designee, will also provide support to Reclamation on any post- feasibility report requirements as needed. The JPA, in collaboration and coordination with CCWD, will be the lead in negotiating a federal construction funding agreement with Reclamation and other related agreements with Reclamation as necessary.

Deliverables:

- ☐ Final Federal Feasibility Study (completed)
- ☐ Updated fact sheets for meetings with elected officials (in progress)
- ☐ Updated federal funding and budget requests (in progress)
- ☐ Post-feasibility report support (in progress)

Task 3.3 Design***(3.3.1) Pumping Plant No. 1 Replacement***

Preliminary design technical evaluations were completed by CCWD as part of CCWD's Canal Replacement Project. Additional design development and evaluations must be completed by CCWD in support of permitting and developing inter-agency agreements, including field work, site facility layouts, and development of electrical design sufficient for coordination with the Western Area Power Administration (WAPA).

Deliverables:

- ☐ Pumping Plant No. 1 Preliminary Design Report (completed)
- ☐ Conceptual Facility Layout Drawings (completed)
- ☐ Electrical System Improvements Conceptual Plans (completed)
- ☐ Geotechnical Investigation Report (completed)
- ☐ 30%, 60%, 90% and Final Plans, Specifications (in progress)
- ☐ 30% Construction cost estimates (completed)
- ☐ Final Design (in progress)
- ☐ Agreement with WAPA

(3.3.2) Los Vaqueros Dam

This task includes work efforts related to design of the Los Vaqueros Dam expansion to gain Division of Safety of Dams (DSOD) authorization to construct. Design-related tasks may include, but are not limited to, reporting, investigations, testing, analysis, and surveys; geotechnical investigations and reporting; stability and deformation analysis; design of earthquake ground motions and parameters, spillway, new high-level outlet, inlet/outlet tunnel modifications and dam instrumentation; constructability review, DSOD meetings and correspondence; and design of site restoration for the core borrow area. This task includes meetings with a Technical Review Board for independent review of the dam consultant's work in accordance with DSOD guidelines.

Deliverables:

- ☐ LV Dam Drawings and Specifications 50% (completed)
- ☐ LV Dam Drawings and Specifications 90% (completed)
- ☐ LV Cost Estimate/Schedule 50% (completed)
- ☐ Draft Basis of Design Report (completed)
- ☐ Geotechnical Data Report (completed)
- ☐ LV Dam Risk Assessment (completed)
- ☐ Dam dewatering plan (completed)
- ☐ Constructability Review Comments and Response Matrix (completed)
- ☐ LV Dam Drawings and Specifications 100%
- ☐ LV Cost Estimate/Schedule 100%

(3.3.3) Transfer-Bethany Pipeline

CCWD will continue pipeline alignment evaluations resulting from continued coordination with local resource and transportation agencies. CCWD will work with Contra Costa County Public Works and the Contra Costa Transportation Authority and their ongoing regional transportation planning for the Vasco Road widening and the State Route 239 Connector and will evaluate alignment adjustments as needed. CCWD will work with resource agencies to evaluate implications of alignment modifications and construction methods and associated mitigation and land needs along the alignment south of Vasco Road in support of coordination with the East Contra Costa Habitat Conservation Plan and the County. CCWD will coordinate with the Department of Water Resources to review and define design criteria and to develop designs of the turn-in to the California Aqueduct and will review available geotechnical information and define pipeline corridor within State owned lands. A final pipeline alignment and land acquisition corridor will be defined. CCWD will prepare a geotechnical work plan and initial assessment of land acquisition needs.

Topographic survey will be completed with up-to-date aerial photography. CCWD will work with landowners and secure access rights to conduct field investigations, including geotechnical investigations, cathodic protection surveys and environmental surveys, as needed. Preliminary design of the pipeline and turn-in will be developed, including plan and profile drawings, hydraulic analysis, pipeline material evaluation, surge analysis and preparation of preliminary design construction schedule and cost estimate. A risk assessment will be conducted, and a risk register developed that will be maintained through project implementation. Prepare plats and legal descriptions for temporary and permanent land acquisition, conduct property appraisals, initiate negotiations with landowners, and begin procurement of pipeline rights-of-way.

Deliverables:

- ☐ Alignment Adjustment Evaluations Tech Memo (in progress)
- ☐ Transfer-Bethany Pipeline Design Criteria Tech Memo
- ☐ Transfer-Bethany Pipeline Preliminary Design Report
- ☐ Topographic Survey
- ☐ Geotechnical Work Plan
- ☐ Assessment of Pipeline Land Acquisition Needs (in progress)
- ☐ Draft and Final Geotechnical Data Report
- ☐ Title and Appraisal Reports

(3.3.4) Operation and Reliability Assessment

This task has been completed.

(3.3.5) Recreation Facilities

This task has been completed.

(3.3.6) Existing Facilities Inspections and Assessments

This task has been completed.

