

July 12, 2018

To: Board of Directors
From: Frances Mizuno, Interim Executive Director
Subject: Agreement for Joint Funding for Engineering Services- Coordinated Operations Agreement Review

Recommendation

Water Resources Committee to recommend to the Board of Directors authorization to execute Agreement for Joint Funding for Engineering Services with Westlands Water District for payment of consultant engineering services for the Bureau of Reclamation to perform Coordinated Operations Agreement modeling support for an amount of \$60,000 and further recommend that the \$60,000 be expended for the Technical Services Contingency budget of \$550,000.

Background

The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) are currently engaged in the process of reviewing the Coordinated Operations Agreement (COA). Reclamation had previously entered into agreements with MBK Engineers for modeling work related to the COA to assist in the review process. Those previous agreements expired and Reclamation's contracting process prevented them from expeditiously entering into a new agreement to allow MBK to continue to support the process during a crucial time-sensitive period. Westlands Water District agreed to contract directly with MBK Engineers for up to \$100,000 to allow MBK to continue to provide the necessary support to Reclamation.

This COA review process is critically important to the Authority members to ensure the COA is operated as it was originally intended. The cost of this support effort should not be solely borne by WWD. Other CVP Contractors have agreed to jointly fund \$40,000 of the \$100,000. The Authority's contribution of \$60,000 will offset any direct funding by WWD. WWD's contribution will be their allocated share of the Authority funding.

Agreement for Joint Funding for Engineering Services

This Agreement is made and entered into this _____ day of June, 2018, between Westlands Water District, hereinafter called "Westlands", and _____, hereinafter called "the Parties", for the joint funding of modeling work completed by MBK Engineers in connection with the Coordinated Operations Agreement (COA).

The Parties agree as follows:

1. **Need for Agreement.** MBK Engineers and the Bureau of Reclamation, hereinafter "Reclamation", have previously entered into agreements for modeling work relating to the COA. Those previous agreements have expired, and MBK Engineers and Reclamation are currently in the process of negotiating a new agreement for modeling work relating to the COA. This new agreement is expected to be executed before the end of June 2018. In order to enable MBK Engineers to continue working on these time sensitive issues, the Parties have agreed to fund the MBK Engineers' modeling work related to COA, up to \$100,000, from the end of the previous contract between MBK Engineers and Reclamation for modeling work relating to the COA until the execution of the new agreement between Reclamation and MBK Engineers for modeling work relating to the COA, hereinafter referred to as "gap funding".
2. **Consultant Work Product.** The Parties agree to cover the gap funding, up to \$100,000, for MBK Engineers to perform the professional services, set forth in Exhibit A and consistent with the agreement currently being finalized between Reclamation and MBK Engineers. The Parties agree MBK Engineers shall adhere to the direction of appropriate Reclamation staff for the performance of this work. Any work product completed in accordance with this Agreement shall be provided directly to Reclamation and shall be property of Reclamation.
3. **Confidential Information.**
 - A. Notwithstanding the cost share provided under this Agreement, the Parties recognize, except as provided under section (B) below:
 - a. the information provided to MBK Engineers and the work MBK Engineers performed and provided to Reclamation under those previously entered into agreements for modeling work relating to the COA was confidential; and
 - b. the information that will be provided to MBK Engineers and the work MBK Engineers will perform and provide to Reclamation work to be performed by MBK Engineers under the agreement between Westlands and MBK Engineers will be confidential.
 - B. Confidentiality does not extend to information which, (i) at the time of disclosure, is within the public domain through no breach of agreement by MBK Engineers, or (ii) has been known or independently developed by and is currently in the possession of MBK Engineers prior to disclosure or receipt hereunder.
4. **Contribution.** _____ agrees to contribute \$_____ towards the gap funding.
5. The Parties acknowledge that MBK Engineers has performed work for several of the Parties previously, and each of the Parties agrees that MBK Engineers' participation in this collaborative effort will not constitute any basis for any attempt to disqualify MBK Engineers from future work for any of the Parties to this Agreement.

