



8:00 A.M. OPERATIONS CENTER - 1200 SOUTH GENE AUTRY TRAIL – PALM SPRINGS – CALIFORNIA

Pursuant to the Governor's Executive Order N-29-20, there will be no public location for attending in person. Members of the public who wish to participate may do so by calling in at:

**Toll Free: (866) 899-4679
Access Code: 888-802-341**

**or Via Computer:
<https://www.gotomeeting.com/meeting/join-meeting>
9-digit Meeting ID: 888802341**

Members of the public who wish to comment on any item within the jurisdiction of the Agency or any item on the agenda should submit comments by emailing sbaca@dwa.org before 5:00 p.m. April 19. Comments will become part of the Board meeting record. Board members and staff will be participating in this meeting via teleconference.

****In order to reduce feedback, please mute your audio when you are not speaking.***

- | | |
|---|---------------------------------|
| 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE | BLOOMER |
| 2. ROLL CALL | BACA |
| 3. APPROVAL OF MINUTES - April 6, 2021 | BLOOMER |
| 4. GENERAL MANAGER'S REPORT | KRAUSE |
| 5. COMMITTEE REPORTS -
A. Finance – April 13, 2021
B. Executive – April 15, 2021 | STUART
BLOOMER |
| 6. SECRETARY-TREASURER'S REPORT – March 2021 | STUART |
| 7. PUBLIC COMMENT: Members of the public may comment on any item not listed on the agenda, but within the jurisdiction of the Agency. In addition, members of the public may speak on any item listed on the agenda as that item comes up for consideration. Speakers are requested to keep their comments to no more than three (3) minutes. As provided in the Brown Act, the Board is prohibited from acting on items not listed on the agenda. | |
| 8. ACTION ITEMS | |
| A. Request Authorization for General Manager to Enter into Updated MOU with United Way of the Desert | METZGER |
| B. Request Authorization to Enter into Funding Agreement with Department of Water Resources (DWR) for the Perris Dam Seepage Recovery Project | KRAUSE |
| C. Request Authorization to Execute Energy Services Agreement with Golden State Renewable Energy (GSRE) for Commercial Battery Energy Storage System (BESS) Installation at Acanto Booster Site | JOHNSON |
| 9. DISCUSSION ITEM | |
| A. March Water Use Reduction Figures | METZGER |
| B. Delta Conveyance Project Update | KRAUSE |
| 10. DIRECTORS COMMENTS/REQUESTS | |
| 11. CLOSED SESSION | |
| A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Government Code Section 54956.9 (d) (1)
Name of Case: Agua Caliente Band of Cahuilla Indians vs. Coachella Valley Water District, et al
(Two Cases) | |

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9 (d) (1)

Name of Case: Mission Springs Water District vs. Desert Water Agency

C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9 (d) (1)

Bonnie Kessner, et al vs. Desert Water Agency, et al

D. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9 (d) (1)

Name of Case: AT&T vs. County of Riverside

E. CONFERENCE WITH LEGAL COUNSEL – PENDING ADMINISTRATIVE PROCEEDING

Pursuant to Government Code Section 54956.9 (d) (1)

Regional Water Quality Control Board Claim No. 7018 0680 0000 1010 7377

12. RECONVENE INTO OPEN SESSION – REPORT FROM CLOSED SESSION

13. ADJOURN

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting is asked to contact Desert Water Agency's Assistant Secretary of the Board, at (760) 323-4971, at least 48 working hours prior to the meeting to enable the Agency to make reasonable arrangements. Copies of records provided to Board members that relate to any agenda item to be discussed in open session may be obtained from the Agency at the address indicated on the agenda.

**MINUTES
OF THE REGULAR MEETING
OF THE
DESERT WATER AGENCY
BOARD OF DIRECTORS**

3

April 6, 2021

DWA Board via Kristin Bloomer, President)
Teleconference: James Cioffi, Vice President)
Joseph K. Stuart, Secretary-Treasurer)
Patricia G. Oygar, Director)
Paul Ortega, Director)

DWA Staff via Mark S. Krause, General Manager)
Teleconference: Esther Saenz, Finance Director)
Sylvia Baca, Asst. Secretary of the Board)
Kris Hopping, Human Resources Director)
Ashley Metzger, Outreach & Conserv. Mgr.)
Kim McCance, Senior Administrative Asst.)

Consultants via Michael T. Riddell, Best Best & Krieger)
Teleconference:

Public via David Freedman, Palm Springs Sustainability Comm.)
Teleconference: Andy Sells, ACWA/JPIA)

19091. President Bloomer opened the meeting at 8:00 a.m. and asked everyone to join her in the Pledge of Allegiance. **Pledge of Allegiance**

19092. President Bloomer called upon Assistant Secretary of the Board Baca to conduct the roll call: **Roll Call**

Present: Ortega, Oygar, Stuart, Cioffi, Bloomer

19093. President Bloomer welcomed Andy Sells, representing the Association of Water Agencies/Joint Powers Insurance Agency (ACWA/JPIA) and invited him to present to the Board. **Presentation – ACWA/JPIA**

Mr. Sells congratulated the Agency and its staff on its Liability, Property and Workers Compensation programs over the years and noted over 200 classes were completed online by DWA staff with Target Solutions last year. He then presented the Agency with a refund check for \$105,077.75.

19094. President Bloomer called for approval of the March 16, 2021 Regular Board Meeting Minutes. **Approval of 03/16/21 Regular Board Mtg. Minutes**

Director Ortega moved for approval. After a second by Vice President Cioffi, the minutes were approved by the following roll call vote:

AYES: Ortega, Oygar, Stuart, Cioffi, Bloomer
 NOES: None
 ABSENT: None
 ABSTAIN: None

19095. President Bloomer called upon General Manager Krause to provide an update on Agency operations. **General Manager's Report**

Mr. Krause provided an update on Agency operations and noted his meetings and activities for the past several weeks.

19096. President Bloomer noted the minutes for the April 1, 2021 Executive Committee meeting were provided in the Board's packet. **Committee Reports Executive 04/01/21**

In response to Director Ortega, Mr. Krause explained Well 17 was removed from the Golden State Renewable Energy LLC (GSRE) Battery Back-Up Project because it did not meet the requirements.

In response to Director Ortega, Mr. Krause gave an update on Unauthorized Fire Service Water Use.

19097. President Bloomer called upon Vice President Cioffi to provide a report on the April 1, 2021 Conservation & Public Affairs Committee meeting. **Conservation & Public Affairs 04/01/21**

Vice President provided a report on the Conservation & Public Affairs Committee meeting.

19098. President Bloomer opened the meeting for public comment. **Public Comment**

Mr. Freedman gave an update on the Mayor's Conservation Challenge and the Palm Springs Airport Demonstration Garden.

There being no one else from the public wishing to address the Board, President Bloomer closed the public comment period.

19099. President Bloomer called upon Outreach & Conservation Manager Metzger to present staff's Request for Adoption of Additional Legislative Bill Positions. **Items for Action: Request Adoption of Additional Legislative Bill Positions**

Mrs. Metzger noted that staff is seeking approval of seven additional legislative bills that were not presented at the March 16, 2021 Board of Directors meeting. She gave an update and provided a report that addressed the additional legislative bills. Staff requests adoption of the legislative bills recommended position as the Agency's position with regard to each bill presented.

Items for Action:

(Cont.)

Request Adoption of
Additional Legislative
Bill Positions

Director Oygar moved for approval of staff's request. After a second by Vice President Cioffi, the motion carried by the following roll call vote:

AYES: Ortega, Oygar, Stuart, Cioffi, Bloomer
NOES: None
ABSENT: None
ABSTAIN: None

19100. President Bloomer called upon Outreach & Conservation Manager Metzger to present staff's Request for the General Manager to Enter into Memorandum of Understanding (MOU) for Implementation of the CV Water Counts Regional Conservation Grant Program.

Request Authorization
for GM to Enter into
MOU for
Implementation of
CVWCRC Grant
Program

Mrs. Metzger reported that Coachella Valley Water District, Desert Water Agency, City of Indio/Indio Water Authority, Mission Springs Water District and City of Coachella/Coachella Water Authority are pursuing an agreement on funding allocation and responsibilities for the recent award of funding through Round 1 of the Integrated Regional Water Management (IRWM) component of Proposition 1. She explained that for this funding opportunity, the Department of Water Resources selected Coachella Valley Regional Water Management Group (CVRWMG) to obtain \$3,825,383 overall, \$1,380,400 of that being dedicated to a regional effort called CV Water Counts Regional Conservation Grant Program. The Agency's portion of the regional water conservation campaign is \$350,000. She noted of that, \$290,000 is for grass removal incentives (\$1 per square foot with a \$1 matching requirement) and \$60,000 is for the Airport Demonstration Garden.

Mrs. Metzger reported that staff and General Counsel reviewed the MOU and made several adjustments which were accepted by the group. She indicated that any funding that is not expended by one party will be available to the remaining parties in accordance with the original funding split agreed upon. She noted that in past rounds of IRWM, this has been a challenge and required additional time for negotiation in a situation where time is already limited.

Staff requests Board authorization for the General Manager to enter into the MOU for implementation of the CV Water Counts Regional Conservation Program.

Items for Action:

(Cont.)
Request Authorization for GM to Enter into MOU for Implementation of CVWCRC Grant Program

Vice President Cioffi moved for approval of staff's request. After a second by Director Ortega, the motion carried by the following roll call vote:

AYES: Ortega, Oygar, Stuart, Cioffi, Bloomer
NOES: None
ABSENT: None
ABSTAIN: None

19101. President Bloomer noted that Board packets included Outreach & Conservation reports for March 2021.

Discussion Items:

Outreach & Conservation – March 2021 Activities & Events

19102. President Bloomer called upon Agency Counsel Riddell to provide a report on the March 18, 2021 Board of Directors of the State Water Contractors meeting.

03/18/2021 SWC Mtg.

Mr. Riddell provided a report on the following items; 1) Closed Session, 2) Legislative Report, and 3) Water Operations Report.

19103. Vice President Cioffi noted that he would like an update report on the Delta Conveyance Project.

Directors Comments/Requests
Cioffi

19104. At 9:35 a.m., President Bloomer convened into a Teleconference Closed Session for the purpose of Conference with Legal Counsel, (A) Existing Litigation, pursuant to Government Code Section 54956.9 (d) (1), Agua Caliente Band of Cahuilla Indians vs. Coachella Valley Water District, et al (Two Cases); (B) Existing Litigation, pursuant to Government Code Section 54956.9 (d) (1), Mission Springs Water District vs. Desert Water Agency; (C) Existing Litigation, pursuant to Government Code Section 54956.9 (d) (1) Bonnie Kessner, et al vs. Desert Water Agency, et al; (D) Existing Litigation, Pursuant to Government Code Section 54956.9 (d) (1), AT&T vs. County of Riverside; and (E) Pending Administrative Proceeding Pursuant to Government Code Section 54956.9 (d) (1) Regional Water Quality Control Board Claim No. 7018 0680 0000 1010 7377.

Closed Session:

A. Existing Litigation – ACBCI vs. CVWD, et al. (2 Cases)
B. Existing Litigation – MSWD vs. DWA
C. Existing Litigation- Bonnie Kessner, et al vs. Desert Water Agency et al
D. Existing Litigation - Possible Intervention in Case: AT&T vs. County of Riverside
E. Pending Admin. Proceeding, RWQCB Claim

19105. At 10:52 a.m., General Manager Krause reconvened the meeting into open session and announced there was no reportable action taken.

Reconvene – No
Reportable Action

19106. In the absence of any further business, General Manager Krause adjourned the meeting at 10:53 a.m.

Adjournment

Sylvia Baca
Assistant Secretary of the Board

DRAFT

GENERAL MANAGER'S REPORT

April 20, 2021

Damaged Air-Vac at 950 N. Indian Canyon Dr.

On April 14 at approximately 6 a.m. Construction Staff responded to a hit air-vac at 950 N. Indian Canyon Dr. This was a hit and run. The air-vac, and air-vac cover was replaced and is back in service. The water loss was a fully open 2-inch pipe that flowed for approximately 15 minutes. A police report was filed.



DWA to Resume in Person Safety Meetings

DWA staff will begin meeting in small groups in Warehouse No. 3 to participate in monthly safety meetings. Monthly safety meetings have been suspended since the beginning of the COVID-19 when modified work policies were implemented in March 2020. The Agency uses safety meetings to satisfy many regulatory requirements for employee safety education and training.

Yuba River Dry Year Water Purchase Program

On April 9, DWR notified the participating SWP Contractors that Yuba dry year water would be made available. DWA has the right to request water delivery as a participant in the program. The Sacramento River Valley water supply index currently classifies this year's water supply as "critical" which determines the availability and cost of this water supply. Recent Yuba hydrology estimates indicate that Yuba County Water Agency (YWA) will produce about 144,000 acre-feet of potentially transferable surface water in 2021. DWA could potentially purchase 997 acre- feet at an approximate cost of \$427,147 or \$428 per acre-foot. The Agency's average cost of water over the last 5 years has been approximately \$245 per acre – foot.

Colorado River Aqueduct Update (CRA)

On April 6, MWD increased to an 8-pump flow in the CRA. To prevent potential overflow within the CRA as a result of the increase flow and to act as a contingency relief should things start backing up during start-up, MWD released a 50 cfs flow at the Whitewater basin outlets. The following day, MWD increased the discharge to 125 cfs and remained at this flow until Monday April 12, at which time the discharge flow was reduced to 75 cfs. The flow was again reduced to 50 cfs on Wednesday April 14. As of April 14, approximately 2,000 AF has been discharged to the Whitewater basin as a result of this MWD operational procedure.

Cal OES/FEMA Grant Funding Update

On March 25, DWA requested a time extension from the California Governor's Office of Emergency Services to complete work on environmental and historic preservation analysis for these projects; Falls Creek Intake and Low Water Crossing, and Chino North Intake & Whitewater Irrigation Pumps Headworks, to November 1, 2021. On April 14, we received notice from Cal OES that they had granted our time extension request.

Human Resource's Meetings and Activities

Meetings:

03/16/2021	DWA Board Meeting	Virtual Meeting
03/22/2021	Weekly Staff Meeting	Virtual Meeting
03/29/2021	Weekly Staff Meeting	Virtual Meeting
03/30/2021	Capital & Extraordinary Budget Review Meeting	Virtual Meeting
04/05/2021	Weekly Staff Meeting	Virtual Meeting
04/06/2021	DWA Board Meeting	Virtual Meeting
04/12/2021	Weekly Staff Meeting	Virtual Meeting
04/19/2021	Engineering/Operations Staff Meeting	Virtual Meeting

Activities:

03/18/2021	ACWA JPIA Webinar: The Interactive Process	Virtual Meeting
03/18/2021	Meeting with Scott Pieratt from WSP	Virtual Meeting
03/24/2021	Meeting with Esther Saenz and ERP Consultant	Virtual Meeting
03/25/2021	Health Equity call to discuss FSA plans	Phone Call
03/29/2021	DWAEA Contract Negotiations Meeting	Virtual Meeting
03/31/2021	Coachella Valley Regional UWMP Webinar	Virtual Meeting
03/31/2021	Meeting with Esther Saenz and ERP Consultant	Virtual Meeting
04/05/2021	Meeting with Fred Prior Training to set up supervisor training program	Phone Call
04/08/2021	Water Service Worker I Interviews	Virtual Meetings
04/12/2021	Meeting with Esther Saenz and ERP Consultant	Virtual Meeting
04/12/2021	DWAEA Contract Negotiations Meeting	Virtual Meeting
04/14/2021	CalPERS Webinar: Your Retirement Calculation	Virtual Meeting
04/14/2021	ACWA JPIA Meeting to discuss Worker's Comp Program	Virtual Meeting
04/14/2021	One Future CV Business Engagement Meeting	Virtual Meeting
04/15/2021	ACWA JPIA Webinar: Recruiting in a Pandemic	Virtual Meeting
04/15/2021	Webinar: ARPA and the COBRA Subsidy	Virtual Meeting
04/19/2021	DWAEA Contract Negotiations Meeting	Virtual Meeting

SYSTEM LEAK DATA					
(PERIOD BEGINNING MARCH 30, 2021 THRU APRIL 12, 2021)					
STREET NAME	NUMBER OF LEAKS	PIPE DIAMETER (INCHES)	YEAR INSTALLED	PIPE MATERIAL	PIPE CONSTRUCTION
DESERT PARK AVE	5	6	1955	STEEL	BARE/UNLINED
INDIAN CANYON DR	3	6	1951	STEEL	BARE/UNLINED
PATENCIO RD	2	4	1954	STEEL	BARE/UNLINED
TAHQUITZ CANYON WY	1	8	1946	STEEL	BARE/UNLINED
VIA MONTE VISTA	1	8	1953	STEEL	BARE/UNLINED
ALEJO RD	1	8	1958	STEEL	BARE/UNLINED
RAMON RD	1	6	1955	STEEL	BARE/UNLINED
MESQUITE AVE	1	6	1956	STEEL	BARE/UNLINED
BARISTO RD	1	4	1936	STEEL	BARE/UNLINED
VIA SALIDA	1	4	1937	STEEL	BARE/UNLINED
PASEO GRACIA	1	4	1946	STEEL	BARE/UNLINED
WARM SANDS DR	1	4	1946	STEEL	BARE/UNLINED
VIA ALTAMIRA	1	4	1954	STEEL	BARE/UNLINED
TERRY LN	1	4	1956	STEEL	BARE/UNLINED
TOTAL LEAKS IN SYSTEM:		21			

Streets highlighted in green are included as part of the

2020/2021 Replacement Pipeline Project

Streets highlighted in blue are being proposed as part of the

2021/2022 Replacement Pipeline Project

Estimate for design portion of Vista Chino 20" mainline replacement is being developed

SYSTEM INFORMATION:	
OLDEST PIPE IN THE SYSTEM (YEAR OF INSTALLATION):	1935
AVERAGE YEAR OF INSTALLATION OF UNLINED STEEL PIPE (SYSTEMWIDE):	1952
AVERAGE AGE OF UNLINED STEEL PIPE (SYSTEMWIDE):	66 YEARS
AVERAGE AGE OF PIPELINE AT THE TIME OF REPLACEMENT:	68 YEARS
TOTAL LENGTH OF PIPE IN SYSTEM OLDER THAN 70 YEARS (LINEAR FEET):	128,186
TOTAL LENGTH OF UNLINED PIPE SYSTEMWIDE (LINEAR FEET):	297,672
*AVERAGE LENGTH OF PIPE REPLACED ANNUALLY (LINEAR FEET):	14,500
PROJECTED TIME FRAME FOR 100% REPLACEMENT OF UNLINED STEEL PIPE:	21 YEARS
PROJECTED TIME FRAME FOR 100% REPLACEMENT OF PIPE OLDER THAN 70 YEARS:	9 YEARS
YEAR AGENCY TRANSITIONED TO CEMENT LINED STEEL PIPE:	1960
<p>*PLEASE NOTE THIS FIGURE REPRESENTS THE AVERAGE LINEAR FOOTAGE OF PIPELINE REPLACED ANNUALLY GIVEN AN AVERAGE ANNUAL BUDGET OF \$3 MILLION.</p>	



General Manager's Meetings and Activities

Meetings:

04/06/21	DWA Bi-Monthly Board Mtg.	Conf Call
04/06/21	WWRF BLM Permit Cooperators Mtg	Conf Call
04/07/21	Kris Polly Prep. For Mtg W/Senator Padilla's Staff	Conf Call
04/07/21	SGMA – Mission Creek Mtg	Conf Call
04/08/21	Introductory Mtg. with Senator Padilla's Office Staff	Conf Call
04/12/21	DWA Wkly Staff Mtgs	Conf Call
04/12/21	Tribal Large Group Mediation Mtg.	Conf Call
04/12/21	DWA Employee Association Negotiating Mtg	Conf Call
04/13/21	DWA Finance Cmte Mtg	Conf Call
04/13/21	Lake Perris Dam Seepage Recovery Agreement	Conf Call
04/13/21	SGMA – SGP SB Mtg W/MSWD Obj Thresholds Etc.	Conf Call
04/13/21	Sites Reservoir – South of Delta SWC Modeling	Conf Call
04/14/21	DCP Coordination Meeting	Conf Call
04/14/21	DCP Update Meeting	Conf Call
04/15/21	DWA Executive Cmte Mtg	Conf Call
04/15/21	SWC Mthly Board Mtg	Conf Call
04/15/21	DC Finance Authority Mthly Board Mtg	Conf Call
04/16/21	Site Reservoir Cmte Mthly Board Mtg	Conf Call
04/19/21	DWA Wkly Staff Mtgs	Conf Call
04/19/21	DWA Employee Association Negotiation Mtg	Conf Call
04/19/21	DWA/CVWD/MWD Coordination Mtg	Conf Call
04/20/21	WWRF-BLM Permit Cooperators Mtg	Conf Call
04/20/21	SGMA – Mission Creek Mtg	Conf Call
04/20/21	DWA Bi-Monthly Board Meeting	Conf Call

Activities:

- 1) SWP Contract Extension Amendment
- 2) DWA Remote Meter Reading Fixed Network
- 3) Whitewater Hydro – Automatic Re-start
- 4) State and Federal Contractors Water Authority and Delta Specific Project Committee (Standing)
- 5) Whitewater River Surface Water Recharge
- 6) Lake Oroville Spillway FEMA funding
- 7) Replacement Pipelines 2020-2021
- 8) DC Project – Finance JPA Committee (Standing)
- 9) DWA/CVWD/MWD Operations Coordination/Article 21/Pool A/Pool B/Yuba Water (Standing)
- 10) DWA/CVWD/MWD Exchange Agreement Coordination Committee (Standing)
- 11) SWP 2020 Water Supply
- 12) ACBCI Water Rights Lawsuit
- 13) Whitewater Hydro Operations Coordination with Recharge Basin O&M
- 14) SGMA Tribal Stakeholder Meetings

Activities Cont.:

- 15) Whitewater Spreading Basins – BLM Permits
- 16) Delta Conveyance Project Cost Allocation
- 17) DWA Surface Water Filtration Feasibility Snow Creek Village/Palm Oasis
- 18) MCSB Delivery Updates
- 19) Well 6 Meaders Cleaners RWQB Meetings
- 20) SWP East Branch Enlargement Cost Allocation
- 21) UWMP Population Calculation Update/Valley-Wide UWMP
- 22) RWQCB Update to the SNMP
- 23) SGMA – San Gorgonio Pass Subbasin

**Minutes
Finance Committee Meeting
April 13, 2021**

Directors Present: Joseph Stuart, Kristin Bloomer

Staff Present: Mark Krause, Steve Johnson, Esther Saenz

1. Discussion Items

A. Proposed 2021/2022 Capital Budget

The Committee reviewed the proposed Capital Budget and new capital budgetary procedures implemented for the 2021/2022 budget cycle.