Task 3.4 Capital Project Management Support

CCWD has competitively procured a consultant to provide Capital Project Management Support Services to conduct a range of risk and technical project activities, including risk assessment and participation in the risk management team, schedule control and optimization, deliverable tracking, project controls and quality management, and resource and budget projections. CCWD will work in coordination with the JPA and the JPA's Program Management consultant to provide updates on ongoing activities led by CCWD for overall LVE Project progress tracking. [Those updates may be included in the monthly progress reports described under Task 1.1, above.](#)

Deliverables:

- ☐ Risk Management Plan
- ☐ Implementation Phase Risk Assessment Report
- ☐ Evaluation of the need for alternative water supply during dam construction

Exhibit B-5
Budget and Cost Share

The budget for Amendment No. 5 to the Agreement covers three major tasks: project management, environmental planning, and engineering feasibility. The total budget includes projected expenditures for legal and consulting services and CCWD labor. The total cost for the scope of work listed in Exhibit A-5 that is covered under this Amendment No.5 is \$19,073,000, as shown in Table 1 below.

Table 1. Budget of Scope of Work

	Original MPA Budget	Amendment No. 2	Amendment No.3	Amendment No. 4	Amendment No. 5	Total
Project Management	\$1,090,600	\$2,302,400	\$1,460,200	\$1,768,000	\$5,374,000 ³	\$11,995,200
Environmental Planning	\$3,777,400	\$5,368,967	\$4,816,429	\$4,462,000	\$3,171,000	\$21,595,796
Engineering Feasibility	\$6,755,400	\$10,161,300	\$13,467,940	\$6,306,000	\$8,352,000	\$45,042,640
Contingency		*	\$987,228	\$714,000	\$2,176,000	\$3887,228
Total	\$11,623,400	\$17,832,667	\$20,731,798	\$13,250,000	\$19,073,000	\$82,510,865

*\$300,000 was assumed as contingency in Amendment No. 2 but was included in the Project Management Task

The total cost to complete the scope of work is \$19,073,000 and will be paid through a combination of reimbursement from Reclamation, reimbursement from the California Water Commission (CWC), and contributions from the JPA Members. To calculate the amount owed by JPA Members, the total cost is reduced by reimbursements from the CWC and Reclamation and the projected carryover of unspent funds from the Agreement as amended. The costs remaining after accounting for contributions from CWC, Reclamation, and carryover funding is \$8,673,000 as shown in Table 2. This is equal to the Total Cost share defined in Section 3(a) of the Agreement as amended and will be split equally among JPA Members, excluding Grassland Water District and the JPA. Two invoices are proposed over the term of the Agreement as amended for JPA Members.

Table 2. Cost to be Paid by JPA Members, excluding GWD

Net Costs for term covered by Amendment No. 5 to Multi-party Agreement (July 2023 – June 2024)	
	Amount
Total Projected Costs	\$19,073,000
less Reclamation reimbursement	-\$2,100,000
less projected carryover of unspent funds from Amendment No. 4	-\$6,300,000
less projected CWC reimbursement	-\$2,000,000
Total Remaining Costs	\$8,673,000

³ See *again* Exhibit C-5 for a breakdown of the use of funds budgeted for JPA services, CCWD services, and CCWD labor for the scope of work covered by Amendment No. 5.

Table 3 shows the invoice schedule and the total costs per agency. For purposes of calculating the amount to be invoiced, the “total number of agencies participating” is equal to the total number of parties signatory to the Amendment No. 5 (including CCWD) but excluding Grassland Water District and the JPA and further excluding any signatory party which has completed its withdrawal from the Agreement prior to the time for payment.

Table 3. Cost per Agency and Invoice Schedule for JPA Members

		Invoice #1	Invoice #2
	Total Cost Per Agency	September 2023	January 2024
7 Agencies Participate	\$1,239,000	\$619,500	\$619,500

Table 4 shows the timing and amount of payment from the JPA to CCWD for CCWD’s labor and services managed by CCWD. The total payment was calculated as the remainder of funding required to fund CCWD’s services and labor after considering state, federal, and carryover funding at CCWD. Two progress payments to CCWD are required after the JPA collects funds from the JPA Members.

Table 4. JPA Progress Payments to CCWD

	Payment #1	Payment #2
Total FY24 Payment to CCWD	November 1, 2023	March 9, 2024
\$5,826,000	2,913,000	2,913,000

Exhibit C-5
Project Budget Including CCWD/JPA Transfers and Use of Funds

	<u>CCWD</u>	<u>JPA</u>	<u>Total</u>
A. Sources of Funds			
State	\$2,000,000	\$0	\$2,000,000
Federal	\$2,100,000	\$0	\$2,100,000
Local	\$0	\$8,673,000	\$8,673,000
Carryover from FY23	\$6,300,000	\$0	\$6,300,000
Total	\$10,400,000	\$8,673,000	\$19,073,000
B. InterAgency Transfers			
CCWD Transfer to JPA (Fund 60 Transfer)	-\$1,425,000	\$1,425,000	\$0
JPA Progress Payments to CCWD	\$5,826,000	-\$5,826,000	\$0
Total	\$4,401,000	-\$4,401,000	\$0
C. Sources of Funds adjusted for InterAgency Transfers	\$14,801,000	\$4,272,000	\$19,073,000
D. Uses of Funds			
JPA Services	\$0	\$3,651,000	\$3,651,000
CCWD Services	\$9,144,000	\$0	\$9,144,000
JPA and CCWD Services Contingency	17% \$1,555,000	\$621,000	\$2,176,000
CCWD Labor	\$4,102,000	\$0	\$4,102,000
Total	\$14,801,000	\$4,272,000	\$19,073,000