6. The Parties agree that they may collectively or individually pursue additional activities beyond those covered in Exhibit A or Exhibit B to this Agreement. The Parties further agree that participation in this collaborative effort does not preclude any of the Parties from individually employing the MBK Engineers to undertake additional or other work for that Party. Payment for such additional work shall be the sole responsibility of the entity(ies) requesting it, and the requesting entity(ies) shall be the sole owner(s) of that work. The Parties' provision of gap-funding for this effort shall not waive any confidentiality that the Parties might otherwise have for such additional and separately contracted for work.
7. **Administration.** The Parties agree that, for ease of administration, Westlands will contract with MBK Engineers for gap funding, will pay invoices received from MBK Engineers, and will bill each Party for its share of the costs as specified in this Agreement. Westlands agrees to provide copies of MBK Engineers' invoices upon request. Each Party agrees to pay Westlands for its allocated share of the consultant costs within 30 days of receipt of the invoice from Westlands. Westlands agrees that it will not charge the Parties any fee for the administration of this Agreement or any additional consultant charges beyond each Party's share as specified in this agreement.

Party

Date

Signature

Party

Date

Signature

LIST OF EXHIBITS:

Exhibit A – Scope of Work for MBK Engineers, defined by Reclamation

Exhibit B – Agreement between MBK Engineers and Westlands for gap funding

WESTLANDS WATER DISTRICT

Agreement for Professional Services

This agreement is made and entered into this 29th day of May, 2018, between Westlands Water District, hereinafter called "District", and MBK Engineers, hereinafter called "Consultant", for modeling work in connection with the Coordinated Operations Agreement "COA", generally described in Exhibit A, which is attached to this agreement.

The parties agree as follows:

1. Need for Agreement

Consultant and the Bureau of Reclamation, hereinafter "Reclamation", have previously entered into agreements for modeling work relating to the COA. Those previous agreements have expired, and Consultant and Reclamation are currently in the process of negotiating a new agreement for modeling work relating to the COA. This new agreement is expected to be executed before the end of June 2018. In order to enable Consultant to continue working on these time sensitive issues, the District has agreed to fund the Consultant's modeling work related to COA, up to \$100,000, from the end of the previous contract between Consultant and Reclamation for modeling work relating to the COA until the execution of the new agreement between Reclamation and Consultant for modeling work relating to the COA.

2. Scope of Services

- A. Scope of Work. Consultant agrees, during the term of this agreement, to perform the professional services set forth in Exhibit A and consistent with the agreement currently being finalized between Reclamation and Consultant. Consultant shall adhere to the direction of appropriate Reclamation staff, for the performance of this work. Any work product completed in accordance with this agreement shall be provided directly to Reclamation and shall be property of Reclamation.
- B. Term of Agreement: The District and Consultant agree that the District shall provide compensation for Consultant's modeling work, described in Exhibit A and consistent with direction from Reclamation, up to \$100,000, until such time when the Consultant has entered into an agreement with the Bureau of Reclamation for the continuation of this work, which is expected to occur prior to the end of June 2018.

3. Compensation

- A. Basic Fee: District agrees to pay Consultant compensation for its services in accordance with the Schedule of Fees as shown in Exhibit B up to \$100,000. Consultant shall submit an invoice for work performed on a monthly basis. Invoices shall be mailed to: Westlands Water District, Attn: Accounts Payable, P.O. Box 6056, Fresno, CA 93703-6056. Invoices received by the 5th day of the month will be paid no later than the 28th day of the month. Invoices received after the 5th day of the month will be paid not later than the 28th day of the following month.

4. Confidential Information

- A. The work performed by Consultant for Reclamation under those previously entered into agreements for modeling work relating to the COA was confidential. Except as provided by section (B) below, the Parties agree that the information that will be provided to Consultant and the work Consultant will

perform and provide to Reclamation, pursuant to this Agreement, will also be confidential ("Confidential Information").

- B. Confidential Information does not include information which, (i) at the time of disclosure, is within the public domain through no breach of this Agreement by MBK Engineers, or (ii) has been known or independently developed by and is currently in the possession of MBK Engineers prior to disclosure or receipt hereunder.
- C. Consultant will retain the Confidential Information only so long as it is necessary to perform Consultant's tasks under this Agreement, and after such time, the Confidential Information will be returned to Reclamation (or at Reclamation's written option, destroyed), and Consultant will retain no copies of the Confidential Information.