B. Proposed 2021/2022 Extraordinary Expense Budget

The Committee reviewed the proposed Extraordinary Expense Budget for the Operating and General Fund as well as discussed the change in budgetary procedures creating the new Extraordinary Expense review category.

C. Proposed 2021/2022 Operating Fund Revenues

The Committee reviewed the proposed Operating Fund Revenues and discussed the continued revenue impacts COVID-19.

D. Proposed 2021/2022 General Fund Revenues

The committee reviewed the proposed General Fund Revenues.

2. Adjourn

Minutes
Executive Committee Meeting
April 15, 2021

Directors Present: Kristin Bloomer, James Cioffi

Staff Present: Mark Krause, Steve Johnson, Esther Saenz, Sylvia Baca

1. Discussion Items

A. Review Agenda for April 20, 2021 Regular Board Meeting

The proposed agenda for the April 20, 2021 meeting was reviewed.

B. Expense Reports

The March expense reports were reviewed.

C. Board Room Audio Visual Upgrades

Staff provided the Committee with recommendations for Board room updates to improve audio and visual presentations during Board meetings.

2. Adjourn

DESERT WATER AGENCY
STATEMENT OF CASH RECEIPTS AND EXPENDITURES

OPERATING ACCOUNT

MARCH 2021

INVESTED
RESERVE FUNDS
\$35,459,119.65

BALANCE	MARCH 1, 2021	\$416,081.45	
WATER SALES		\$2,538,372.42	
RECLAMATION SALES		43,447.27	
WASTEWATER RECEIPTS		106,112.10	
POWER SALES		0.00	
METERS, SERVICES, ETC.		263,751.00	
REIMBURSEMENT – GENERAL FUND		82,308.12	
REIMBURSEMENT – WASTEWATER FUND		6,140.00	
ACCOUNTS RECEIVABLE – OTHER		6,155.36	
CUSTOMER DEPOSITS – SURETY		10,798.00	
CUSTOMER DEPOSITS – CONST.		0.00	
LEASE REVENUE		3,796.78	
INTEREST RECEIVED ON INV. FDS.		10,410.00	
FRONT FOOTAGE FEES		0.00	
BOND SERVICE & RESERVE FUND INT		0.00	
MISCELLANEOUS		<u>13,284.40</u>	
TOTAL RECEIPTS		\$3,084,575.45	
PAYMENTS			
PAYROLL CHECKS		\$496,439.91	
PAYROLL TAXES		233,764.86	
ELECTRONIC TRANSFERS		181,009.86	
CHECKS UNDER \$10,000.00		280,613.72	
CHECKS OVER \$10,000.00 – SCH. #1		1,696,570.97	
CANCELLED CHECKS AND FEES		<u>(102,657.85)</u>	
TOTAL PAYMENTS		<u>\$2,785,741.47</u>	
NET INCOME		\$298,833.98	
BOND SERVICE ACCOUNT			
MONTHLY WATER SALES		\$0.00	
EXCESS RETURNED BY B/A		<u>\$0.00</u>	
BOND SERVICE FUND			\$0.00
INVESTED RESERVE FUNDS			
FUNDS MATURED		\$0.00	
FUNDS INVESTED – SCH. #3		<u>977,000.00</u>	
NET TRANSFER			(\$977,000.00) \$977,000.00
BALANCE	MARCH 31, 2021	(\$262,084.57)	\$36,436,119.65

DESERT WATER AGENCY
Operating Fund
Schedule #1 - Checks Over \$10,000

March 2021

Check #	Name	Description	Amount
127753	ACWA/JPIA	Health, dental & vision insurance premiums - March 2021	\$ 221,615.39
127778	Hunter Johnsen Inc.	Agency Consulting Services for CV Water Counts	\$ 37,565.88
127798	Singer Lewak LLP	ERP Consulting (W/O # 20-178-M)	\$ 99,905.03
127804	Z&L Paving	Paving	\$ 55,674.00
127814	MSA Safety Sales, LLC	To replace ck # 127485 - MSA Atmospheric Monitors	\$ 69,856.50
127817	SWRCB Accounting Office	Water Systems Annual Fees - Billing Period 7/1/20 - 6/30/21	\$ 44,403.23
127819	Outflow Technologies	Programming - Core backoffice project (W/O # 18-179-M)	\$ 25,445.00
127822	ACWA/JPIA	Health, dental & vision insurance premiums - April 2021	\$ 222,880.05
127829	CC Pros LLC	W/O Refund - Kieley Rd CC	\$ 10,563.38
127830	Southern California Edison	Power	\$ 223,351.31
127844	Desert Water Agency - Wastewater	Wastewater revenue billing - February 2021	\$ 77,066.78
127875	Badger Meter Inc.	Water service supplies	\$ 15,449.70
127877	Beck Oil Inc	Fuel purchase	\$ 17,178.16
127879	Best Best & Krieger LLP	Legal fees	\$ 46,761.02
127884	Cleanexcel, Inc	Cleaning services - March 2021	\$ 15,072.00
127888	Core & Main LP	Water service supplies	\$ 10,008.28
127897	Down to Earth Landscaping	Landscape maintenance	\$ 42,559.58
127905	Ferguson Waterworks	Water service supplies	\$ 11,320.80
127919	Inland Water Works Supply Co.	Water service supplies	\$ 83,327.76
127920	Jones Bros Construction Co.	2019/2020 Pipeline replacement - Retention payment - (W/O# 19-113-30)	\$ 83,880.03
127921	J Colon Coatings Inc.	Snow Creek Equalization NO.22 - Progress payment #1	\$ 40,090.00
127926	Krieger & Stewart Inc.	Engineering	\$ 61,159.80
127932	MRC Smart Technology Solutions	Monthly invoice Xerox maintenance	\$ 13,496.50
127940	Outflow Technologies	Programming - Core backoffice project (W/O # 18-179-M)	\$ 25,445.00
127949	Quadient, Inc.	Ink cartridges & supplies	\$ 14,118.51
127959	Sulzer Electro-Mechanical	Well #33 motor repair (W/O# 20-165-W-33)	\$ 65,776.15
127961	Thatcher Company of California	Water service supplies	\$ 22,332.13
127973	Z&L Paving	Paving	\$ 15,669.00
127981	Sundial PS LLC	Grass removal rebate	\$ 24,600.00
Total			\$ 1,696,570.97

Monthly Investment Portfolio Report

As of 03/31/2021

AGG- Operating Fund (213426)

Dated: 04/05/2021

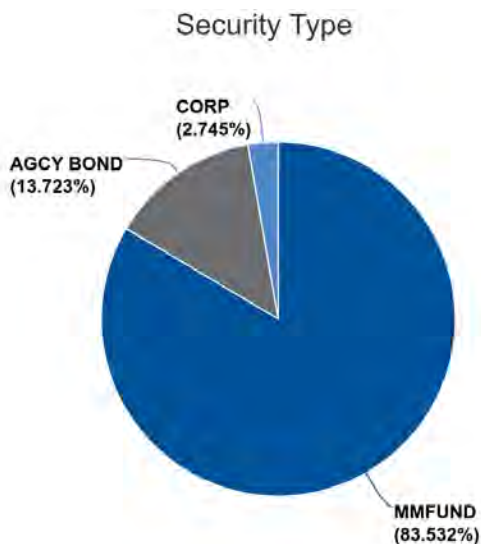


Chart calculated by: PAR Value

MMFUND

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
LAIF Money Market Fund LAIF - OP	---	---	03/31/2021	03/31/2021	30,434,909.65	30,434,909.65	30,434,909.65	---
LAIF Money Market Fund LAIF - OP	---	---	03/31/2021	03/31/2021	30,434,909.65	30,434,909.65	30,434,909.65	---

AGCY BOND

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
FEDERAL HOME LOAN BANKS UnionBanc OP	04/29/2020	04/29/2021	04/29/2021	04/29/2024	1,000,000.00	1,000,000.00	1,000,510.00	0.723%
FEDERAL HOME LOAN MORTGAGE CORP UnionBanc OP	08/20/2020	08/20/2021	08/20/2025	08/20/2025	1,000,000.00	1,000,000.00	989,787.00	0.863%
FEDERAL NATIONAL MORTGAGE ASSOCIATION UnionBanc OP	06/30/2020	06/30/2021	06/30/2025	06/30/2025	1,000,000.00	1,000,000.00	993,048.00	0.897%
FEDERAL NATIONAL MORTGAGE ASSOCIATION UnionBanc OP	08/12/2020	08/12/2022	08/12/2025	08/12/2025	1,000,000.00	1,000,000.00	987,288.00	0.857%
FEDERAL NATIONAL MORTGAGE ASSOCIATION UnionBanc OP	12/16/2020	12/14/2021	06/14/2024	06/14/2024	1,000,000.00	1,000,500.00	995,928.00	0.503%
--- UnionBanc OP	---	---	06/30/2024	02/06/2025	5,000,000.00	5,000,500.00	4,966,561.00	0.768%

CORP

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
WELLS FARGO BANK NA UnionBanc OP	10/04/2019	09/09/2021	09/09/2021	09/09/2022	1,000,000.00	1,000,710.00	1,007,144.00	0.729%

Monthly Investment Portfolio Report

As of 03/31/2021

AGG- Operating Fund (213426)

Dated: 04/05/2021

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
WELLS FARGO BANK NA UnionBanc OP	10/04/2019	09/09/2021	09/09/2021	09/09/2022	1,000,000.00	1,000,710.00	1,007,144.00	0.729%

Summary

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
---	---	---	09/14/2021	10/24/2021	36,434,909.65	36,436,119.65	36,408,614.65	0.762%

* Grouped by: Security Type. * Groups Sorted by: Ending Market Value + Accrued. * Filtered By: Description ≠ "Receivable". * Weighted by: Ending Market Value + Accrued.

DESERT WATER AGENCY
STATEMENT OF CASH RECEIPTS AND EXPENDITURES

GENERAL ACCOUNT

MARCH 2021

INVESTED
RESERVE FUNDS
\$169,675,935.38

BALANCE	MARCH 1, 2021	(\$739,290.19)	
* TAXES - RIVERSIDE COUNTY		96,793.66	
* INTEREST EARNED - INV. FUNDS		207,227.48	
GROUNDWATER REPLEN. ASSESSMENT		369,330.67	
REIMBURSEMENT - OPERATING FUND		0.00	
REIMBURSEMENT - CVWD MGMT AGRMT		99,033.00	
STATE WATER PROJECT REFUNDS		0.00	
REIMB - CVWD - WHITEWATER HYDRO		0.00	
POWER SALES - WHITEWATER		43.58	
MISCELLANEOUS		<u>4,276.46</u>	
TOTAL RECEIPTS		\$776,704.85	
PAYMENTS			
CHECKS UNDER \$10,000.00		16,923.31	
CHECKS OVER \$10,000.00 - SCH. #1		1,403,755.02	
CANCELLED CHECKS AND FEES		<u>0.00</u>	
TOTAL PAYMENTS		<u>\$1,420,678.33</u>	
NET INCOME		(\$643,973.48)	
INVESTED RESERVE FUNDS			
FUNDS MATURED		6,935,002.05	
FUNDS INVESTED - SCH. #2		<u>6,533,200.00</u>	
NET TRANSFER		\$401,802.05	(\$401,802.05)
BALANCE	MARCH 31, 2021	(\$981,461.62)	\$169,274,133.33
* INCLUSIVE TO DATE		TAXES	INTEREST
RECEIPTS IN FISCAL YEAR		\$20,307,581.68	\$1,685,358.57
RECEIPTS IN CALENDAR YEAR		\$13,366,238.18	\$436,027.56

DESERT WATER AGENCY

General Fund

Schedule #1 - Checks Over \$10,000

March 2021

Check #	Name	Description	Amount
9504	Best Best & Krieger LLP	Legal fees	\$ 31,539.85
9506	United States Geological Survey	Joint Funding Agreement quarterly billing - (08/01/2020 - 10/31/2020)	\$ 43,311.25
9507	Water Strategies, LLC	Professional Services, February 2021	\$ 14,000.00
9508	State of California Department of Water Resources	State Water Project Dry year water purchase	\$ 24,528.26
9513	Cora Construction Inc.	Snow Creek Village progress payment #10 (W/O# 18-101-M)	\$ 115,514.09
9515	Desert Water Agency - Operating Fund	Operating Fund Reimbursement for February 2021	\$ 81,344.27
9516	Water Systems Consulting, Inc.	Regional Urban Water Management Plan	\$ 15,618.30
9517	State of California Department of Water Resources	State Water Project - March 2021	\$ 1,077,899.00
Total			\$ 1,403,755.02

Monthly Investment Portfolio Report

As of 03/31/2021

AGG- General Fund (213428)

Dated: 04/05/2021

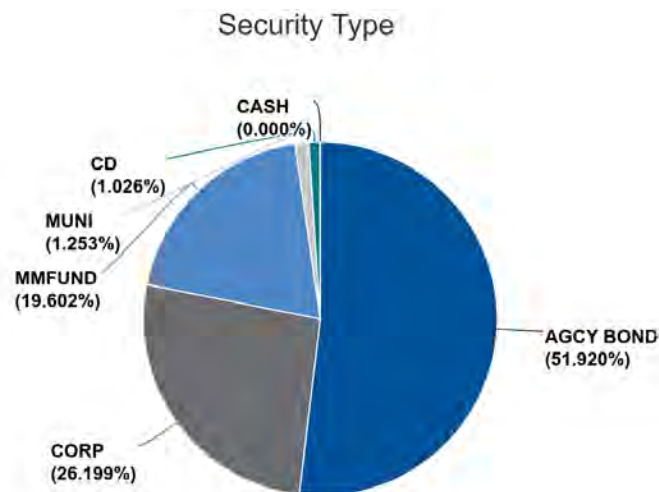


Chart calculated by: PAR Value

AGCY BOND

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
FEDERAL FARM CREDIT BANKS FUNDING CORP Alamo Capital	08/04/2020	04/09/2021	08/04/2025	08/04/2025	3,000,000.00	3,000,005.00	2,974,332.00	0.871%
FEDERAL FARM CREDIT BANKS FUNDING CORP Alamo Capital	10/15/2020	04/09/2021	10/15/2024	10/15/2024	3,000,000.00	2,995,500.00	2,981,367.00	0.578%
FEDERAL FARM CREDIT BANKS FUNDING CORP Alamo Capital	01/05/2021	04/09/2021	04/05/2024	04/05/2024	3,000,000.00	3,000,000.00	2,986,332.00	0.422%
FEDERAL FARM CREDIT BANKS FUNDING CORP Alamo Capital	02/12/2021	05/12/2021	11/12/2024	11/12/2024	3,000,000.00	3,000,000.00	2,968,635.00	0.593%
FEDERAL FARM CREDIT BANKS FUNDING CORP UnionBanc GF	12/22/2020	12/22/2022	12/22/2025	12/22/2025	3,000,000.00	3,000,000.00	2,934,048.00	0.947%
FEDERAL FARM CREDIT BANKS FUNDING CORP Piper Sandler	04/23/2020	04/22/2021	04/22/2021	04/22/2024	3,000,000.00	3,000,000.00	3,001,251.00	0.786%
FEDERAL FARM CREDIT BANKS FUNDING CORP Piper Sandler	10/15/2020	10/15/2021	10/15/2024	10/15/2024	3,000,000.00	3,000,000.00	2,984,217.00	0.580%
FEDERAL FARM CREDIT BANKS FUNDING CORP Piper Sandler	12/28/2020	12/21/2021	12/21/2023	12/21/2023	3,000,000.00	3,000,000.00	2,986,188.00	0.380%
FEDERAL FARM CREDIT BANKS FUNDING CORP Stifel	10/16/2020	04/09/2021	03/28/2024	03/28/2024	3,000,000.00	3,000,000.00	2,989,197.00	0.421%
FEDERAL HOME LOAN BANKS UnionBanc GF	12/30/2020	12/30/2021	12/30/2025	12/30/2025	3,000,000.00	3,000,000.00	2,939,715.00	0.954%
FEDERAL HOME LOAN BANKS Piper Sandler	11/04/2019	11/04/2021	11/04/2021	11/04/2024	3,000,000.00	3,000,000.00	3,031,458.00	1.573%
FEDERAL HOME LOAN BANKS Piper Sandler	04/06/2020	04/06/2021	04/06/2021	04/06/2023	3,000,000.00	3,000,000.00	3,000,321.00	0.870%
FEDERAL HOME LOAN BANKS Piper Sandler	01/28/2021	06/28/2021	03/28/2024	03/28/2024	3,000,000.00	3,000,000.00	2,986,647.00	0.420%
FEDERAL HOME LOAN BANKS Piper Sandler	02/17/2021	08/17/2021	02/17/2026	02/17/2026	3,000,000.00	3,000,000.00	2,947,743.00	0.992%

Monthly Investment Portfolio Report

As of 03/31/2021

AGG- General Fund (213428)

Dated: 04/05/2021

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
FEDERAL HOME LOAN BANKS Piper Sandler	02/26/2021	08/26/2021	11/26/2024	11/26/2024	3,000,000.00	3,000,000.00	2,968,104.00	0.595%
FEDERAL HOME LOAN BANKS Piper Sandler	03/30/2021	09/30/2021	03/30/2026	03/30/2026	3,000,000.00	3,000,000.00	2,990,208.00	1.087%
FEDERAL HOME LOAN BANKS Stifel	02/25/2021	08/25/2021	11/25/2024	11/25/2024	3,000,000.00	3,000,000.00	2,972,562.00	0.604%
FEDERAL HOME LOAN BANKS Stifel	03/30/2021	09/30/2021	09/30/2024	09/30/2024	2,000,000.00	2,000,000.00	1,995,998.00	0.568%
FEDERAL HOME LOAN MORTGAGE CORP Alamo Capital	09/30/2020	09/30/2021	09/30/2025	09/30/2025	3,000,000.00	3,000,000.00	2,937,363.00	0.874%
FEDERAL HOME LOAN MORTGAGE CORP UnionBanc GF	08/20/2020	08/20/2021	08/20/2025	08/20/2025	3,000,000.00	3,000,000.00	2,969,361.00	0.863%
FEDERAL HOME LOAN MORTGAGE CORP Piper Sandler	06/25/2020	06/25/2021	06/25/2025	06/25/2025	3,000,000.00	3,000,000.00	2,980,830.00	0.854%
FEDERAL HOME LOAN MORTGAGE CORP Piper Sandler	08/26/2020	05/26/2021	08/26/2024	08/26/2024	3,000,000.00	3,000,000.00	2,994,591.00	0.554%
FEDERAL HOME LOAN MORTGAGE CORP Stifel	10/28/2020	10/28/2022	10/28/2024	10/28/2024	3,000,000.00	3,000,000.00	2,981,130.00	0.588%
FEDERAL HOME LOAN MORTGAGE CORP Stifel	11/30/2020	11/30/2022	05/30/2024	05/30/2024	3,000,000.00	3,000,000.00	2,989,626.00	0.470%
FEDERAL NATIONAL MORTGAGE ASSOCIATION Alamo Capital	08/25/2020	---	08/25/2025	08/25/2025	3,000,000.00	2,985,965.00	2,947,638.00	0.779%
FEDERAL NATIONAL MORTGAGE ASSOCIATION Alamo Capital	09/06/2019	---	09/06/2022	09/06/2022	1,000,000.00	996,520.00	1,017,551.00	0.146%
FEDERAL NATIONAL MORTGAGE ASSOCIATION UnionBanc GF	07/15/2020	07/15/2021	07/15/2025	07/15/2025	3,000,000.00	3,000,000.00	2,980,506.00	0.885%
FEDERAL NATIONAL MORTGAGE ASSOCIATION UnionBanc GF	08/12/2020	08/12/2022	08/12/2025	08/12/2025	3,000,000.00	3,000,000.00	2,961,864.00	0.857%
FEDERAL NATIONAL MORTGAGE ASSOCIATION UnionBanc GF	12/16/2020	12/14/2021	06/14/2024	06/14/2024	3,000,000.00	3,001,500.00	2,987,784.00	0.503%
FEDERAL NATIONAL MORTGAGE ASSOCIATION Piper Sandler	12/14/2020	12/14/2021	06/14/2024	06/14/2024	3,000,000.00	3,000,000.00	2,987,784.00	0.503%
---	---	---	09/03/2024	12/15/2024	87,000,000.00	86,979,490.00	86,374,351.00	0.718%

CORP

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
3M CO Stifel	06/05/2020	03/15/2025	03/15/2025	04/15/2025	3,000,000.00	3,258,120.00	3,183,474.00	1.098%
APPLE INC Alamo Capital	09/16/2019	08/11/2024	08/11/2024	09/11/2024	1,000,000.00	990,552.00	1,039,257.00	0.646%
APPLE INC UnionBanc GF	01/27/2021	08/11/2024	08/11/2024	09/11/2024	3,000,000.00	3,150,000.00	3,117,771.00	0.646%
APPLE INC Stifel	09/24/2020	04/11/2025	04/11/2025	05/11/2025	2,000,000.00	2,055,740.00	2,012,226.00	0.973%
APPLE INC Stifel	03/26/2021	01/08/2026	02/08/2026	02/08/2026	1,000,000.00	986,200.00	978,777.00	1.151%
BANK OF NEW YORK MELLON CORP Alamo Capital	05/06/2020	03/24/2025	03/24/2025	04/24/2025	1,000,000.00	1,020,005.00	1,016,772.00	1.176%
CATERPILLAR FINANCIAL SERVICES CORP Alamo Capital	12/17/2020	---	09/14/2023	09/14/2023	3,000,000.00	3,012,276.48	2,994,594.00	0.524%
CHEVRON CORP Stifel	07/08/2020	01/03/2024	01/03/2024	03/03/2024	3,000,000.00	3,239,700.00	3,195,612.00	0.639%
CITIBANK NA Stifel	06/24/2020	12/23/2023	12/23/2023	01/23/2024	3,000,000.00	3,297,000.00	3,247,089.00	0.686%
EXXON MOBIL CORP UnionBanc GF	03/17/2020	---	08/16/2022	08/16/2022	3,000,000.00	3,037,470.00	3,063,828.00	0.349%
EXXON MOBIL CORP UnionBanc GF	11/22/2019	01/01/2023	01/01/2023	03/01/2023	2,000,000.00	2,055,180.00	2,081,572.00	0.583%
JOHN DEERE CAPITAL CORP Alamo Capital	04/03/2020	---	09/08/2022	09/08/2022	1,000,000.00	1,003,535.00	1,027,071.00	0.260%

Monthly Investment Portfolio Report

As of 03/31/2021

AGG- General Fund (213428)

Dated: 04/05/2021

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
JOHN DEERE CAPITAL CORP Alamo Capital	02/08/2021	---	01/15/2026	01/15/2026	3,000,000.00	3,000,000.00	2,925,540.00	1.235%
MICROSOFT CORP Stifel	12/20/2019	02/01/2023	02/01/2023	05/01/2023	2,000,000.00	2,034,620.00	2,074,460.00	0.575%
MICROSOFT CORP Stifel	02/10/2021	08/03/2025	08/03/2025	11/03/2025	3,000,000.00	3,337,530.00	3,268,026.00	1.122%
TOYOTA MOTOR CREDIT CORP Alamo Capital	07/18/2019	---	09/08/2022	09/08/2022	1,000,000.00	1,000,000.00	1,025,957.00	0.337%
TOYOTA MOTOR CREDIT CORP Alamo Capital	10/21/2019	---	10/07/2024	10/07/2024	1,500,000.00	1,499,994.00	1,558,606.50	0.869%
TOYOTA MOTOR CREDIT CORP Alamo Capital	02/19/2019	---	07/13/2022	07/13/2022	1,400,000.00	1,399,076.00	1,444,980.60	0.290%
VISA INC Stifel	01/30/2020	10/14/2022	10/14/2022	12/14/2022	2,000,000.00	2,065,680.00	2,076,048.00	0.553%
WALMART INC Stifel	06/18/2020	10/15/2024	10/15/2024	12/15/2024	2,000,000.00	2,173,300.00	2,139,958.00	0.732%
WELLS FARGO BANK NA UnionBanc GF	10/04/2019	09/09/2021	09/09/2021	09/09/2022	2,000,000.00	2,001,420.00	2,014,288.00	0.729%
---	---	---	02/12/2024	03/31/2024	43,900,000.00	45,617,398.47	45,485,907.10	0.740%

MMFUND

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
INSURED BANK PROGRAM MONEY MARKET FDIC INSD Stifel	03/31/2021	---	03/31/2021	03/31/2021	2.96	2.96	2.96	---
LAIF Money Market Fund LAIF - GF	---	---	03/31/2021	03/31/2021	32,846,480.40	32,846,480.40	32,846,480.40	---
---	---	---	03/31/2021	03/31/2021	32,846,483.36	32,846,483.36	32,846,483.36	---

MUNI

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
EL CAJON CALIF UnionBanc GF	02/08/2021	---	04/01/2024	04/01/2024	300,000.00	302,583.00	297,630.00	1.196%
EL CAJON CALIF UnionBanc GF	02/08/2021	---	04/01/2023	04/01/2023	400,000.00	402,124.00	401,636.00	0.443%
MONTEREY PK CALIF PENSION OBLIG UnionBanc GF	02/16/2021	---	06/01/2025	06/01/2025	400,000.00	403,156.00	398,392.00	0.986%
MONTEREY PK CALIF PENSION OBLIG UnionBanc GF	02/16/2021	---	06/01/2023	06/01/2023	450,000.00	450,643.50	450,040.50	0.359%
MONTEREY PK CALIF PENSION OBLIG UnionBanc GF	02/16/2021	---	06/01/2024	06/01/2024	550,000.00	552,255.00	549,450.00	0.658%
---	---	---	02/22/2024	02/22/2024	2,100,000.00	2,110,761.50	2,097,148.50	0.691%
UnionBanc GF								

CD

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
Ally Bank Piper Sandler	05/30/2019	---	05/31/2022	05/31/2022	245,000.00	245,000.00	251,623.82	0.180%
Goldman Sachs Bank USA Piper Sandler	06/05/2019	---	06/06/2022	06/06/2022	245,000.00	245,000.00	251,739.95	0.172%
JPMorgan Chase Bank, National Association Alamo Capital	02/08/2021	07/16/2021	01/16/2026	01/16/2026	250,000.00	250,000.00	245,971.75	0.944%
Morgan Stanley Bank, N.A. Piper Sandler	06/06/2019	---	06/06/2022	06/06/2022	245,000.00	245,000.00	251,870.29	0.177%

Monthly Investment Portfolio Report

As of 03/31/2021

AGG- General Fund (213428)

Dated: 04/05/2021

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
Morgan Stanley Private Bank, National Association Piper Sandler	06/06/2019	---	06/06/2022	06/06/2022	245,000.00	245,000.00	251,884.99	0.172%
Sallie Mae Bank Piper Sandler	05/29/2019	---	05/31/2022	05/31/2022	245,000.00	245,000.00	251,642.20	0.174%
Synchrony Bank Piper Sandler	06/07/2019	---	06/07/2022	06/07/2022	245,000.00	245,000.00	251,450.36	0.177%
---	---	---	12/05/2022	12/05/2022	1,720,000.00	1,720,000.00	1,756,183.35	0.282%

CASH

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
Cash Alamo Capital	---	---	03/31/2021	03/31/2021	0.00	0.00	0.00	---
Cash Alamo Capital	---	---	03/31/2021	03/31/2021	0.00	0.00	0.00	---

Summary

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
---	---	---	10/31/2023	01/05/2024	167,566,483.36	169,274,133.33	168,560,073.32	0.719%

* Grouped by: Security Type. * Groups Sorted by: Ending Market Value + Accrued. * Filtered By: Description ≠ "Receivable". * Weighted by: Ending Market Value + Accrued.

DESERT WATER AGENCY
STATEMENT OF CASH RECEIPTS AND EXPENDITURES

WASTEWATER ACCOUNT

MARCH 2021

INVESTED
RESERVE FUNDS
\$1,625,535.48

BALANCE	MARCH 1, 2021	\$6,317.42		
ACCOUNTS RECEIVABLE - OTHER		\$0.00		
CUSTOMER DEPOSITS - CONSTRUCTION		0.00		
INTEREST EARNED - INVESTED FUNDS		0.00		
WASTEWATER REVENUE		77,066.78		
SEWER CAPACITY CHARGES		6,562.33		
MISCELLANEOUS		<u>0.00</u>		
TOTAL RECEIPTS		\$83,629.11		
PAYMENTS				
CHECKS UNDER \$10,000.00		\$0.00		
CHECKS OVER \$10,000.00 - SCH. #1		72,932.78		
CANCELLED CHECKS AND FEES		<u>0.00</u>		
TOTAL PAYMENTS		<u>\$72,932.78</u>		
NET INCOME		\$10,696.33		
INVESTED RESERVE FUNDS				
FUNDS MATURED		\$0.00		
FUNDS INVESTED – SCH. #2		<u>6,000.00</u>		
NET TRANSFER			(\$6,000.00)	\$6,000.00
BALANCE	MARCH 31, 2021	\$11,013.75	\$1,631,535.48	

DESERT WATER AGENCY

Wastewater Fund

Schedule #1 - Checks Over \$10,000

March 2021

Check #	Name	Description	Amount
3381	City of Palm Springs	Wastewater Revenue Billing for February 2021	\$ 10,519.12
3382	Coachella Valley Water District	Wastewater Revenue Billing for February 2021	\$ 62,413.66
Total			\$ 72,932.78

Monthly Investment Portfolio Report

As of 03/31/2021

AGG- Wastewater Fund (213427)

Dated: 04/05/2021

Security Type



Chart calculated by: PAR Value

MMFUND

Description, Broker	Settle Date	Next Call Date	Effective Maturity	Final Maturity	PAR Value	Original Cost	Market Value	Yield to Maturity
LAIF Money Market Fund LAIF - WW	---	---	03/31/2021	03/31/2021	1,631,535.48	1,631,535.48	1,631,535.48	---
LAIF Money Market Fund LAIF - WW	---	---	03/31/2021	03/31/2021	1,631,535.48	1,631,535.48	1,631,535.48	---

* Grouped by: Security Type. * Groups Sorted by: Ending Market Value + Accrued. * Filtered By: Description ≠ "Receivable". * Weighted by: Ending Market Value + Accrued.

DESERT WATER AGENCY
Investment Portfolio Reporting Requirements

*as required by DWA Resolution 886, Section VII
& California Government Code Section 53646*

as of

March 31, 2021

Statement of Compliance

The Desert Water Agency portfolio is in compliance with the Agency's investment policy and guidelines for investment of Agency funds as outlined in DWA Resolution 886 and updated by Resolution 1200.

Statement of Agency's Ability to Meet Six-Month Expenditure Requirements

Desert Water Agency has the ability to meet its expenditure requirements for the next six months.

Description of Investments

Agency Bonds

Securities issued by a government-sponsored enterprise or by a federal government department other than the U.S. Treasury.

Bank Deposits

Agency funds on deposit in the General Fund, Operating Fund and Wastewater Fund active checking accounts for use in meeting the daily cash flow requirements of the Agency.

Certificate of Deposits (CD)

Interest bearing time deposit. FDIC insured up to \$250,000 per depositor, per FDIC-insured bank.

Corporate Notes

Debt securities issued by a for-profit company.

Money Market Funds

High quality, short-term debt instruments, cash and cash equivalents. Utilized for overnight holding of investment proceeds prior to reinvesting or transferring to Agency checking accounts.

Municipal Bonds

Fixed income securities issued by states, cities, counties, special districts and other governmental entities.

Funds Managed by Contracted Parties - LAIF

The Desert Water Agency has contracted with the California Local Agency Investment Fund (LAIF) for investment of Agency funds. LAIF is a voluntary program created by Section 16429.1 et seq. of the California Government Code. LAIF is an investment alternative for California's local governments and special districts. This program offers local agencies the opportunity to participate in a major portfolio, which invests hundreds of millions of dollars, using the investment expertise of the state Treasurer's Office professional investment staff at no additional cost to the taxpayer or ratepayer. All Agency funds invested with LAIF are available for withdrawal upon demand and may not be altered, impaired or denied in any way (California Government Code Section 16429.4).

Market Value Source

Current market values are provided by Clearwater Analytics for all investment types other than LAIF. LAIF market values are recorded at PAR value.

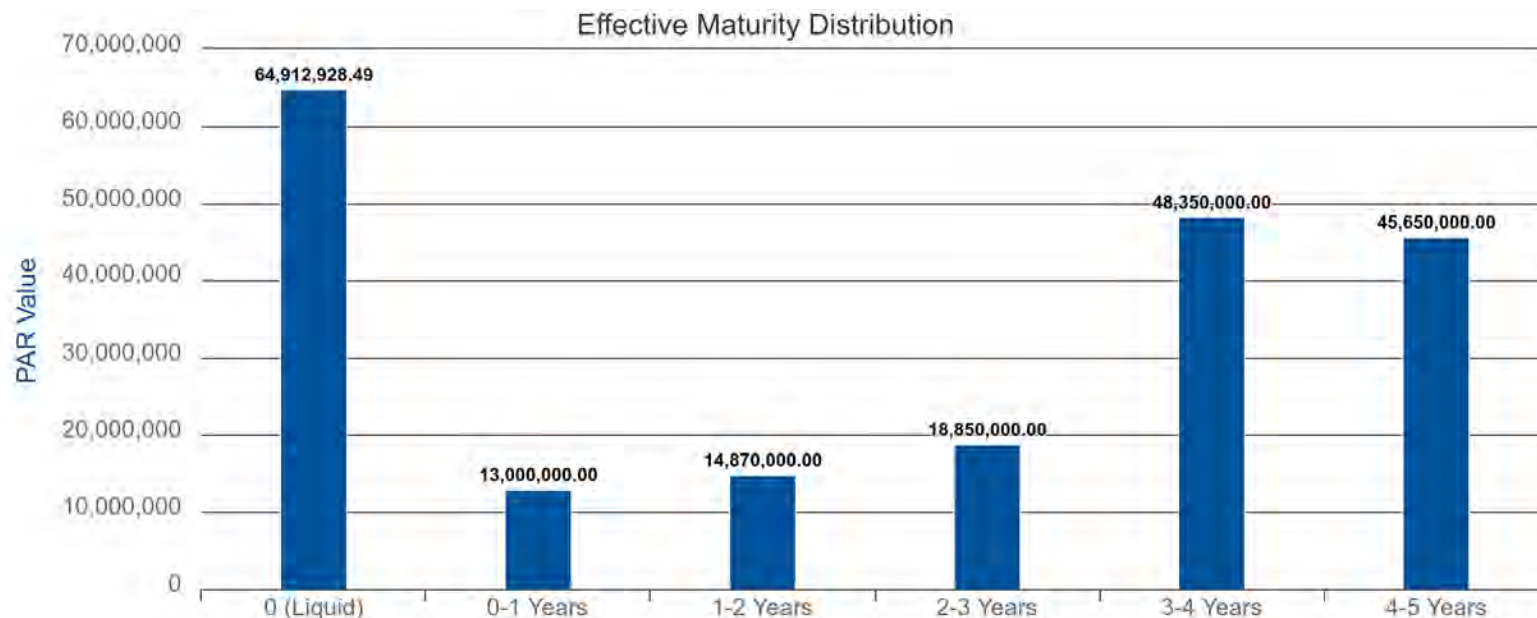
Esther Saenz
Finance Director
Desert Water Agency

Effective Maturity Distribution Summary

As of 03/31/2021

AGG-ALL (219610)

Dated: 04/05/2021



0 (Liquid)

DWA Fund	Account	Identifier	Description	Security Type	PAR Value	Ending Effective Maturity	Final Maturity
General Fund	---	---	---	MMFUND	32,846,483.36	03/31/2021	03/31/2021
Operating Fund	LAIF - OP	LAIFMMF	LAIF Money Market Fund	MMFUND	30,434,909.65	03/31/2021	03/31/2021
Wastewater Fund	LAIF - WW	LAIFMMF	LAIF Money Market Fund	MMFUND	1,631,535.48	03/31/2021	03/31/2021
---	---	---	---	MMFUND	64,912,928.49	03/31/2021	03/31/2021

0-1 Years

DWA Fund	Account	Identifier	Description	Security Type	PAR Value	Ending Effective Maturity	Final Maturity
General Fund	---	---	---	---	11,000,000.00	07/06/2021	11/17/2023
Operating Fund	UnionBanc OP	---	---	---	2,000,000.00	07/05/2021	07/04/2023
---	---	---	---	---	13,000,000.00	07/06/2021	10/27/2023

1-2 Years

DWA Fund	Account	Identifier	Description	Security Type	PAR Value	Ending Effective Maturity	Final Maturity
General Fund	---	---	---	---	14,870,000.00	09/29/2022	10/27/2022
General Fund	---	---	---	---	14,870,000.00	09/29/2022	10/27/2022

2-3 Years

DWA Fund	Account	Identifier	Description	Security Type	PAR Value	Ending Effective Maturity	Final Maturity
General Fund	---	---	---	---	18,850,000.00	12/28/2023	01/13/2024

Effective Maturity Distribution Summary

As of 03/31/2021

AGG-ALL (219610)

Dated: 04/05/2021

<i>DWA Fund</i>	<i>Account</i>	<i>Identifier</i>	<i>Description</i>	<i>Security Type</i>	<i>PAR Value</i>	<i>Ending Effective Maturity</i>	<i>Final Maturity</i>
General Fund	---	---	---	---	18,850,000.00	12/28/2023	01/13/2024

3-4 Years

<i>DWA Fund</i>	<i>Account</i>	<i>Identifier</i>	<i>Description</i>	<i>Security Type</i>	<i>PAR Value</i>	<i>Ending Effective Maturity</i>	<i>Final Maturity</i>
General Fund	---	---	---	---	47,350,000.00	09/18/2024	09/26/2024
Operating Fund	UnionBanc OP	3135GA5Y3	FEDERAL NATIONAL MORTGAGE ASSOCIATION	AGCY BOND	1,000,000.00	06/14/2024	06/14/2024
---	---	---	---	---	48,350,000.00	09/16/2024	09/24/2024

4-5 Years

<i>DWA Fund</i>	<i>Account</i>	<i>Identifier</i>	<i>Description</i>	<i>Security Type</i>	<i>PAR Value</i>	<i>Ending Effective Maturity</i>	<i>Final Maturity</i>
General Fund	---	---	---	---	42,650,000.00	10/07/2025	10/15/2025
Operating Fund	UnionBanc OP	---	---	AGCY BOND	3,000,000.00	07/31/2025	07/31/2025
---	---	---	---	---	45,650,000.00	10/02/2025	10/10/2025

Summary

<i>Account</i>	<i>Identifier</i>	<i>Description</i>	<i>Security Type</i>	<i>PAR Value</i>	<i>Ending Effective Maturity</i>	<i>Final Maturity</i>
---	---	---	---	205,632,928.49	06/09/2023	08/09/2023

* Grouped by: Effective Maturity Distribution -> DWA Fund. * Groups Sorted by: Effective Maturity Distribution -> DWA Fund. * Filtered By: Security Type not in "CASH". * Weighted by: Ending Market Value + Accrued.