5. Modification

The District reserves the right to negotiate and add or delete items to this Contract as deemed necessary. If changes or other events beyond the parties' control require adjustments, the parties shall make a good faith effort to agree on all necessary particulars. Such agreement shall be put in writing, signed by both parties, and added to this agreement.

6. Indemnification

Except with regard to professional services, as provided in the paragraph below, to the furthest extent allowed by law including California Civil Code Section 2782, Consultant shall indemnify, hold harmless and defend the District and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the District, Consultant or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Consultant's obligations under the preceding sentence shall apply regardless of whether the District or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active negligence or willful misconduct of the District or any of its officers, officials, employees, agents or volunteers.

Specifically regarding professional services, Consultant shall indemnify, hold harmless and defend the District and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the District, Consultant or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses), to the proportionate extent that it arises out of or in connection with the professional negligent errors or omissions of consultant in the performance of this Agreement.

If Consultant should subcontract all or any portion of the work to be performed under this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend the District and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this Agreement and shall replace any other Indemnification language that has been included in any other Contract document or language.

7. Insurance

During the term of this Agreement, Consultant shall maintain certificates of insurance and policy endorsements for general liability coverage and auto liability of not less than \$1,000,000 per occurrence for bodily injury and property damage each accident limit; workers' compensation if applicable (statutory limits) and employer's liability of \$1,000,000. Certificates of Insurance shall be provided to the District prior to commencement of work on the Project. District shall also be named as an Additional Insured and shall receive written notification of at least 30 days prior to any cancellation of policies thereof.

Any insurance, self-insurance or other coverage maintained by the District, its director's officers, employees, or authorized volunteers shall not contribute to Consultant's requirement to maintain insurance. The general liability coverage shall give the District, its directors, officers, employees, or authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent.

In the event that Consultant employs subcontractors as part of the work covered by the contract, it shall be the Consultant's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified above.

8. Consultant Relationship

In the performance of work, duties, and obligations assumed under this Contract, it is mutually understood and agreed that Consultant, including any and all of Consultant's officers, agents, and employees, will at all times be acting and performing as an independent contractor and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the District.

Furthermore, District shall have no right to control or supervise or direct the manner or method by which Consultant shall perform its work and function. However, District shall retain the right to administer this Contract so as to verify that Consultant is performing its obligations in accordance with the terms and conditions thereof. Consultant and District shall comply with all applicable provisions of law and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof. It is acknowledged that during the term of this contract, Consultant may be providing services to others unrelated to the District or to this agreement.

This agreement does not constitute a partnership relationship. Neither party has the authority to enter into contracts on the other's behalf.

7. Termination of Agreement

With reasonable cause, either party may terminate this agreement effective immediately upon providing written notice of termination for cause. Either party may terminate this agreement at any time by giving 30 days written notice of termination. Consultant shall be entitled to full payment for services performed prior to the effective date of termination.

8. Dispute Resolution

The parties agree in good faith to attempt to resolve amicably, without litigation, any dispute arising out of or relating to this agreement. In the event that any dispute cannot be resolved through direct discussions, the matter may be submitted to the judicial system, in which event all litigation and collection expenses, witness fees, court costs and attorneys' fees shall be paid to the prevailing party.

9. Assignment

Neither party may assign, transfer, or subcontract this agreement nor their rights or duties under this Contract without the written consent of the other party.

10. Severability

Should any provision herein be found or deemed to be invalid, this agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this agreement are declared to be severable.

11. Jurisdiction

Consultant shall comply with all laws, rules and regulations whether they be federal, state, or municipal, which may be applicable to Consultant business, equipment, and personnel engaged in the services covered by this agreement.

12. Agreement

This agreement will become effective when signed by both parties.

Accepted by:

Contractor

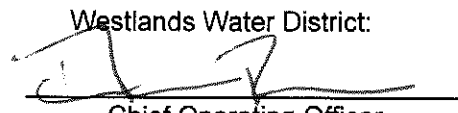
Authorized Signature

Walter Bourez III
Print Name

Principal Engineer
Title

5/29/2018
Date

94-2282149
Taxpayer I.D.