DESERT WATER AGENCY
Monthly Investment Portfolio Report

Abbreviations & Definitions

Investment Type Abbreviations	
AGCY BOND	Agency Bond ¹
CORP	Medium Term Notes (Corporate) ²
MMFUND	Local Agency Investment Fund (LAIF) ³ & Cash Funds in Transit ⁴
MUNI	Municipal Bonds ⁵
CD	Negotiable Certificates of Deposit ⁶

Definitions	
Settle Date	The date of original purchase
Next Call Date	The next eligible date for the issuer to refund or call the bond or note
Effective Maturity	The most likely date that the bond will be called based on current market conditions
Final Maturity	The date the bond matures, DWA receives the full PAR value plus the final interest payment
PAR Value	The principal amount DWA will receive when a bond is either called or matures
Original Cost	The original cost to purchase the bond (includes premium/discount)
Market Value	The current value of the bond at current market rates
Yield to Maturity	The total anticipated return on a bond held to maturity expressed as an annual rate

NOTES:

¹ DWA Investment Policy, Resolution 1200, Schedule 1, Item 2

² DWA Investment Policy, Resolution 1200, Schedule 1, Item 12

³ DWA Investment Policy, Resolution 1200, Schedule 1, Item 7

⁴ Cash funds in transit are a result of maturities/calls/coupon payments that are held in the Agency's money market account with the broker/custodian until transferred to the Agency's bank.

⁵ DWA Investment Policy, Resolution 1200, Schedule 1, Item 3

⁶ DWA Investment Policy, Resolution 1200, Schedule 1, Item 8

DESERT WATER AGENCY - OPERATING FUND COMPARATIVE EARNINGS STATEMENT								
MONTH 20-21 MARCH	/-----THIS MONTH-----/ THIS YEAR	LAST YEAR	BUDGET	/-----FISCAL YEAR TO DATE-----/ THIS YEAR	LAST YEAR	BUDGET	/--VARIANCE--/ YTD	PCT
OPERATING REVENUES								
WATER SALES	2,416,714.83	2,369,770.23	2,245,100.00	28,126,841.46	26,254,959.08	27,292,250.00	834,591.46	3
RECLAMATION SALES	54,201.15	148,248.85	59,150.00	857,595.75	1,263,604.07	1,057,450.00	199,854.25-	19-
POWER SALES	.00	.00	2,750.00	23,184.29	33,618.67	24,750.00	1,565.71-	6-
OTHER OPER REVENUE	268,823.43	182,492.32	173,725.00	1,913,499.63	2,116,369.73	1,563,525.00	349,974.63	22
TOTAL OPER REVENUES	2,739,739.41	2,700,511.40	2,480,725.00	30,921,121.13	29,668,551.55	29,937,975.00	983,146.13	3
OPERATING EXPENSES								
SOURCE OF SUPPLY EXP	1,086,643.87	935,000.63	932,375.00	4,635,221.27	3,861,610.89	4,218,425.00	416,796.27	10
PUMPING EXPENSE	285,784.47	193,533.04	217,950.00	2,611,203.05	1,990,959.02	2,481,550.00	129,653.05	5
REGULATORY WATER TREAT	58,331.77	45,666.24	53,700.00	501,749.06	416,853.58	483,300.00	18,449.06	4
TRANS & DIST EXPENSE	254,866.71	171,368.04	349,000.00	1,776,277.53	2,072,469.71	3,141,000.00	1,364,722.47-	43-
CUSTOMER ACT EXPENSE	109,760.02	91,091.35	95,750.00	785,243.46	737,031.88	848,550.00	63,306.54-	7-
ADMIN & GEN EXPENSE	1,009,565.70	708,134.74	755,660.00	8,932,753.40	8,688,780.49	9,452,590.00	519,836.60-	5-
REGULATORY EXPENSE	50,406.14	77,401.22	37,750.00	182,281.40	306,508.91	339,750.00	157,468.60-	46-
SNOW CREEK HYDRO EXP	2,023.23	3,542.39	3,050.00	29,893.01	24,655.73	27,450.00	2,443.01	9
RECLAMATION PLNT EXP	63,550.49	101,041.09	209,875.00	592,250.96	806,515.92	1,885,875.00	1,293,624.04-	69-
SUB-TOTAL	2,920,932.40	2,326,778.74	2,655,110.00	20,046,873.14	18,905,386.13	22,878,490.00	2,831,616.86-	12-
OTHER OPER EXPENSES								
DEPRECIATION	503,773.27	494,472.56	518,550.00	4,694,650.70	4,534,840.05	4,666,950.00	27,700.70	1
SERVICES RENDERED	16,958.35	10,259.51	13,750.00	108,451.51	97,896.57	123,750.00	15,298.49-	12-
DIR & INDIR CST FOR WO	262,115.90-	156,330.31-	204,900.00-	2,121,359.37-	1,756,493.83-	1,844,100.00-	277,259.37-	15
TOTAL OPER EXPENSES	3,179,548.12	2,675,180.50	2,982,510.00	22,728,615.98	21,781,628.92	25,825,090.00	3,096,474.02-	12-
NET INCOME FROM OPERATIONS	439,808.71-	25,330.90	501,785.00-	8,192,505.15	7,886,922.63	4,112,885.00	4,079,620.15	99
NON-OPERATING INCOME (NET)								
RENTS	14,338.37	3,779.89	3,800.00	128,686.32	158,915.13	159,700.00	31,013.68-	19-
INTEREST REVENUES	13,360.28	43,461.14	15,000.00	168,975.62	423,982.03	135,000.00	33,975.62	25
OTHER REVENUES	560.00	280.00	.00	8,684.65-	10,341.72	.00	8,684.65-	0
GAINS ON RETIREMENT	112,924.67	.00	2,480.00	126,098.79	.00	17,360.00	108,738.79	626
DISCOUNTS	3.49	15.84	50.00	294.73	214.39	450.00	155.27-	35-
PR. YEAR EXPENSES	.00	.00	.00	363.60-	292.11	.00	363.60-	0
OTHER EXPENSES	59.21-	.00	2,500.00-	27,119.01-	20,000.00-	52,500.00-	25,380.99	48-
LOSS ON RETIREMENTS	75,858.28-	.00	4,500.00-	145,570.47-	24,948.81-	40,500.00-	105,070.47-	259
TOTAL NON-OPER INCOME	65,269.32	47,536.87	14,330.00	242,317.73	548,796.57	219,510.00	22,807.73	10
TOTAL NET INCOME	374,539.39-	72,867.77	487,455.00-	8,434,822.88	8,435,719.20	4,332,395.00	4,102,427.88	95

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS**

APRIL 20, 2021

**RE: REQUEST APPROVAL TO UPDATE MEMORANDUM OF
UNDERSTANDING WITH UNITED WAY OF THE DESERT
REGARDING CUSTOMER ASSISTANCE PROGRAM**

Our current Help2Others program gives customers the ability to apply through United Way of the Desert for \$100 in credits per year. They are, except in special circumstances, required to apply twice per year to get a \$50 credit each time. Historically, the program has not been not highly utilized.

During the past year, the program has extended eligibility during Covid-19 to assist those financially impacted by the pandemic. The fund has seen an increase in use during this time but still has a balance of about \$35,000. We expect this program to be used heavily when prohibitions on shut offs are lifted.

In order to assist customers during this difficult time and to commemorate the Agency's 60th anniversary, the draft FY 2021-2022 budget includes an augmentation to the program to \$60,000. In past years, the Agency contributed \$20,000 or \$30,000. All Agency contributions have been made with non-rate revenue. The program is also funded by vendor and employee contributions.

The Conservation & Public Affairs Committee discussed augmenting the credit customers can receive to \$200 per year. This amount is roughly 20% of the annual water bill cost of Desert Water Agency's average residential customer.

If the first bill the credit is applied to is less than \$200, customers will be able to draw the remaining credit amount down over multiple water bills until it is exhausted. Additionally, they only have to apply once per year. This will save United Way, DWA and customers time and effort since multiple applications aren't necessary.

In order to adjust the amount of the credit, the memorandum of understanding needs to be updated. An updated MOU with the new credit amount of \$200 is attached. No other provisions of the existing MOU are being modified.

Staff recommends that the Board of Directors authorize the General Manager to enter into the updated memorandum of understanding with United Way of the Desert.

**Memorandum of Understanding
Between
United Way of the Desert and Desert Water Agency
For
The Development and Administration of an
Emergency Assistance Program for Water Department Customers**

This Memorandum of Understanding dated _____, is entered into between United Way of the Desert and Desert Water Agency (the Parties) for the purpose of the creation of an Emergency Assistance Program for the customers of Desert Water Agency.

Whereas, in these times of unprecedented economic uncertainty, many residents are experiencing greater pressure to make ends meet;

Whereas, the formation of an Emergency Assistance Program will help residents pay for a most basic and life-sustaining service - water;

Whereas, a joint endeavor between United Way of the Desert and the Desert Water Agency provides the most efficient approach desired by the Parties;

Now, Therefore, it is mutually understood and agreed as follows:

Section 1: Guidelines

1.1 Desert Water Agency will solicit/provide the “seed money” to implement his program. The United Way of the Desert will be the fiscal agent to manage the funds.

1.2 United Way of the Desert will be responsible for the screening of applicants and will determine who qualifies for the Emergency Assistance Program from guidelines established by the Parties, and mutually agreed by the Parties. Those guidelines are attached as Exhibit 1, and dated April 1, 2021. Effective May 1, 2021 clients may be granted a total of \$200 in water assistance credit per 12-month period.

1.3 United Way of the Desert will provide a monthly financial report to Desert Water Agency.

1.4 Effective January 1, 2018 United Way of the Desert will retain an admin fee of 10%.

Section 2: General Provisions Governing the MOU

2.1 The MOU may be terminated by either Party within 45 day's notice in writing.

2.2 Each Party shall use its best efforts and work wholeheartedly and in good faith for the satisfactory performance and expeditious completion of the terms of this MOU.

2.2 This MOU may be executed in any number of counterparts, each of which shall be deemed original, but all of which, when taken together, shall constitute one and the same instrument.

In witness whereof, the Parties have executed this MOU as of the day and year indicated on the first page of this MOU.

Kristal Granados
Chief Executive Officer
United Way of the Desert

Mark S. Krause
General Manager
Desert Water Agency

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS**

APRIL 20, 2021

**RE: REQUEST AUTHORIZATION TO ENTER INTO FUNDING
AGREEMENT WITH DEPARTMENT OF WATER RESOURCES
(DWR) FOR THE PERRIS DAM SEEPAGE RECOVERY PROJECT**

Desert Water Agency's (DWA's) participation in the financial responsibility associated with the operations and maintenance of Lake Perris started after the negotiations concluded on the landmark 100,000 af exchange agreement executed in 2003 with Metropolitan Water District (MWD), Coachella Valley Water District (CVWD) and DWA. DWA received an annual increase of 11,900 af to its Table A allocation, DWA's and CVWD's point of delivery for the 100,000 af exchange of Table A is located at Lake Perris downstream of our Lake Silverwood turnout. Currently, the cost obligations for Lake Perris are shared by MWD, CVWD, and DWA in the proportions of 63.3%, 32.33%, and 4.37%, respectively, and are based on the proportion of our Table A amounts discharged to Lake Perris.

A series of remediation projects were conducted from 2014 to 2018 to minimize the potential for catastrophic results from liquefaction due to seismic events (2006 MWD Lake Perris Dam study). These projects, collectively referred to as the Perris Dam Remediation Projects (Remediation Projects) have an overall cost of approximately \$229 M, and include reduction of the risk from an unstable foundation (shoring up the foundation through cement soil deep mixing (CSDM)), improving the outlet tower, and installing emergency outlet extension (and associated real estate acquisition) through the residential complex that developed downstream of the dam subsequent to its installation; DWA's portion of its cost share is approximately \$6.77 M (2018\$).

The concept of recovering seepage water originated from the construction of the toe-drain collection pipe as part of the Remediation Projects, which collects groundwater flowing underneath the dam and returns the flow to the MWD's Colorado River Aqueduct. Although the original intent of collecting this groundwater was to reduce the risk from liquefaction, it was determined that there was sufficient water that could be returned to the participating agencies and become a new water supply.

In an attempt to quantify the benefits from a potential seepage recovery project, DWR estimated the volume of water that can be recovered be approximately 7,500 af/yr. This new water would be divided between MWD, DWA, and CVWD in proportion to their financial obligations to Lake Perris. DWA and CVWD's portion of the recovered water will be exchanged for an equal amount of MWD's Colorado River water and delivered to the Whitewater and Mission Creek Turnouts in accordance to the conditions set in the *2019 Amended and Restated Agreement between MWD, CVWD, and DWA for the Exchange and Advanced Delivery of Water*.

Project Description:

The project is divided into a Recovery System and Conveyance System. DWR will manage and construct the Recovery System, comprised of five extraction wells and pumps to recover water, and will cost approximately \$29 M. The Conveyance System will be managed and constructed by MWD, consists of a pipeline (1 mile of 24 inch diameter pipe) to connect the extraction facilities to the CRA, and will cost approximately \$4.7 M. Once completed, it is estimated that the unit cost of the new supply will be less than \$300/af, which includes approximately \$50/af for operations and maintenance expenses.

Three funding agreements will be needed for project participation: 1) Recovery System Preconstruction (feasibility and environmental analysis, preliminary design), 2) Recovery System Construction, and 3) Conveyance System Design and Construction. Table 1 shows the details for each phase, including total costs, DWA's share, and schedule. It is estimated that DWA's total share of the project will be nearly \$1.46 M (in 2021\$). To date, DWR has collected \$2.1 M from the parties towards the Recovery System Preconstruction.

Table 1: Agreements, costs and schedule for Seepage Recovery Project

Agreement (Cost)		DWA's share (\$K)	Estimated schedule
1.	Recovery System Preconstruction (\$12.575 M)	\$549	2021 - 22
2.	Recovery System Construction (\$16.1 M)	\$704	2022 - 24
3.	Conveyance System Design/Construction (\$4.7 M)	\$205	2022 - 24

DWR and MWD entered into a Funding Agreement on May 15, 2017 for the Costs of Environmental Analysis, Planning and Preliminary Design of the Lake Perris Seepage Recovery Project (SWPAO #17601). Although the original Preconstruction funding agreement was between MWD and DWR, it allowed DWA and CVWD the opportunity to participate in the Project to receive water supply benefits. After some discussions between the DWR and the water agencies, DWR prepared separate funding agreements in March 2021. The preconstruction funding agreement between DWR and DWA, entitled *Agreement for Funding Between the Department of Water Resources of the State of California and Desert Water Agency for the Costs of Environmental Analysis, Planning and Design of the Perris Dam Seepage Recovery Project (SWPAO #21608)*, is attached for Board consideration.

The Recovery System Preconstruction agreement establishes the terms and conditions under which the parties will cost-share in environmental analysis, planning, and preliminary design of the Project. Once approved, the agreement provides DWA access to 328 af/yr of the water supply benefits of the project and confirms DWA's financial participation in its 4.37% share of the pre-construction costs. This phase is estimated to cost \$12.575 M, with DWA's share of approximately \$550K, and terminates by December 31, 2023 or when all the tasks are completed.

Future agreements include the Recovery System Construction (estimated at \$16.1 M) and Conveyance System Design and Construction (estimated at \$4.7 M). The necessary future agreements will be brought for consideration for approval at future Board Meetings.

Recovery System Preconstruction requests

The project has been divided into three separate phases, and staff is seeking approval and funding for the Recovery System Preconstruction Phase at this time. The details are provided in Table 2 below.

Table 2: Recovery System Preconstruction Phase Details

Task	Estimated cost (\$M)
Review and Compile Existing Information	\$0.25
Field Assessments and Groundwater Modeling	\$4.475
Preliminary Design, CEQA Analysis, Permitting	\$4.25
Final Design	\$3.6
Total (excludes construction, reporting, monitoring)	\$12.575

It was originally intended that MWD bear the preconstruction costs until DWA and CVWD were able to decide on their participation, after which time MWD would be reimbursed from the two agencies. However, in accordance with the DWR project controls process, a project charter was created in 2017 to establish the mechanism for cost recovery on the Statement of Charges. During this process, DWR unintentionally started allocating costs to MWD, DWA, and CVWD on their 2017 Statement of Charges, under the premise that all agencies wished to pay for their share in installments which ends in 2035. Under this method, the agencies would be responsible for interest payments at a Project Interest Rate of 4.61% in addition to the principal.

As shown in Table 3 below, DWA would pay approximately \$220 K in interest charges in addition to the \$549 K in principal for the Preconstruction Phase (difference between Option 1 and 2 totals). DWA has paid approximately \$91,000 (\$91 k) to date, and if the payment plan (Option 1) was selected, DWA would still owe an additional \$696 K. After discussions with DWR, DWA has the option of paying its total share for this phase of \$549 K in Fiscal Year 2022 (FY22), and the amount that has been paid to date (~\$91 k) will be fully credited in future years to costs associated with Recovery System (~\$72 K) or other Transportation Capital (~\$19 K).

Table 3: Payment options

Payments	Option 1: DWR schedule	Option 2: Advance funding
Paid (to 2021)	\$91,302	\$91,302
Payment (2022)	\$41,583	\$549,159
Payment/credit (2023-35)	-\$654,793	-\$72,841
Total	\$787,678	\$567,620

Staff recommends the Board authorize the General Manager to execute the Agreement for Funding Between DWR and DWA for the Environmental Analysis, Planning and Design of the Perris Dam Seepage Recovery Project (SWPAO #21608), and to authorize the advance payment of DWA's share of the preconstruction costs in an amount not to exceed \$549,159.

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791



4/7/2021

Mr. Mark S. Krause, General Manager
Desert Water Agency
Post Office Box 1710
Palm Springs, California 92263-1710

Dear General Manager Krause,

Attached is the "Agreement for Funding between the Department of Water Resources of the State of California and Desert Water Agency for the Costs of Environmental Analysis, Planning and Design of the Perris Dam Seepage Recovery Project" (SWPAO #21607).

The Agreement establishes the terms and conditions under which the Parties will cooperate in funding the environmental analysis, planning and design of the Perris Dam Seepage Recovery Project.

If you agree to the terms and conditions of this Agreement, please sign and date the signature page using DocuSign, but do not date the first page. Please also submit certified copies of your Board of Directors' approvals for this Agreement, if required, to:

Water Operations Executive Manager
Division of Operations & Maintenance
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001
Email: WOEM@water.ca.gov

Once executed, the Department of Water Resources will return fully executed originals of the Agreement to DWA.

If you have any questions or need additional information, please contact Lincoln King of my staff at (916) 653-4389 and refer to SWPAO #21607.

Sincerely,


John Leahigh
Water Operations Executive Manager
Division of Operations & Maintenance

Enclosures

State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT FOR FUNDING BETWEEN
THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA AND
DESERT WATER AGENCY
FOR THE COSTS OF ENVIRONMENTAL ANALYSIS,
PLANNING AND DESIGN OF THE
PERRIS DAM SEEPAGE RECOVERY PROJECT

SWPAO #21607

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18. EXECUTION	9

Exhibit A

State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT FOR FUNDING BETWEEN
THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA AND
DESERT WATER AGENCY
FOR THE COSTS OF ENVIRONMENTAL ANALYSIS,
PLANNING AND DESIGN OF THE
PERRIS DAM SEEPAGE RECOVERY PROJECT

SWPAO #21607

THIS AGREEMENT is made this _____ day of _____, 2021,
pursuant to the provisions of the California Water Resources Development Bond Act,
the State Central Valley Project Act, and other applicable laws of the State of California,
between the Department of Water Resources of the State of California, hereinafter
called "DWR," and Desert Water Agency, hereinafter called "DWA." As used in this
Agreement, "Party" or "Parties" means a signatory to this Agreement.

RECITALS

- A. DWR is authorized to construct, operate and maintain facilities for the storage and conveyance of water, certain of which facilities make water available to DWA.
- B. Pursuant to the agreement titled, "Contract between the State of California Department of Water Resources and The Metropolitan Water District of Southern California for a Water Supply," dated October 17, 1962, and its subsequent amendments, DWA receives water supplies that are delivered by the State Water Project.
- C. According to a study conducted by DWR in August 2006, titled "Perris Dam Remediation Groundwater Study Project Geology Report," an estimated 306,000 acre-feet of State Water Project (SWP) water had seeped underneath Perris Dam from 1974 to 2005. Through 2015, it is estimated that approximately 400,000 acre-feet of SWP water stored in Lake Perris had cumulatively seeped underneath Perris Dam. The Perris Dam Seepage Recovery Project is intended to recover water that continues to seep underneath Perris Dam.
- D. DWR desires to study, plan and design the possible construction of permanent facilities within DWR's right-of-way to recover SWP water seeped from Lake Perris and to deliver this supply to a future turnout, to be constructed by DWR in Repayment Reach 28J of the California Aqueduct. These facilities are hereinafter referred to as the "Perris Dam Seepage Recovery Facilities."
- E. DWA desires to study, plan and design the possible construction of permanent facilities, downstream of the turnout, to take delivery of water from the Perris Dam Seepage Recovery Facilities to the Colorado River Aqueduct. These facilities are hereinafter referred to as the "Perris Dam Seepage Delivery Facilities."
- F. On May 15, 2017, DWR and The Metropolitan Water District of Southern California (MWDSC) entered into an "Agreement for Funding between the Department of Water Resources of the State of California and The Metropolitan Water District of Southern California for the Costs of Environmental Analysis, Planning and Preliminary Design of the Lake Perris Water Recovery Project" (SWPAO #17601), hereinafter referred to as the "2017 Funding Agreement," which was subsequently amended on August 17, 2018, to extend its termination date to June 30, 2020.
- G. In accordance with Article 6(b) of the 2017 Funding Agreement, MWDSC offered to both DWA and Coachella Valley Water District (CVWD) the opportunity to participate in the Project. In response to that offer, both DWA and CVWD indicated their desire to participate in the Project and to split the associated costs by the same percentages as those for Repayment Reach 28J; provided that

DWA's and CVWD's participation may cease after final design is completed and prior to construction. MWDSC's and CVWD's participation in the Project is not subject to this Agreement and will be addressed in separate agreements with MWDSC and CVWD.

- H. Starting in 2017, DWA's share of the costs of environmental analysis, planning and preliminary design of the Project, calculated based on DWA's percentage for Repayment Reach 28J, was included in the capital cost component of the Transportation Charge through the Statements of Charges process. Any charges collected to date will be applied towards DWA's total Transportation Capital Charge.
- I. For the purposes of the California Environmental Quality Act (CEQA), the Perris Dam Seepage Recovery Facilities and the Perris Dam Seepage Delivery Facilities are considered a single project and are hereinafter referred to collectively as the "CEQA Project." The Parties have determined that DWR shall serve as the Lead Agency for the proposed CEQA Project, and that DWA shall serve as a Responsible Agency. Water recovery is the sole purpose of this proposed CEQA Project. The Perris Dam Seepage Recovery Facilities, which are the subject of this Agreement and a component of the CEQA Project, are hereinafter referred to as "Project." Water recovery is also the sole purpose of this proposed Project.
- J. This Agreement is not subject to CEQA because it does not authorize any activities that would result in a direct or reasonably foreseeable indirect physical change in the environment, but rather establishes the terms and conditions under which the Parties will cooperate in environmental analysis, planning and design of the proposed Project facilities. Contingent on environmental analysis and design results, the Parties may execute additional agreements in the future, including an agreement for construction, operation and maintenance of the proposed Project. The Parties will comply with CEQA prior to executing these additional agreements. This Agreement does not represent a contractual commitment by DWR or DWA to approve the proposed Project or to sign these additional agreements. DWR and DWA retain their full discretion under CEQA to consider and adopt mitigation measures and alternatives, including the alternative of not going forward with the proposed Project.

AGREEMENT PROVISIONS

The Parties agree as follows:

1. DEFINITIONS

When used in this Agreement, the following definitions will apply:

- (a) "SWP" means the State Water Project that is owned, operated and maintained by DWR. The SWP is also known as the State Water Facilities, as defined in California Water Code Section 12934(d).
- (b) "Water Supply Contract" means the long-term water supply contract between DWR and DWA, dated October 17, 1962; and all subsequent amendments.
- (c) "Table A Amount" shall mean the amount of SWP water allocated on an annual basis in accordance with Table A and under the provisions of DWA's Water Supply Contract.
- (d) "Perris Dam Seepage Recovery Water" shall mean SWP water that seeps from Lake Perris and that will be collected by the Perris Dam Seepage Recovery Facilities. This recovered water is separate from the water collected by the existing passive recovery system, which counts as Table A Amounts. Perris Dam Seepage Recovery Water shall represent its own, unique category of water, and deliveries of this water shall be in addition to Table A Amounts, and any other category of deliveries under the provisions of MWDSC's, DWA's and CVWD's Water Supply Contracts.
- (e) "Perris Dam Seepage Recovery Facilities" shall mean all facilities necessary for the collection of Perris Dam Seepage Recovery Water from Lake Perris and for delivery of this water to a future turnout, to be constructed by DWR in Repayment Reach 28J of the California Aqueduct. The Perris Dam Seepage Recovery Facilities constitute the Project. If this proposed Project is approved and moves forward, the proposed Project will be implemented by future agreement(s) for the construction, operation and maintenance of these facilities.

2. LOCATION AND DESCRIPTION

The study area includes both the area adjacent to Perris Dam and MWDSC's Colorado River Aqueduct (see Exhibit A). The proposed Project will provide for the collection of Perris Dam Seepage Recovery Water by DWR. The delivery of Perris Dam Seepage Recovery Water will be accomplished through a future turnout facility to be constructed by DWR, which will connect to MWDSC's Colorado River Aqueduct through facilities to be constructed by MWDSC.

3. PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish the terms and conditions under which the Parties will cooperate in environmental analysis, planning and design of the proposed Project facilities and to provide for funding the costs of such analysis, planning and design.

4. TERM OF AGREEMENT

This Agreement shall become effective upon execution by all Parties and execution of agreements by DWR and MWDSC and DWR and CVWD providing for funding of MWDSC's and CVWD's respective shares of Project Costs through final design, and shall terminate on the earliest of the two dates: 1) December 31, 2023; or 2) when the tasks identified in Article 8 have been completed. However, the Agreement shall remain in effect for four years beyond the earliest termination date that results from the two termination provisions set forth above, or until any claim or litigation concerning this Agreement asserted to any Party as of four years after that termination date is finally resolved, whichever occurs later.

5. DWR RESPONSIBILITIES

DWR shall do the following:

- (a) Serve as Project manager.
- (b) Manage, assist with and approve any and all environmental work.
- (c) Serve as CEQA Lead Agency for the proposed CEQA Project, and coordinate with federal agencies, if necessary, to arrange compliance with the National Environmental Policy Act, the federal Endangered Species Act, and other relevant laws.

6. DWA RESPONSIBILITIES

- (a) Pursuant to the 2017 Funding Agreement, MWDSC has offered, in writing, to DWA and CVWD the opportunity to participate in the proposed Project and has forwarded copies of these offers and the responses from DWA and CVWD to DWR. DWA and CVWD have both decided to participate with MWDSC in the proposed Project through final design.
- (b) DWA shall serve as a CEQA Responsible Agency for the proposed CEQA Project and participate in environmental analysis, planning, and design of the proposed Project facilities.
- (c) DWA shall pay its share of the costs incurred by DWR pursuant to this Agreement, as set forth in Articles 8 and 9 of this Agreement.

7. COORDINATION BETWEEN DWR AND DWA

- (a) DWR will coordinate with DWA on activities related to the proposed Project.

Funding Agreement for Costs of the Perris Dam Seepage Recovery Project

- (b) The Parties will meet regularly to discuss the proposed Project's progress. These meetings, either in person or by telephone conference, will occur approximately monthly or at times when the Parties otherwise agree to meet.
- (c) The Parties will cooperate with each other, including executing all necessary documents and providing assistance in obtaining approvals and permits from regulatory agencies required to perform the obligations under this Agreement, and carrying out the purpose and intent of this Agreement.
- (d) The Parties will share comments on drafts of environmental documents, plans, studies and designs of the proposed Project facilities.
- (e) DWR shall provide written quarterly budget and project status updates to DWA.

8. ESTIMATED PROJECT COSTS

The table below estimates Project costs through final design to be \$12,575,000. Based on the percentages for Repayment Reach 28J under DWA's Water Supply Contract, DWA's share of the estimated Project costs will be \$549,159. These are the estimates as of this Agreement's execution date, and the actual costs and billings to DWA may differ from these estimates.

Table 1 – Estimated Project Costs

Project Work Item	Estimated Project Costs
Task 1: Review and Compile Existing Information	\$250,000
Task 2: Field Assessments and Groundwater Modeling	\$4,475,000
Task 3: Preliminary Design, CEQA Analysis and Permitting	\$4,250,000
Task 4: Final Design	\$3,600,000
TOTAL (excludes construction, reporting, monitoring and project closeout)	\$12,575,000

If this Project is approved for construction, the construction costs of the Perris Dam Seepage Recovery Facilities may be covered in a separate agreement among DWR, MWDSC, and possibly DWA and/or CVWD. The total estimated cost for the Perris Dam Seepage Recovery Facilities, which includes the costs from Table 1, is \$28,716,944.

Table 1 does not include costs incurred by DWA for planning, design and construction of DWA's delivery facilities from the turnout to the Colorado River Aqueduct. These costs will be allocated and paid according to a separate agreement among MWDSC, DWA and/or CVWD. If this Project is built, the total estimated cost for the delivery facilities is \$4,700,000.

9. REPAYMENT PROVISIONS

(a) Repayment provisions of the Project are pursuant to Articles 24 and 50 of the Water Supply Contract. Pursuant to Article 24(c)(2) of the Water Supply Contract, DWA has elected a rapid repayment option for DWR's costs associated with environmental analysis, planning and design pursuant to this Agreement, and DWR hereby approves the following repayment schedule for DWA's share of the estimated Project costs:

- (1) Payments will be made as the capital cost component of the Transportation Charge through the normal Statements of Charges process.
- (2) \$549,159 will be advanced funded by DWA in two equal installments in calendar year 2022.

(b) If this Project is built, DWR will account and invoice DWA, as appropriate, for the delivery of the Perris Dam Seepage Recovery Water, details of which will be specified in future agreement(s).

10. NOTICES OR OTHER COMMUNICATIONS

(a) All notices or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if:

- (1) Served personally on the Party to whom notice is to be given;
- (2) Sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or
- (3) On the third day after mailing, if mailed to the Party to whom the notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Water Operations Executive Manager
 Division of Operations & Maintenance
 Department of Water Resources
 Post Office Box 942836
 Sacramento, California 94236 0001
 Email: WOEM@water.ca.gov

DWA: Desert Water Agency
General Manager-Chief Engineer
Post Office Box 1710
Palm Springs, California 92263-1710
Email: MKrause@dwa.org

- (b) The time for providing any notices or other communications specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement.

11. INDEMNIFICATION

DWA agrees to defend and hold DWR, its officers, employees and agents harmless from any direct or indirect loss, liability, lawsuit, cause of action, judgment or claim, and shall indemnify DWR, its officers, employees and agents from all lawsuits, costs, damages, judgments, attorneys' fees and liabilities arising from or related to this Amendment, except to the extent resulting from the sole negligence or willful misconduct of DWR, its officers, employees and agents.

12. AMENDMENTS

This Agreement may be amended at any time by mutual written agreement of the Parties.

13. BINDING ON SUCCESSORS AND ASSIGNMENTS

This Agreement will bind and inure to the benefit of the respective successors and assigns of the Party, except that, none of the obligations of the Parties set forth in this Agreement will be assigned without the prior, written approval of the other Parties, which approval will not unreasonably be withheld.

14. APPLICABLE LAW

This Agreement will be construed under and will be deemed to be governed by the laws of the State of California.

15. LONG-TERM WATER SUPPLY CONTRACTS

Nothing in this Agreement shall modify DWA's Water Supply Contract.

16. DISPUTE RESOLUTION

In the event of a dispute regarding interpretation or implementation of this Agreement, the Director of DWR and the General Manager of DWA, or their authorized representatives, shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute remains unresolved, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any

Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

17. COMPLETE CONTRACT

This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement between the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this Agreement, except as to those other agreements that are expressly referred to in this Agreement.

18. EXECUTION

The Parties agree that this Agreement will be executed using DocuSign by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature. The Agreement shall take effect as soon as all Parties have signed.

All Parties will receive an executed copy of this Agreement via DocuSign after all Parties have signed.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives,
have executed this Agreement on the date first above written.

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Chief Counsel
Department of Water Resources

Office of Water Operations Executive Manager
Division of Operations and Maintenance

Date

Date

DESERT WATER AGENCY

Mark S. Krause
General Manager-Chief Engineer

Date

Michael Riddell

General Counsel

4/9/2021

Date



Certificate of Completion

Envelope Id: 19268297B004413A83F114EEE7BA0EFE	Status: Sent
Subject: Please DocuSign: Agreement Transmittal Letter.docx, 2021 Perris Seepage Recovery Funding Agreem...	
Source Envelope:	
Document Pages: 14	Signatures: 2
Certificate Pages: 6	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	DWR SWPAO Executive Secretary
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	1416 9th Street
	Sacramento, CA 95814
	SWPAOExecSecr@water.ca.gov
	IP Address: 136.200.53.23

Record Tracking

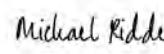
Status: Original 4/7/2021 9:13:24 AM	Holder: DWR SWPAO Executive Secretary SWPAOExecSecr@water.ca.gov	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Department of Water Resources	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
John Leahigh John.Leahigh@water.ca.gov Water Operations Manager Department of Water Resources Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 136.200.53.19	Sent: 4/7/2021 3:56:54 PM Viewed: 4/7/2021 3:58:20 PM Signed: 4/7/2021 4:00:09 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Michael Riddell Michael.Riddell@bbklaw.com Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 74.116.243.2	Sent: 4/7/2021 4:00:12 PM Viewed: 4/9/2021 9:48:45 AM Signed: 4/9/2021 9:53:34 AM
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Electronic Record and Signature Disclosure:

Accepted: 4/9/2021 9:48:45 AM
ID: 8445c571-b044-49c5-b49f-3d1d727e09ca

Mark Krause mark@dwa.org Security Level: Email, Account Authentication (None)	Sent: 4/9/2021 9:53:38 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Katerina Deaver
katerina.deaver@water.ca.gov
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Laura Boosalis
laura.boosalis@water.ca.gov
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events	Signature	Timestamp
Spencer Kenner Spencer.Kenner@water.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
John Leahigh John.Leahigh@water.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
DWR SWPAO Executive Secretary swpaoexecsecr@water.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Steve Johnson SJohnson@dwa.org AGM Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div>COPIED</div>	Sent: 4/7/2021 4:00:12 PM
Lincoln King Lincoln.King@water.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Tariq Yusufzai Mohammad.Yusufzai@water.ca.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/7/2021 3:56:54 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Department of Water Resources (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Department of Water Resources:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by phone call: (916) 653-5791

To contact us by paper mail, please send correspondence to:

Department of Water Resources

P.O. Box 942836

Sacramento, CA 95236-0001

To advise Department of Water Resources of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at don.davis@water.ca.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from Department of Water Resources

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to don.davis@water.ca.gov and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Department of Water Resources

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account

Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> • Allow per session cookies • Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Department of Water Resources as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Department of Water Resources during the course of my relationship with you.

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS**

April 20, 2021

RE: REQUEST BOARD AUTHORIZATION TO EXECUTE ENERGY SERVICES AGREEMENT WITH GOLDEN STATE RENEWABLE ENERGY (GSRE) FOR COMMERCIAL BATTERY ENERGY STORAGE SYSTEM (BESS) INSTALLATION AT ACANTO BOOSTER SITE

In October 2020, Golden State Renewable Energy (GSRE) submitted two applications to the SCE SGIP program to reserve funding for commercial energy storage system installation at DWA well site 17 and Acanto Booster site. In late January 2021, the SCE SGIP Program Administrator issued a Conditional Reservation Letter for both sites, reserving \$668,500 per site.

With the funding reserved, GSRE has been working with the Agency on an Energy Services Agreement, outlining the conditions and terms of the purchase and sale of the services provided from the battery storage system. As part of the review of this agreement it was discovered that there was potential risk associated with keeping the well 17 site operational over the next 15 years. The well was drilled in 1955 and there is the possibility that the well casing could fail over the next 15 years. Since the Agency has recently drilled a new well (well 43) near the site, if well 17 failed, the Agency would most likely not replace the well for several years. This scenario would prevent the battery storage system from meeting the designed power benefits for the site and therefore would result in diminished payback to GSRE. With this uncertainty, GSRE removed well 17 from the SCE SGIP program.

Since Acanto Booster is fairly new (built in the 1990's), has two pumps with one back-up pump, and is the only booster capable of pumping water to the Andreas reservoirs, this site is low risk of not operating over the next 15 years and it was decided by both GSRE and the Agency to move forward with the Energy Service Agreement.

Staff and Counsel have reviewed the agreement and all requested changes have been made by GSRE; therefore, staff requests Board authorization to execute the Energy Service Agreement with Golden State Renewable Energy for commercial battery energy storage system installation at Acanto Booster site.

Energy Services Agreement

This Energy Services Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Host Customer:		Seller:	
Name and Address	Desert Water Agency 1200 Gene Autry Trail South Palm Springs, CA 92263-1710 Attention: Steve Johnson	Name and Address	GSR-BTM LLC 1 Clipper Cove San Francisco, CA 94130 Attention: Phillip Suna
Phone	(760) 323-4971 office (760) 272-6852 mobile	Phone	(925) 338-3815 office
Fax	None	Fax	None
E-mail	sjohnson@dwa.org	E-mail	phillip@gsr-energy.com
Premises Ownership	Host Customer [X] owns [] leases the Premises. List Premises Owner, if different from: Host Customer: _____ n/a _____	Additional Seller Information	
Tax Status			
Project Name	“Acanto Booster” located at 3290 S Palm Canyon Dr., Palm Springs, CA 92264		

This Agreement sets forth the terms and conditions of the purchase and sale of the services provided from the battery energy storage system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Host Customer’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- | | |
|-------------------------|--|
| <u>Exhibit 1</u> | Pricing |
| <u>Exhibit 2</u> | System Description, Delivery Point, and Premises |
| <u>Exhibit 3</u> | Host Customer Information |
| <u>Exhibit 4</u> | General Terms and Conditions |
| <u>Exhibit 5</u> | Definition of Services |

Host Customer: DESERT WATER AGENCY

Seller: GSR-BTM LLC

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT 1

Pricing

1. **Operating Term:** Fifteen (15) years, beginning on the Commercial Operation Date (the “Operating Term”).
2. **Reserved.**
3. **Contract Price:** Self Generation Incentive Program (“SGIP”) Payments are assigned by Host Customer to Seller and paid by SGIP Program Administrator directly to Seller in accordance with Sections 4 and 11. The table below delineates SGIP Payments paid directly to Seller by SGIP Program Administrator and payments paid by Host Customer to Seller. Payments from Host Customer to Seller for shared Grid Service payments, if any, and shared Utility Bill Cost Savings are not components of Contract Price and are addressed in **Exhibit 4** in Section 12 and Section 13 respectively.

Operating Term Contract Year	\$/year (from SGIP Program Administrator to Seller)	\$/year (from Host Customer)
1	\$334,250	\$0
2	\$66,850	\$0
3	\$66,850	\$0
4	\$66,850	\$0
5	\$66,850	\$0
6	\$66,850	\$0
7	\$0	\$0
8	\$0	\$0
9	\$0	\$0
10	\$0	\$0
11	\$0	\$0
12	\$0	\$0
13	\$0	\$0
14	\$0	\$0
15	\$0	\$0
Total	\$668,500	\$0

The first year of the Operating Term shall commence on the Commercial Operation Date, and each subsequent Operating Term Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. Interconnection costs for the System will not exceed **\$20,000** in the aggregate.
 - b. All prices in this Agreement are calculated based on an Upfront Payment of \$334,250.00 and a maximum Performance Based Payment of \$334,250.00 paid shortly after the end of each of the first five Contract Years of System operations. The Seller posted the SGIP 5.0% Deposit for this System in the amount of \$33,425.00. The SGIP Program Administrator will refund this deposit directly to Seller shortly after the Commercial Operation Date.
 - c. The System is sized and configured as defined by **Exhibit 2**.
5. **Contract Price Exclusions.** Unless Seller and Host Customer have agreed otherwise in writing, and except as otherwise provided in Section (i) of **Exhibit 2**, Seller is not responsible for unexpected and atypical expenses unforeseen as of the Effective Date. Examples of such expenses may include, but are not limited to, unforeseen groundwork (including excavation and circumvention of underground obstacles), upgrades or repair to customer or utility electrical infrastructure (including client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects) and changes in System design which materially impact installation costs and that are caused by any inaccuracy or ambiguity in information provided by Host Customer including information related to building plans and specifications.