Westlands Water District:

Chief Operating Officer

May 29, 2018
Date

LIST OF EXHIBITS:
Exhibit A – Scope of Work
Exhibit B – Schedule of Fees

Task 1 - COA technical analysis based on 1984 technical report

Negotiation of the COA was supported by modeling described in the 1984 Report. DWR and Reclamation are performing studies similar to those described in this report to support current discussions. This task shall include reviewing and performing these studies and coordinating with Reclamation and DWR.

Analysis described in the 1984 Report are commonly referred to as the COA 1-2-3 studies. Effort under this Task shall be to evaluate the DWR modeling and perform modeling using various assumptions proposed by Reclamation or CVP water users. The analysis described in the 1984 Report were performed with complex models of the CVP/SWP, modeling of the 1-2-3 studies have increased in its complexity due to additional operating criteria and advancement of models. In addition to increased complexity, Reclamation and DWR have differing opinions regarding assumptions that should be used in these studies.

Also included in this task shall be the development of appropriate assumptions, modeling, review of modeling, and interpretation of modeling results. Due to the complex nature of this modeling, number of scenarios, and coordination that will be required, it is anticipated that this modeling will take place over a two year period

Task 2 - Evaluation of COA Sharing Parameters

There are various technical approaches needed to support COA discussions, effort under this Task shall be to perform analysis to support these various approaches.

Since COA was signed in 1986, a number of additional operation criteria have been imposed on CVP/SWP operation that are not addressed in COA. Additional operating criteria have resulted in undefined sharing of water supply between the CVP and SWP to occur about 30% of the time. Under this Task, evaluations shall be performed to determine how various assumptions regarding sharing will affect CVP operations and water supply.

In addition to addressing times when operations are not addressed in COA, evaluations are needed to understand how a first-in-time sharing of water supply and obligation to satisfy standards may affect sharing between the CVP and SWP. Evaluation of first-in-time sharing shall be performed under this Task.

Task 3 – Meetings and support

COA discussions involve meetings with Reclamation and DWR management and various subgroups. This Task shall include technical support, preparation, and attendance for the following potential group meetings:

- Reclamation / DWR policy and COA sharing
- Reclamation / DWR technical subgroup
 - Reclamation / DWR modeling subgroup
- Reclamation water user group
 - Reclamation modeling subgroup

It is anticipated that each of these groups may meet once a month over the next two years. This Task includes development of technical information and meeting handouts to support Reclamation.

SCHEDULE OF FEES

1. Standard Fees:

	<u>Per Hour</u>
Principal	\$200-260
Supervising Engineer	170-230
Senior Project Manager	180-230
Project Manager	160-200
Senior Engineer	140-210
Engineer/Hydrologist	120-180
GIS Professional	120-180
Water Resources Associate	100-160
Assistant Engineer	100-150
Prevailing Rate Surveyor, Chief of Party	163
Prevailing Rate Surveyor, Rodman/Chainman	148
GIS Specialist	80-140
Technician/Drafter	80-140
Junior Engineer	75-110
Engineering Aide	50-80
Technical Editor	50-125
3-Man Survey Crew	270
2-Man Survey Crew	235

2. Time spent in appearances at courts or quasi-judicial State or Federal boards and commissions is billed at \$450 per hour for principals and supervising engineers, \$400 per hour for registered engineer staff, and \$250 per hour for other staff.

3. Automobile mileage is billed at the Federal reimbursement rate. Local mileage (less than 20 miles) will not be billed.

4. All other direct non-salary expense, including transportation and subsistence, long-distance telephone charges, commercial printing, reproduction costs, and similar out-of-pocket expenses are billed at actual cost plus a service charge of 10%. Use of GPS equipment is billed at \$50 per hour. Use of MBK owned boat will be billed at \$100/day. Use of MBK owned drones will be billed at \$125/day. Professional services provided by others billed through MBK at cost plus a service charge of 5%-15%.

5. Billings will be made monthly and payment will be due within 45 days. Accounts not paid within 90 days of presentation will bear interest at the rate of 1½% per month or fraction thereof from the billing date unless other arrangements are made in advance.

6. If accounts are not paid within 90 days of presentation, the firm may retain an attorney to obtain payment. In the event that it does so and payment of all or part of the account is thereafter obtained, reasonable attorney's fees and other costs incurred to obtain such payment shall also be paid, or if payment is obtained by Judgment, shall be awarded as part of the Judgment.