6. Termination Payment Schedule. In the event of early Termination of the Agreement by Host Customer for reasons other than a Seller Event of Default or for delay as stated in Section 2(d) of **Exhibit 4**:

- a. if on or after the Effective Date through SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter¹, Host Customer must repay Seller the SGIP 5% Deposit indicated in Section 4(b) and reasonable and documented out-of-pocket and direct overhead costs incurred by Seller to advance development of the System.
- b. if after SGIP Program Administrator issuance of the final Incentive Claim Form (ICF) approval letter and prior to end of the Contract Term, the Host Customer shall pay Termination Payment that is equal to those amounts in the corresponding Operating Term Contract Year listed in the Termination Payment Schedule below plus Seller's actual reasonable cost incurred to remove the System from the Premises. Regarding System removal upon early Termination, Seller will provide open book accounting of any third-party costs incurred and shall not apply any margin or markup to such third-party costs.

Operating Term Contract Year	Termination Payment (\$)
1	\$311,958
2	\$260,082
3	\$205,716
4	\$145,972
5	\$83,432
6	\$17,959
7	\$16,263
8	\$14,551
9	\$12,821
10	\$11,072
11	\$9,299
12	\$7,502
13	\$5,676
14	\$3,819
15	\$1,928

¹ Per the SGIP Handbook, Seller will submit the final Incentive Claim Form to SGIP Program Administrator after the Project is installed, interconnected and operational. SGIP Administrator may schedule and conduct a site visit before issuing the final ICF approval letter which begins the incentive payment process.

EXHIBIT 2

System Description, Delivery Point, and Premises

a. **System Location:** 3290 S Palm Canyon Dr., Palm Springs, CA 92264

b. **System Size (AC kW):** 174 kW-ac

c. **Expected First Year Energy Capacity (kWh):** 696 kWh

d. **Expected Installation: Indoor [] Outdoor [X] Description:**

The powerpacks, one (1) inverter, one (1) site master controller, and one (1) AC combiner to be installed next to the existing utility service entrance switchboard. One (1) utility lockable disconnect to be installed adjacent to the existing utility service entrance switchboard. All installations to be installed in smallest footprint possible not on top of any existing utilities or structures.

e. **Expected Battery Energy Storage System**

Manufacturer/Model	Quantity
Planned equipment - Tesla Powerpack	3

f. **Facility and System Description:** See **Exhibit 2, Attachment A**

g. **Description of Delivery Point:**

The powerpacks feed one power converter that feeds a generation load center that feeds that lockable utility disconnect that interconnects with the existing utility service entrance switchboard by extending the bus.

h. **Description of back-up power capabilities in the event of loss of grid power including any circuit relocations identified as necessary:**

When power is loss at the site from the grid, the site master controller will instruct the batteries to move into islanding mode while controlling a relay installed at the main disconnect to open the disconnect breaking the site's connection to the grid. The site will then be entirely fed by the batteries until the batteries have been fully discharged.

i. **Description of cost items not included in Contract Price, if any:**

N/A

EXHIBIT 2, Attachment A:

Facility and System Description

Water facility for booster pumps to increase pressure in waterlines. The system to be installed consist of three (3) powerpacks, one (1) inverter, one (1) site controller, one (1) load center, one (1) utility approved disconnect, and one (1) relay for controlling main service disconnect. System may change based upon existing site conditions or limitations.

EXHIBIT 3

Host Customer Information

Within 10 days following the execution of this Agreement, Host Customer will supply Seller with the following information:

Host Customer Information							
Name: Desert Water Agency					Federal Tax ID: 95-2408471		
Previous & Other Names (if applicable):				Website: https://dwa.org/			
Address: 1200 South Gene Autry Trail							
City, State, Zip: Palm Springs, CA 92264							
Phone Number: (760) 323-4971				Fax Number: (760) 325-6505			
Entity Type Check One:	S-Corp	C-Corp	Partnership	Sole Prop	LLC	LLP	Other: X
Property Address for Battery Installation: 3290 S. Palm Canyon Drive			State: CA		Zip Code: 92264	Property Owned by Applicant X YES o NO	
Property Type:		If Not Applicant, Name of Property Owner, address, phone number and email.					

Information Requested: Please submit the information required below via email to info@goldenstaternewableenergy.com.

Corporate Records / Formation Documentation

- ☐ Copy of Articles of Incorporation, Partnership Agreement, Fictitious Name Statement or Organizational formation documents (If applicable).

Financial Statements

- ☐ If readily available, last two (2) years of CPA audited, reviewed, compiled statements (Balance Sheet, Income Statement, Cash Flow).

Real Estate Documents

- ☐ Demonstration of Ownership of Premises or Lease with Premises Fee Owner
- ☐ Copies of Liens or Third-Party Security Interests in the Premises

If Host Customer is not Property Owner, Seller may request Host Customer to provide additional documentation to complete the evaluation process. Seller will notify Host Customer if additional information is required.

EXHIBIT 4

General Terms and Conditions

1. **Purchase and Sale of Services.** Host Customer shall purchase from Seller, and Seller shall sell to Host Customer, the System Services (as defined in this **Exhibit 5**) commencing on Commercial Operation Date and through the Contract Term (as defined in Section 2(a)). Electricity stored by the System shall be delivered to Host Customer at the Delivery Point.
2. **Term and Termination.**
 - a. **Effective Date; Contract Term.** This Agreement is effective as of the Effective Date and the Contract Term consists of two periods, a **Development Term** that starts on the Effective Date and runs up until the day before the Commercial Operation Date and then an **Operating Term** that starts on the Commercial Operation Date and runs for a period of 15 years, unless earlier terminated as provided in this Agreement (collectively, the “**Contract Term**”).
 - b. **Reserved.**
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time during the Development Term (i) significant additional and unanticipated costs are identified which have not previously been identified pursuant to Section 5 of **Exhibit 1** or which exceed the Contract Price assumptions pursuant to Section 4 of **Exhibit 1**, or Seller determines that the installation of the System will not be technically or economically viable for any other reason, and (ii) the Parties have failed to reach agreement after negotiating a Contract Price adjustment for sixty (60) days following written notice from Seller to Host Customer, either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of **Exhibit 1** or otherwise.
 - d. **Termination by Host Customer for Delay.** Seller will use commercially reasonable efforts to achieve Commencement of Installation at least sixty (60) days prior to the expiration of the SGIP reservation as indicated in the Conditional Reservation Letter for the System, as may be extended by the SGIP Program Administrator. If Seller fails to meet this deadline, Host Customer may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. In addition, Host Customer shall not be liable for any damages in connection with such termination.
 - e. **Termination for Failure of SGIP.** The state rebate and incentive calculations Seller has provided to Host Customer are estimates. These estimates are based on certain assumptions that may not be applicable based on the circumstances specific to the System. However, actual rebates and incentives may vary based on changes in eligibility requirements, funding availability, and funding rates. No substantial commencement of on-site work shall begin until Seller has received confirmation of a successful SGIP reservation in an amount that preserves the financial viability of this Agreement under the terms provided herein. When Seller has received this reservation confirmation, Seller will then request an Incentive Claim Form to be signed by Host Customer. Once the Conditional Reservation Letter is obtained, listing Seller or a financing party determined by Seller as the payee, and the necessary financing is in place to fund the System, Seller will commence work assuming equipment availability. Host Customer shall complete and return any rebate or associated utility program participation paperwork requested by Seller within seven (7) days of receipt. Each Party has the right to terminate this Agreement, without penalty or fee, if Seller determines after the engineering site audit of the Premises that Seller has misestimated the System’s total cost or the estimated rebate is confirmed at a lower amount than proposed. Such termination

right will expire at the earlier of (i) one (1) week before the scheduled System installation date and (ii) one (1) month after Seller informs Host Customer in writing of the revised cost. Any changes to the System will be documented in a written amendment to this Agreement signed by both Host Customer and Seller. Host Customer authorizes Seller to make corrections to the utility and incentive paperwork to conform to this Agreement or any amendments to this Agreement that are signed by both Parties.

3. **Billing and Payment; Taxes.**

- a. **Charges.** In accordance with Section 11.a, Host Customer and Seller agree that SGIP Program shall pay Seller as set forth in Section 3 of **Exhibit 1** (the “**Contract Price**”).
- b. **Invoices.** Seller shall invoice Host Customer annually, unless no payment is due under the terms of this Agreement. Such annual invoices shall state the rates applicable to, and charges incurred by, Host Customer under this Agreement.
- c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
- d. **Taxes.** Seller is responsible for any incremental personal property taxes imposed on the Host due to installation of the System (“**Seller’s Taxes**”). Seller shall not be responsible for taxes, if any, assessed on the sale, delivery or consumption of electricity stored by the System.

4. **Incentives and Environmental Attributes.** As the owner of the System, Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives and Environmental Attributes applicable to the System. Host Customer shall cooperate with Seller in obtaining, securing and transferring all Incentives, if any. Host Customer is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Host Customer shall not make any filing or statements inconsistent with Seller’s ownership interests in the Incentives and Environmental Attributes. If any Incentives are paid or delivered directly to Host Customer, Host Customer shall immediately pay or deliver such items or amounts to Seller. For sake of clarity, Seller will be responsible for payment of any deposit required to secure Incentives and if any such deposit is refunded to Host Customer rather than to Seller, Host Customer will immediately pay or deliver such refunded amounts to Seller.

“**Governmental Authority**” means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

“**Incentives**” means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits (including depreciation deductions) under federal, state or local law, and (iv) any other attributes, commodity, Payments stream or payment in connection with the System (such as ancillary or capacity Payments), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include Environmental Attributes.

“**Environmental Attributes**” means, with respect to the System, any and all presently existing or created in the future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the operation of the System and its displacement of conventional energy generation.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 2(c) above and the remaining provisions of this Section 5 and Section 6.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an “Approval”):
 - i. any agreements and approvals from the utility necessary in order to interconnect the System to the utility’s electric distribution system.
 - ii. any zoning, land use and building permits required for Seller to construct, install and operate the System; and

Host Customer shall cooperate with Seller’s reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Host Customer to the local utility.

- c. **System Design Approval.** Seller shall provide Host Customer with a copy of the System design for approval before Commencement of Installation. Host Customer shall have ten (10) days after receipt to approve or disapprove the design. Failure by Host Customer to respond within such ten (10) day period shall be deemed approval of the design. To disapprove the design, the Host Customer must provide commercially reasonable explanation for such disapproval and clear feedback on requested changes. Seller shall make commercially reasonable efforts to modify the design and resubmit it for Host Customer’s approval. If the Host Customer and Seller cannot reasonably agree on an economically viable System design modification, Seller may terminate this Agreement under Section 2(c) above.
- d. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation, consistent with provisions in **Exhibit 4**, Section 2(a). “Commencement of Installation” means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.
- e. **Force Majeure.**
 - i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Operating Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Operating Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
 - ii. **Extended Force Majeure.** If a Force Majeure Event for which one Party has notified the other Party under paragraph (i) above either: (x) continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period; or (y) is deemed by mutual agreement of the Parties to have rendered repairs to the System impractical; then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued before termination including Seller’s responsibility to remove the System as required under Section 9 (but Host Customer shall reimburse Seller for Seller’s removal costs if the Force Majeure Event affects Host Customer and Host

Customer elects to terminate the Agreement). Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, before expiration of the initial one hundred eighty (180) day period, Seller provides written evidence to Host Customer that it is diligently pursuing such actions, then Host Customer shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.

- iii. **“Force Majeure Event”** means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; pandemic including COVID-19, but only to the extent of direct impacts of COVID-19 (including travel restrictions, quarantine restrictions, supply chain disruptions, and labor force disruptions) of which such Party was not aware, and should not reasonably have been aware, as of the Effective Date; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out, including those related to disease or pandemic; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller’s control or due to a Force Majeure Event.
- iv. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, the requirement of achievement of Commencement of Installation will be automatically extended day for day to account for the impact of the delay.

- f. **Commercial Operation.** Seller shall notify Host Customer in writing when it has achieved Commercial Operation (the date of such notice, the **“Commercial Operation Date”**). **“Commercial Operation”** means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in **Exhibit 2** and has permission to operate from the relevant Governmental Authority. Seller shall provide Host Customer with documentation to evidence that the System is ready to begin Commercial Operation upon Host Customer’s reasonable request.

6. **Installation, Operation and Maintenance.**

- a. **Seller’s General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner and in accordance with applicable law and prudent industry practices in the state of California. The System shall comply with all applicable rules, regulation, and local building codes.
- b. **System Repair and Maintenance.** In the unlikely event it is required, Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System with written consent from Host Customer; provided that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Host Customer. SCE electrical service to the premises will continue uninterrupted when the System is undergoing maintenance or repair. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller’s sole cost and expense, except that Host Customer shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Host Customer, its agents, employees or contractors.
- c. **Maintenance of Premises.** Host Customer shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Host Customer, to the extent within its reasonable control, (i) shall ensure that the Premises always remains interconnected to the local utility grid; and

(ii) shall not permit cessation of electric service to the Premises from the local utility. Host Customer is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Host Customer's side of the Delivery Point, including all of Host Customer's equipment that utilizes the System's outputs. Host Customer shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Host Customer, and does not need to receive permission to operate from the utility.

- d. **Alteration of Premises.** Not less than thirty (30) days before making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Host Customer shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration, or Improvement result in a permanent and material adverse economic impact on the System, Host Customer may request relocation of the System under Section 8 hereof. If a temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.
- e. **Malfunctions and Emergencies:** Each Party shall notify the other Party within twenty-four (24) hours following the discovery of any emergency condition affecting, material malfunction in, or damage to, the System or its operation. In the event of any System emergency condition, or any damage or loss of the use of the Premises or the System, or event or condition that could reasonably be expected to result in physical damages to the Premises, Seller, or if necessary, Host Customer, shall undertake appropriate and necessary repairs or corrective action in an expeditious and safe manner.
- f. **Disconnection.** Host Customer shall not cause or allow a disconnection of the System from its utility's electrical facilities, including as a result of non-payment of bills from its utility unless directed to do so by Seller or in response to an emergency situation per Section 6(d).

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights.** Host Customer hereby grants to Seller and to Seller's agents, employees, contractors and the utility (i) a non-exclusive license running with the Premises (the "**Non-Exclusive License**") for access to, on, over, under and across the Premises from the Effective Date until the date that is ninety (90) days following the date of expiration or earlier termination of this Agreement (the "**License Term**"), for the purposes of performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement and otherwise as required by Seller to perform this Agreement, it being understood that any Seller access will require Host Customer authorization. During the Contract Term, Host Customer shall provide Seller, its employees, contractors and subcontractors with reasonable access to the Premises at mutually agreed upon times to allow Seller to perform (i) the installation work, (ii) System operations and maintenance and (iii) System removal, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the System with the Premises electrical wiring. Host Customer shall provide reasonably sufficient space for the temporary storage and staging of tools, materials and equipment during the installation and/or removal of the System. During the License Term, Host Customer shall preserve and protect Seller's rights under the Licenses and Seller's access to the Premises and shall not interfere, or permit any third parties under Host Customer's control to interfere with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.

- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. **Safeguarding the Premises.** Host Customer shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Host Customer shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Host Customer shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Host Customer's breach of its obligations under this Section or (ii) the acts or omissions of Host Customer or its employees, agents, invitees or separate contractors.
- d. **Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced, and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- e. **Liens.**
 - i. **Lien Obligations.** Host Customer shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "Lien") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume, or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Host Customer of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
 - ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities, and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(e)(i).

8. **Relocation of System.**

If, during the Contract Term, Host Customer ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Host Customer is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Host Customer may propose in writing the relocation of the System, at Host Customer's cost, in lieu of termination of the Agreement by Seller for a Default Event by Host Customer. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Host Customer's proposal, Seller may terminate this Agreement pursuant to Section 14(b)(ii).

9. **Removal of System upon Termination or Expiration.**

Upon the expiration or earlier termination of this Agreement (provided Host Customer does not exercise its purchase option under Section 17(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration or early termination of the Contract Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures. Host Customer must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host Customer may, at its option, remove the System to a rented warehouse with Seller paying reasonable rent charges and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. **System Data.**

- a. **Ownership Rights.** Host Customer acknowledges that the System collects, produces, and delivers to Seller certain data, information, and content (collectively "Equipment Data") through the operation of the System. Seller shall always retain right, title and interest in all Equipment Data associated with, or resulting from, the installation and operation of the System. Seller may use the Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Host Customer or an agent or affiliate of Host Customer shall be anonymized in a manner such that it is not possible to link that data to Host Customer. Seller acknowledges that the System will provide Host Customer with certain operational and performance data, in accordance with System Services as described in **Exhibit 5** attached hereto. Host Customer may use Equipment Data in any way it elects provided that any such use of the Equipment Data disclosed to any person other than Seller or an agent or affiliate of Seller shall not disclose any knowledge, data or information related to the System and/or Seller's use and ownership of the System.
- b. **Access to Data and Systems.** To facilitate its participation in SGIP and Grid Programs (as defined in Section 11 and Section 12 of this Agreement) and to calculate Utility Bill Cost Savings (as defined in Section 13 of this Agreement), Seller may access and use Host Customer's data, including utility account information, usage history, and meter data. Host Customer agrees to provide Seller with available electrical design information about the System, its Premises, and other electrical hardware attached to its Premises, including single-line diagrams and permits. Host Customer agrees to allow Seller and Seller affiliates, its utility, the California Integrated System Operator (CAISO), governmental bodies, and their affiliates (collectively, "Grid Service Entities") to come to its Premises at agreed-upon times to inspect and modify the System, including, as agreed-to by Host Customer, installing additional hardware on or around the System as required to comply with SGIP or Grid Program requirements.

11. **SGIP Requirements.**

- a. **Purpose.** The System is participating in California's Self Generation Incentive Program ("SGIP"), and Host Customer authorizes Seller to act as Host Customer's SGIP Services Provider to facilitate Host Customer's participation in SGIP. The State may charge Seller an application fee ("**Application Fee**") for participating in the SGIP financial incentive programs. Costs associated with this Application Fee will be paid by Seller. The financial incentives issued by Host Customer's SGIP Program Administrator after the System achieves permission to operate from the Utility is called "**SGIP Payments**". Host Customer assigns all title and interest in SGIP Payments to Seller, identifying Seller as Payee to the SGIP Program Administrator, and releases any claim to the SGIP Payments.
- b. **SGIP Payments.** SGIP Payments have two separate components. The first component is a one-time payment totaling 50% of the total SGIP Payments as reflected in **Exhibit 2** ("**Upfront Payment**"). The second component is the Performance Based Payment, the balance of the SGIP Payments paid

out at a maximum of 10% per year over five years based on annual kilowatt-hours discharged and complying with all greenhouse gas (GHG) emission reduction, cycling and other system and operational requirements adopted by the California Public Utility Commission. Seller will monitor and manage the capabilities of the System to: a) allow the System to provide back-up power during periods of loss of grid power, and b) comply with cycling requirements for the Performance Based Payment Term, and c) reduce Host Customer electric bills by discharging energy to reduce site peak demand and/or by discharging energy during high priced time-of-use periods, and d) permit participation in Grid Services as described in Section 20. The System must discharge an average of 104 Full Cycles per year for the first five years of operation to qualify for the maximum available SGIP Payments. A “Full Cycle” is discharging the full energy capacity of the System, whether during a single full discharge or over multiple partial discharges. Seller will work with Host Customer to ensure that the System functions to meet this SGIP requirement.

- c. **Administration.** Seller will be responsible for administering SGIP matters, including preparing and submitting the SGIP application, liaising with SGIP administrators, preparing and submitting the incentive claim form (including documentation demonstrating utility Permission to Operate, final building inspection, final monitoring schematic/as-built, project cost affidavit and breakdown worksheet, one week dataset and 2 hour test dataset, scheduling of physical inspection) and receiving SGIP funds into a Seller designated account. Host Customer hereby authorizes Seller, as its Incentive Provider, to act on its behalf and to enroll, register, or otherwise include the System in all eligible financial incentives, including SGIP.
- d. **Further Assurances.** Seller shall execute such documents relating to such incentives as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon rebate and incentive paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts secure SGIP Payments, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such incentive programs or by Seller.
- e. **Appointment as SGIP Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for the SGIP (“SGIP Services Provider”). Host Customer hereby authorizes the SGIP Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in SGIP, including: (i) receiving notices from its utility and any other third parties regarding SGIP, and (ii) payments to and from its utility and any other third parties regarding SGIP. Host Customer grants to Seller all rights to use the System to provide SGIP Services and to otherwise participate in SGIP. Host Customer understands that such use of the System by Seller (or Seller’s affiliates) may override other System operating modes while preserving key capabilities to provide back-up power and cycling requirements for SGIP. Seller will make any relevant notices and documents available to Host Customer.
- f. **SGIP Default.** Host Customer will be in default under this Section 11 if Host Customer fails to perform any obligation under this Section 11. If Host Customer is in default, Seller may take any reasonable action to correct its default or to prevent Seller’s loss. If Host Customer defaults under this Section 11, Host Customer will reimburse Seller for any loss of SGIP benefits Seller suffers and for any return of SGIP refunds Seller must make to program administrators.

12. **Grid Services**

- a. **Purpose.** In addition to providing the System Services listed in **Exhibit 5** and the SGIP Services described in Section 11, the System can provide certain additional services to the electric grid (“Grid Services”, in each case provided under a “Grid Program”). Such Grid Services are designed to help maintain the reliability of the electrical grid, by reducing the strain placed on the electrical grid during periods of high electricity demand and/or reduce the electrical grid’s contribution to GHG emissions. Host Customer authorizes Seller to enroll the System to participate in any Grid Program which may from time to time become available provided that Seller shall

operate the System under any such Grid Program in a manner that does not disrupt the provision of the System Services described in **Exhibit 5**. In some cases, incentives or payments may be available for participation in a Grid Program ("**Grid Payments**"). Seller will notify Host Customer if Seller will enroll the System in any Grid Program, including what, if any, Grid Payments will be paid to Host Customer, and Host Customer will have thirty (30) days to opt the System out of participating in the Grid Program. If Host Customer does not timely opt out of participating in the Grid Program, the System will be enrolled in the Grid Program and Host Customer agrees to execute all documents necessary to have the System participate in the Grid Program.

- b. **Appointment as Grid Services Provider.** Host Customer hereby appoints Seller, or another party designated by Seller, to act on its behalf as its sole and exclusive agent and provider for participation in Grid Programs ("**Grid Services Provider**"). Host Customer hereby authorizes the Grid Services Provider to act on its behalf and to enroll, register, or otherwise cause the participation of the System in any Grid Program, subject to the terms of this section.
- c. **Further Assurances.** Seller shall execute such documents relating to enrollment and participation in Grid Programs as Seller has reviewed and determined reasonable, in its sole discretion, and will work collaboratively with Host Customer to process agreed upon Grid Program paperwork. Host Customer agrees to fully and promptly cooperate with Seller in its efforts to assist Host Customer, including promptly taking any actions and providing all necessary documentation, data, access, authorizations, and any other information required by such Grid Programs or by Seller.

13. **Utility Bill Cost Savings**

- a. **Electricity Bill Cost Savings.** Seller will operate the System to provide System Services described in **Exhibit 5**. These services include Demand Charge Management and Time-of-Use Management which are both expected to reduce the Host Customer's utility electricity bill for load served by the System. Based on Seller's analysis of Host Customer's historical loads and electricity bills for loads at the Premises and modeling of expected System operations, Seller estimates Host Customer's electric bills will be reduced by approximately \$1,133 per year. The Host Customer bills are expected to be reduced by a similar amount each year of the Contract Term.
- b. **Sharing of Demonstrated Savings.** Once per year, Host Customer will pay Seller a set percentage of Host Customer's demonstrated electricity bill cost savings made possible by operation of the System ("Demonstrated Savings"). Demonstrated Savings is the imputed electrical energy costs and demand charges the Host Customer would have paid the Electric Utility for electric service at the Premises but for the System operating ("the Baseline") less the actual electrical energy costs and demand charges the Host Customer paid the Electric Utility for electric service at the Premises ("Adjusted Cost"). The Demonstrated Savings will be calculated using the data from the meter installed by Seller in connection with the System, the utility meter at the Premises and the tariffs applicable to the Premises. In the first through fifth Contract Years of the Contract Term, Host Customer will pay to Seller 30% of Demonstrated Savings. In the sixth through fifteenth Contract Years of the Contract Term, Host Customer will pay to Seller 20% of the Demonstrated Savings. Host Customer will retain the balance of the Demonstrated Savings.
- c. **Electricity Bill Cost Savings Report.** Within 30 days of the end of each Contract Year, Seller will provide to Host Customer an Annual Electricity Bill Cost Savings Report that provides an analysis of the Host Customer's utility bills and System performance over the previous Contract Year. This report will calculate the Baseline amount, the Adjusted Cost amount, and the Demonstrated Savings amount. The report will provide data and detailed analysis showing how the System performed and whether Demonstrated Savings were secured through Demand Charge Management, Time-of-Use Management, or what combination of these services. If Host Customer has any questions about the report and the resulting Demonstrated Savings, Host Customer will provide notice to Seller with these questions within twenty (20) days of receiving the report. Seller will respond within fifteen (15) days of receipt of notice to answer Host Customer's questions. If the Parties cannot reasonably agree to the amount of the Demonstrated Savings, the Parties will settle the issue by arbitration in accord with the Dispute Resolution provisions in Section 22.b.
- d. **Tariff Change.** Host Customer retains any and all rights to choose its electric tariffs from among the options offered by the Electric Utility now or in the future. However, at least sixty (60) days before changing the electric tariff for the loads that are served by the System, Host Customer must notify Seller of the proposed change so that Seller can advise Host Customer of expected impacts on System operation and expected utility bill cost savings and so that Seller can, if necessary, update System operational algorithms to maximize utility bill cost savings under the new anticipated tariff while still delivering other System Services described in **Exhibit 5**.

14. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");

- ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section 14(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated before the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or,
- v. in the case of Host Customer as the Defaulting Party only, Host Customer (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Host Customer pays the Termination Payment determined under Section 6 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Host Customer is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.
- vi. in the case of Host Customer selling its Premises but not assigning this Agreement to new Host Customer that accepts this Agreement and all its obligations and maintains electrical loads on the Premises that allow the System to continue operating.

b. Remedies.

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Host Customer, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Host Customer cures the Default Event in full, or (b) of termination of this Agreement. Seller's rights under this Section 14(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 14(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 14(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Host Customer, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth in Section 6 of **Exhibit 1**, and (ii) any other amounts previously accrued under this Agreement and then owned by Host Customer to Seller.
 - (2) **Termination by Host Customer.** If Seller is the Defaulting Party and Host Customer terminates this Agreement, the Termination Payment to Host Customer will be equal

to the sum of (i) all direct costs reasonably incurred by Host Customer by reason of the termination; and (ii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Host Customer. The Termination Payment determined under this Section 14(b)(iii)(2) cannot be less than zero.

- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement before the expiration of the Contract Term pursuant to Section 14(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 14(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 14(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to remove the System following the occurrence of a Default Event by Host Customer pursuant to Section 14(a)(i), unless Host Customer pre-pays the cost of restoration reasonably estimated by Seller.
 - i. **Reservation of Rights.** Except in the case of a termination under Section 14(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 14(b)(ii), nothing in this Section 14 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
 - ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Host Customer's obligation to pay the full Termination Payment set forth in Section 6 of **Exhibit 1** following a Default Event by Host Customer.
 - iii. **No Limitation on Payments.** Nothing in this Section 14 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Host Customer but for a Host Customer breach or Default Event.

15. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
 - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

- b. **Host Customer's Representations and Warranties.** Host Customer represents and warrants to Seller the following:

- i. **Licenses.** (a) Host Customer has title to or a leasehold or other valid property interest in the Premises such that Host Customer has the full right, power and authority to grant the Licenses in Section 7(a), (b) such grant of the Licenses does not violate any law, ordinance, rule or other governmental restriction applicable to Host Customer or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Host Customer is bound or that affects the Premises, and (c) if Host Customer does not own the Premises or any Improvement on which the System is to be installed, Host Customer has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the Licenses to Seller so that Seller may perform its obligations under this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Host Customer nor the performance by Host Customer of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Host Customer is a party or by which Host Customer is bound.
- iii. **Accuracy of Information.** All information provided by Host Customer to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Host Customer's planned use of the Premises and any applicable Improvements, and (d) Host Customer's estimated electricity requirements, is accurate in all material respects.
- iv. **SGIP.** Host Customer understands and will complete all its obligations under Section 11 related to the SGIP program.

- c. **Seller's Warranties.**

- i. If Seller damages any other part of the Premises or any Improvement , Seller shall repair or reimburse Host Customer for such damage, as agreed by the Parties.

- d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 15(a) AND 15(c) OF THIS AGREEMENT ARE HOST CUSTOMER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 15, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 15(a) AND 15(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

16. **Insurance.**

- a. **Insurance Coverage.** At all times during the Contract Term, the Parties shall maintain the following insurance, as applicable:

Seller's Insurance. As of the Effective Date, Seller shall maintain One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, as well as contractual liability coverage and naming Host Customer as an additional insured; (b) employer's liability insurance with minimum coverage of at least One Million Dollars (\$1,000,000); (c) automobile liability insurance on all owned, non-owned and/or hired vehicles with minimum coverage of at least One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, and physical damage insurance for the actual cash value of each such vehicle. Before system equipment is delivered to Host

Customer site, Seller shall maintain property insurance of the System for the replacement cost thereof.

- i. **Host Customer's Insurance.** Host Customer shall maintain commercial general liability insurance with coverage of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

17. **Ownership; Option to Purchase.**

a. **Ownership of System.**

- i. **Ownership; Personal Property.** Throughout the Contract Term, Seller shall be the legal and beneficial owner of the System, all associated Incentives and Environmental Attributes. The System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Host Customer agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will always retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Host Customer and Lienholders.** Host Customer shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Host Customer shall provide a disclaimer or release from such lienholder.
- iii. **Fixture Disclaimer.** If Host Customer is the fee owner of the Premises, Host Customer consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Host Customer is not the fee owner, Host Customer shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance, Seller has the right to file such disclaimer.
- iv. **SNDA.** Upon request, Host Customer shall deliver to Seller a Subordination and Non-Disturbance Agreement (SNDA) in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the

Premises are leased by Host Customer), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.

- v. **Eviction Notice.** If Host Customer does not own the Premises or any Improvement on which the System is installed, Host Customer shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Host Customer's lease of the Premises and/or Improvement.

b. **Option to Purchase.**

- i. **Exercise of Option.** Beginning at the end of the sixth (6th) Operating Term Contract Year and at the end of any subsequent Operating Term Contract Year, so long as Host Customer is not in default under this Agreement, Host Customer may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment on that date as set forth in Section 6 of **Exhibit 1**. Host Customer shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days before the end of the relevant Operating Term Contract Year and the purchase shall be completed before the end of the Operating Term Contract Year.
- ii. **Fair Market Value.** The "Fair Market Value" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Host Customer has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the energy storage industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. If the Host Customer does not conclude the purchase, cost of the appraisal will be born solely by the Host Customer.
- iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to the System to Host Customer upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to affect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Host Customer any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Host Customer all System operation and maintenance manuals and logs in Seller's possession and provide Host Customer basic training on the operation and maintenance of the System upon Host Customer's reasonable request. Upon purchase of the System, Host Customer shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 11(d), Seller will have no further liabilities or obligations hereunder for the System.

18. **Indemnification and Limitations of Liability.**

- a. **General.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "Indemnified Parties"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from (1) any Claim (as defined in Section 18(b) relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 15 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement;

provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 18(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 18(c).

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice of any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 18(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 18(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification.**

- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Host Customer’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 18(c)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. **Host Customer Indemnity.** Host Customer shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. “**Hazardous Substance**” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability.**

- i. **No Consequential Damages.** Except for indemnification of third-party claims pursuant to this Section 18, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost Payments, lost profits, lost business opportunity or any business interruption) arising out of

their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 6 of **Exhibit 1** shall be deemed to be direct, and not indirect or consequential damages under this Section 18(d)(i).

- ii. **Actual Damages.** Except for indemnification of Claims pursuant to this Section 18, and except as otherwise limited in Section 19, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Host Customer and/or the SGIP Administrator under this Agreement. The provisions of this Section 18(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- f. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

19. Change in Law.

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Host Customer in writing of such Change in Law. Within thirty (30) days following receipt by the Host Customer of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- b. **Illegality or Impossibility.** If, in Seller's sole discretion, a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Host Customer without either Party having further liability under this Agreement except with respect to liabilities accrued before the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

20. Assignment and Financing.

- a. **Assignment.**
 - i. **Restrictions on Assignment.** Subject to the remainder of this Section 20(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Host Customer may not withhold its consent to an assignment proposed by Seller where the proposed assignee has

the financial capability and experience necessary to operate and maintain energy storage systems such as the System.

ii. **Permitted Assignments.** Notwithstanding Section 20(a)(i):

1. Seller may, without the prior written consent of Host Customer, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 20(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and
2. Host Customer may, and provide prior notice to Seller, assign this Agreement to an affiliate of Host Customer of the Premises; provided, that, Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.

Host Customer must assign, and provide prior notice to Seller, this Agreement to an affiliate of Host Customer of the Premises. Host Customer is not released from liability hereunder by reason of the assignment unless the assignee assumes Host Customer's obligations hereunder by binding written instrument on terms satisfactory to Seller, including as to the assignee's creditworthiness.

iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

b. **Financing.** The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") for the installation, construction, ownership, operation, and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Host Customer shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

c. **Termination Requires Consent.** Seller and Host Customer agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

21. **Confidentiality.**

a. **Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

- b. **Permitted Disclosures.** Notwithstanding Section 21(a):
- i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "**Representatives**"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
 - ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.
- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 21 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 21. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 21, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

22. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** The law of the state where the System is located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any

dispute arising from or relating to this Agreement shall be settled by arbitration in Palm Springs, California. The arbitration shall be administered by JAMS in accordance with its arbitration rules, and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted before arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys' fees and costs.

- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except for liabilities accrued before the date of termination and remove the System as allowed by Section 9 of this Agreement.
- h. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Host Customer shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of energy services delivered by the System.
- i. **No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. **Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a

whole. In such event, such provision shall be rectified or interpreted to best accomplish its objectives within the limits of applicable law.

- k. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- l. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Host Customer, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. **Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.

End of Exhibit 4

EXHIBIT 5

SYSTEM SERVICES

Energy Services

Backup Power The System is designed to provide backup power if a power outage occurs during which Host Customer load cannot draw electricity from the grid. The System can only power circuits that the Host Customer has selected and that Seller has approved and connected to the System. Such eligible circuits must be 120/240V single phase and connected such that they may be powered by the battery energy storage system during an outage. The System may be unable to power the entire load at the Premises during a power outage and depending on energy consumption Host Customer may have limited energy and duration of operations for the System. When Seller causes the System to discharge, Seller shall ensure that at least 20% of the System energy capacity remains after such discharge is complete. Upon receiving advance notice of planned grid outage events, Seller will use commercially reasonable efforts to fully charge the System in advance of planned grid outage events. Seller will follow Prudent Industry Practices to ensure the System is available to provide backup power as described; provided, however, that Seller cannot guarantee the System will perform in every outage or provide backup power for an entire given outage. **In addition, if Host Customer is powering medical equipment using the System, Host Customer should also provide a secondary power source to the medical equipment and take additional measures should there be an outage and the System is not operational.**

“Prudent Industry Practices”, as applied to the System, means the practices, methods, acts, equipment, specifications and standards of safety, as the same may change from time to time, as are used or approved by a significant portion of the residential generation or storage industry that operate battery storage systems that are similar in size and type as the System as good, safe and prudent practices for such systems with commensurate standards of safety, performance, dependability and economy, as adjusted for the circumstances existing at the time any decision is made or action is taken, and following applicable laws, permits and equipment manufacturers’ recommendations. Prudent Industry Practices are not intended to be the same as optimum practices, methods or acts to the exclusion of all others, but rather to be within a spectrum of good and proper practices, methods, and acts.

Demand Charge Management If Host Customer is on a rate schedule that features demand charges or changes to such a rate schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s monthly demand charges by discharging energy from the System during periods when the System algorithms anticipate Host Customer will be setting monthly peak demand, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s demand charge management.

Time-Of-Use Management If Host Customer is on a time-of-use rate schedule or changes to such a schedule, Seller will follow Prudent Industry Practices when operating the System to lower Host Customer’s energy charges by discharging energy from the System during peak price periods, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not guarantee savings on Host Customer’s utility bill or any specified level of performance from Seller’s time-of-use management.

Solar Self-Consumption If the System is paired with a solar energy system, Seller will follow Prudent Industry Practices when operating the System, subject to the requirements of any utility program. Notwithstanding the foregoing, Seller does not in any way guarantee that energy generated by Host Customer’s solar energy system will be available at a time later than the moment it is produced.

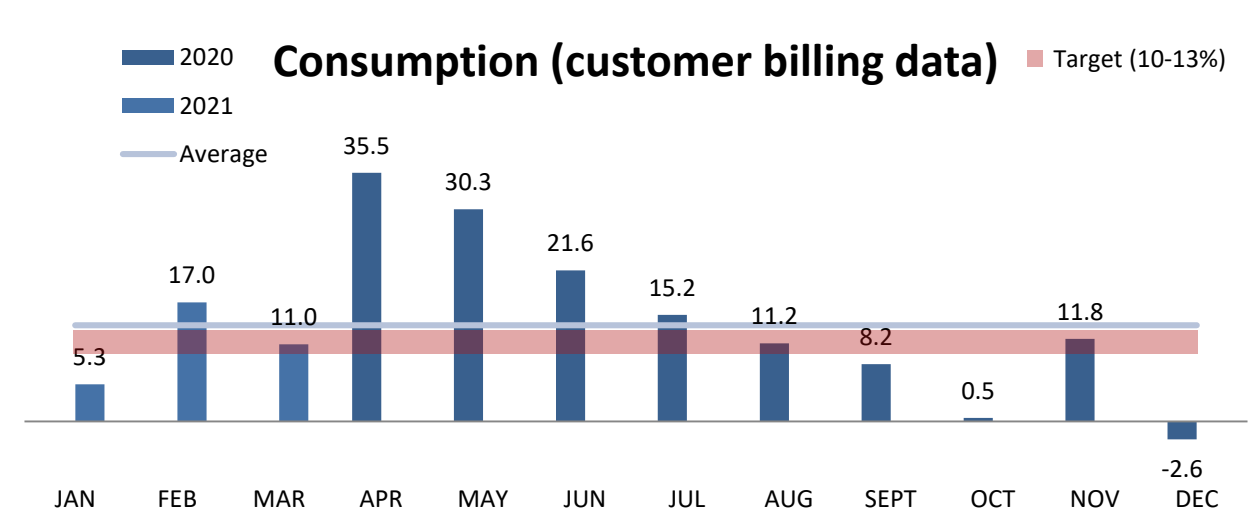
System Performance Monitoring Seller will install and maintain metering and monitoring equipment. Seller will remotely monitor, analyze, and store data about the state and performance of the System and use this data, including to: provide the System Services, support any manufacturer warranty claims, ensure and demonstrate compliance with any utility or government requirements, including but not limited to, compliance with requirements of a utility program and any applicable incentive programs, and/or determine when repair services are necessary.

STAFF REPORT TO DESERT WATER AGENCY BOARD OF DIRECTORS

APRIL 20, 2021

RE: MARCH 2021 WATER USE REDUCTION FIGURES

Desert Water Agency customers achieved an 11% reduction in metered potable water consumption during March 2021 compared to the same month in 2013 – the baseline year used by the State Water Resources Control Board (State Water Board) to measure statewide conservation achievements. DWA continues to report its production to the state on a monthly basis, despite mandatory conservation ending in 2017.



DWA is asking its customers to save 10-13% compared to 2013 to help achieve long-term sustainability.

This target will likely be re-evaluated once Desert Water Agency receives water use objectives in accordance with long-term conservation legislative (AB 1668 and SB 606, 2018). The 10-13% target was established after the drought mandatory reduction levels were eliminated.

On the following page is additional information for this month.

March 2021 conservation percentage	10.72%
March 2021 metered potable consumption	1773.46 AF
March 2013 metered potable consumption	1986.41 AF
The percentage of the Total Monthly Potable Water Production going to residential use only for the reporting month	67.73%
Population (inclusive of seasonal residents)	89,232
Estimated R-GPCD	141.49
How many public complaints of water waste or violation of conservation rules were received during the reporting month?	15
How many contacts (written/ verbal) were made with customers for actual/ alleged water waste or for a violation of conservation rules?	3
How many formal warning actions (e.g.: written notifications, warning letters, door hangers) were issued for water waste or for a violation of conservation rules?	0
How many penalties were issued for water waste or for a violation of conservation rules?	0

**STAFF REPORT
TO
DESERT WATER AGENCY
BOARD OF DIRECTORS
APRIL 20, 2021**

RE: DELTA CONVEYANCE PROJECT UPDATE

The following update is given as a general overview of the activities of the Delta Conveyance Design and Construction Authority (DCA) from October 2020 through February 2021.

In February 2021 the DCA completed its first year long phase: *Phase 1 Information Gathering*. This phase included outreach efforts to gather existing deep subsurface data across the Delta and used them to guide data gap exploration. The geophysical test program was completed to evaluate the potential to reduce reliance on more invasive exploration methods. An alternative approach was developed to the intake cofferdam construction and groundwater cutoff system to reduce the need for in-river pile driving. The DCP team was guided on reusable tunnel material (RTM) topics and engaged experts to develop supplemental testing program. Rigorous seismic design guidelines were developed. Additionally, the DCA supported the key public outreach efforts.

DWR completed soil investigation activities in the Delta that were a part of previous efforts over the summer. DWR and the DCA have started soil investigations under the Initial Study/Mitigated Negative Declaration for Soil Investigations in the Delta that was adopted on July 9. The DCA completed geophysical surveys and soil borings on Bouldin Island that started on October 5.

DWR has released a survey to collect information on how low-income, minority, and other underserved communities rely on resources in the Delta. This information will help assess potential impacts and benefits to these communities.

The 15th meeting of the Stakeholder Engagement Committee (SEC) was held via video conference on February 24, 2021. The meeting video, agenda, presentation, and supplemental materials are available for review on the dcdca.org website.

DWR is continuing to develop an Environmental Impact Report (EIR). Current work is focused on formulation of alternatives to be analyzed in the EIR, descriptions of the existing conditions, and development of methods to analyze potential impacts on environmental resources.

The U.S. Army Corps of Engineers (USACE) initiated compliance with the National Environmental Policy Act (NEPA) by issuing a Notice of Intent (NOI) to develop an Environmental Impact Statement (EIS). The EIS scoping period closed on October 20, 2020 and the USACE received about 90 comment letters and emails.

The program management team continues to focus on processing contract changes to accommodate the 2020-2021 budget reduction from \$34M to \$27M approved at the November DCA board meeting in response to current economic conditions. The DCA engineering team is creating template drawings and GIS map books for the Bethany Alternative.

California Water Research stated that in March 2021, Kathryn Mallon resigned as Executive Director of the Delta Conveyance Design and Construction Authority (DCA.). Mallon decided to seek other opportunities after finishing the initial engineering and design work for the project. However, the initial engineering designs for the project are close to being finished but are not yet complete.

Graham Bradner is taking over from Mallon as the new Interim DCA Executive Director. Bradner has been working for the project as a geologist under contract from GEI consultants. Bradner is a good choice for Interim ED, both to lead the geotechnical explorations this spring and to lead the DCA's discussions with the US Army Corps of Engineers about the Section 408 permit for modifying the levees for the two intakes in the North Delta.

Below are copies of slides from taken from DCA Board meeting presentations. They show where the reductions made to reduce the current budget from \$34M to \$27M, the planning schedule through 2024, deliverables to support environmental document development and an overall map of the alignment alternatives. In addition, there excerpts from a PowerPoint presentation to the DCA attached that shows all of the alignment alternatives and the various key facilities associated with each. As you can see alternative have been modified and added with much more detail than in the past. If you would like to review the complete presentation you can find in at the following link: https://www.dcdca.org/wp-content/uploads/2021/02/2021MarchMapbook_Final.pdf

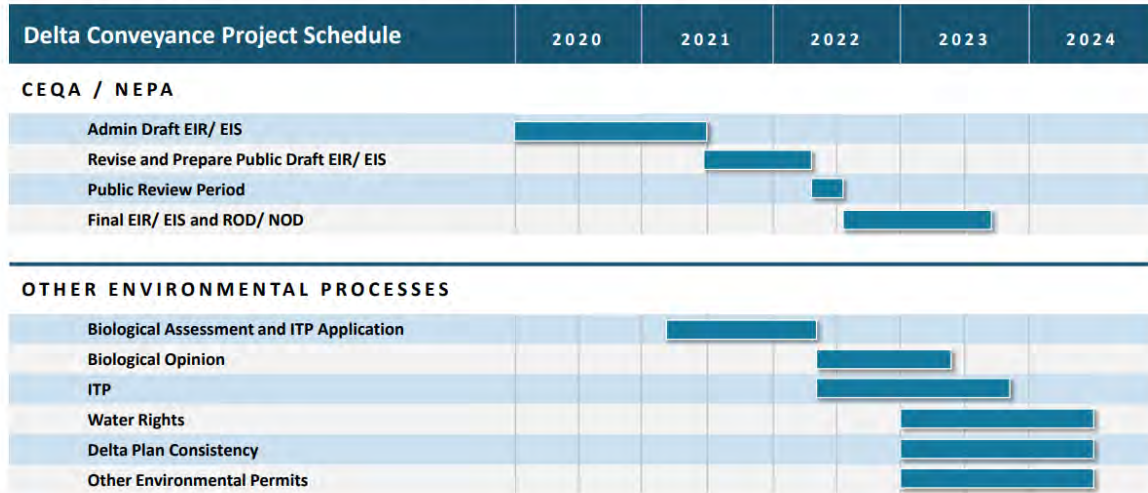
	FY 2020/2021 Budget	FY 2020/2021 Amended Budget	Variance
PROGRAM TOTAL	\$ 34,000,000	\$ 27,000,000	-\$ 7,000,000
Item			
PROGRAM MANGEMENT OFFICE	\$ 12,888,474	\$ 11,133,246	-\$ 1,755,228
PMO-Executive Office	\$ 2,697,409	\$ 2,796,854	\$ 99,445
PMO-Community Engagement	\$ 1,301,880	\$ 1,223,222	-\$ 78,658
PMO-Program Controls	\$ 2,527,124	\$ 1,714,329	-\$ 812,795
PMO-Administration	\$ 3,244,410	\$ 2,746,814	-\$ 497,596
PMO-Procurement	\$ 210,000	\$ 109,447	-\$ 100,553
PMO-Property	\$ 1,648,758	\$ 1,388,687	-\$ 260,071
PMO-Permitting Management	\$ 1,123,893	\$ 1,123,893	\$ 0
PMO-Health and Safety	\$ 45,000	\$ 20,000	-\$ 25,000
PMO-Quality Management	\$ 45,000	\$ 10,000	-\$ 35,000
PMO-Sustainability	\$ 45,000	\$ 0	-\$ 45,000
PROGRAM INITIATION	\$ 21,111,526	\$ 15,866,754	-\$ 5,244,772
PI-Engineering	\$ 12,451,950	\$ 10,327,688	-\$ 2,124,262
PI-Fieldwork	\$ 8,659,576	\$ 5,539,066	-\$ 3,120,510

DCA Budget Reductions for Current Fiscal Year

Savings	Description
\$310,000	Reduce legal, human resource, and treasury services
\$2,030,000	Shift non-critical studies to next fiscal year
\$2,820,000	Shift portion of field work to next fiscal year
\$150,000	Reduce meeting frequency and graphics support
\$920,000	Reduce controls staff and IT system support to reflect reduced workload
\$250,000	Reduce office administration costs to reflect continued at-home work
\$520,000	Reduce available contingency for unanticipated services
\$7,000,000	Reduces Expected Expenditure from \$34Mil to \$27Mil

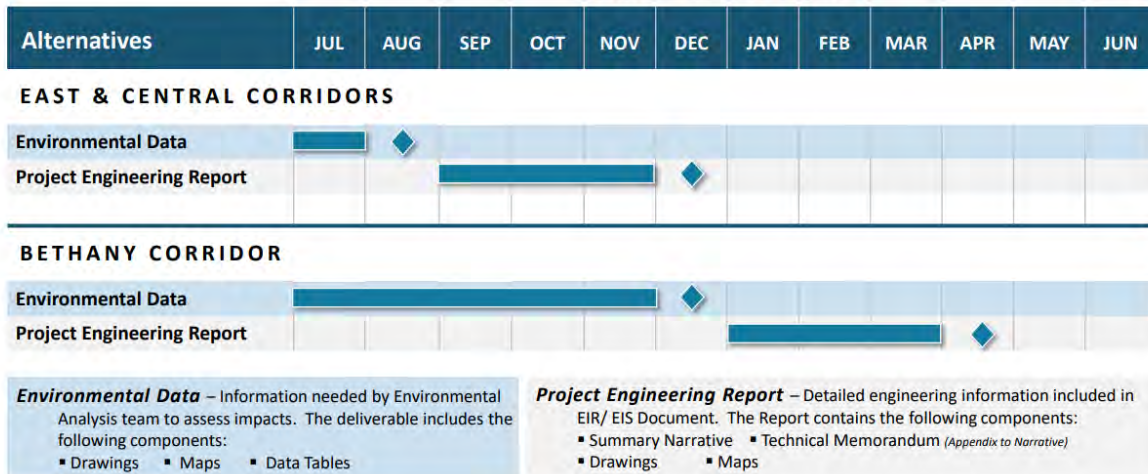
\$7 Mil in savings
to reflect state
and national
economic
downturn.

DWR Updated Planning Schedule



DCA Deliverables to Support EIR & EIS – Current FY

FISCAL YEAR 2020/2021



DCA Activities and Annual Budgets – 3 Year Look Ahead

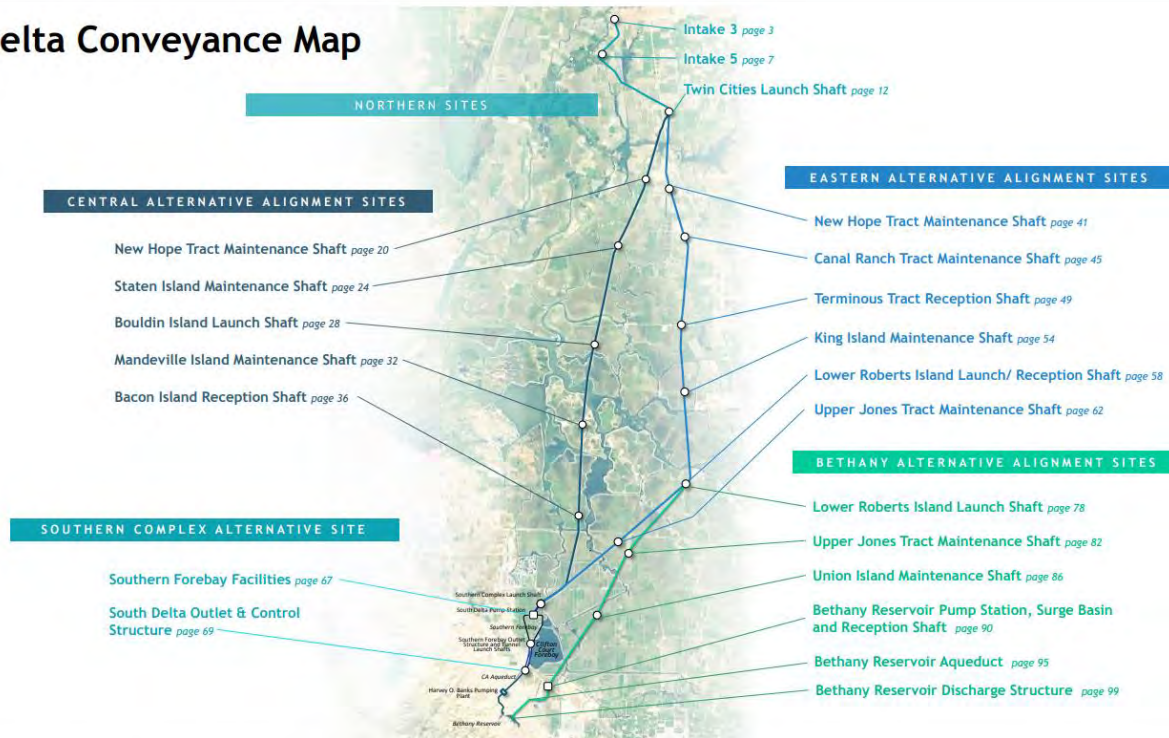
Delta Conveyance Project Schedule	FY 20/21	FY 21/22	FY 22/23	
CEQA / NEPA				
Admin Draft EIR/ EIS				
Revise and Prepare Public Draft EIR/ EIS				
Public Review Period				
Final EIR/ EIS and NOD/ROD				
DCA ACTIVITIES				
	<ul style="list-style-type: none"> Complete Project Engineering Reports Initiate Field Work studies to confirm assumptions Stakeholder Engagement 	<ul style="list-style-type: none"> Address design questions Modify facilities as needed based on Environmental Analysis Continue Field Work studies to confirm assumptions Stakeholder Engagement 	<ul style="list-style-type: none"> Assist in hearings preparation Assist in responding to public comment Continue Field Work studies to confirm assumptions Stakeholder Engagement 	
DCA BUDGET	\$27.0 Mil	\$21.5 Mil	\$33.0 Mil	\$81.5 Mil



10/14/2020

5

Delta Conveyance Map

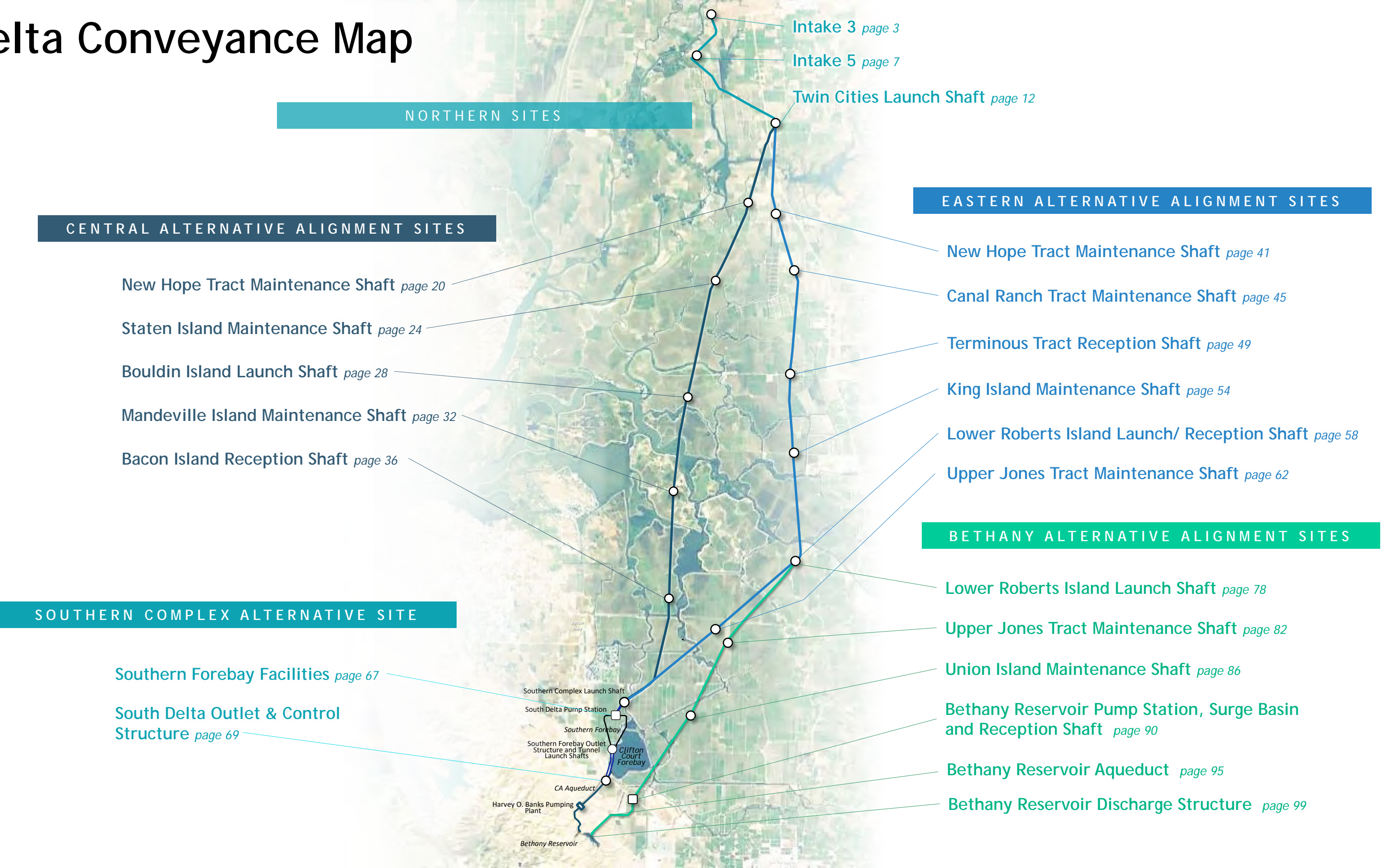


Disclaimer: These pages are for Stakeholder Engagement Committee discussion purposes only. They do not represent a decision by the DCA or DWR. Final decisions about the project will be made by DWR and will NOT be made until the concluding stages of the CEQA process.

MARCH 2021

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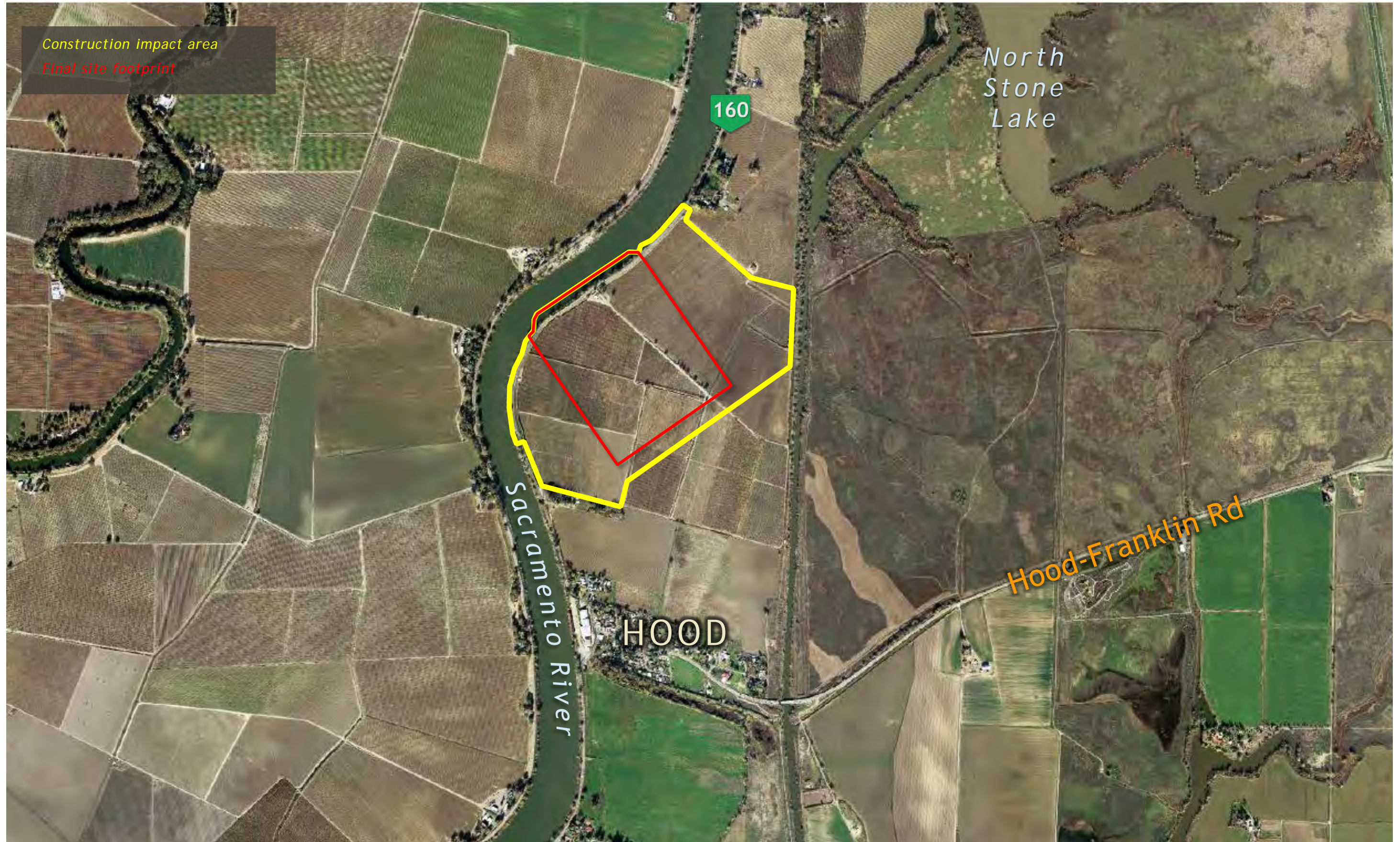
Delta Conveyance Map



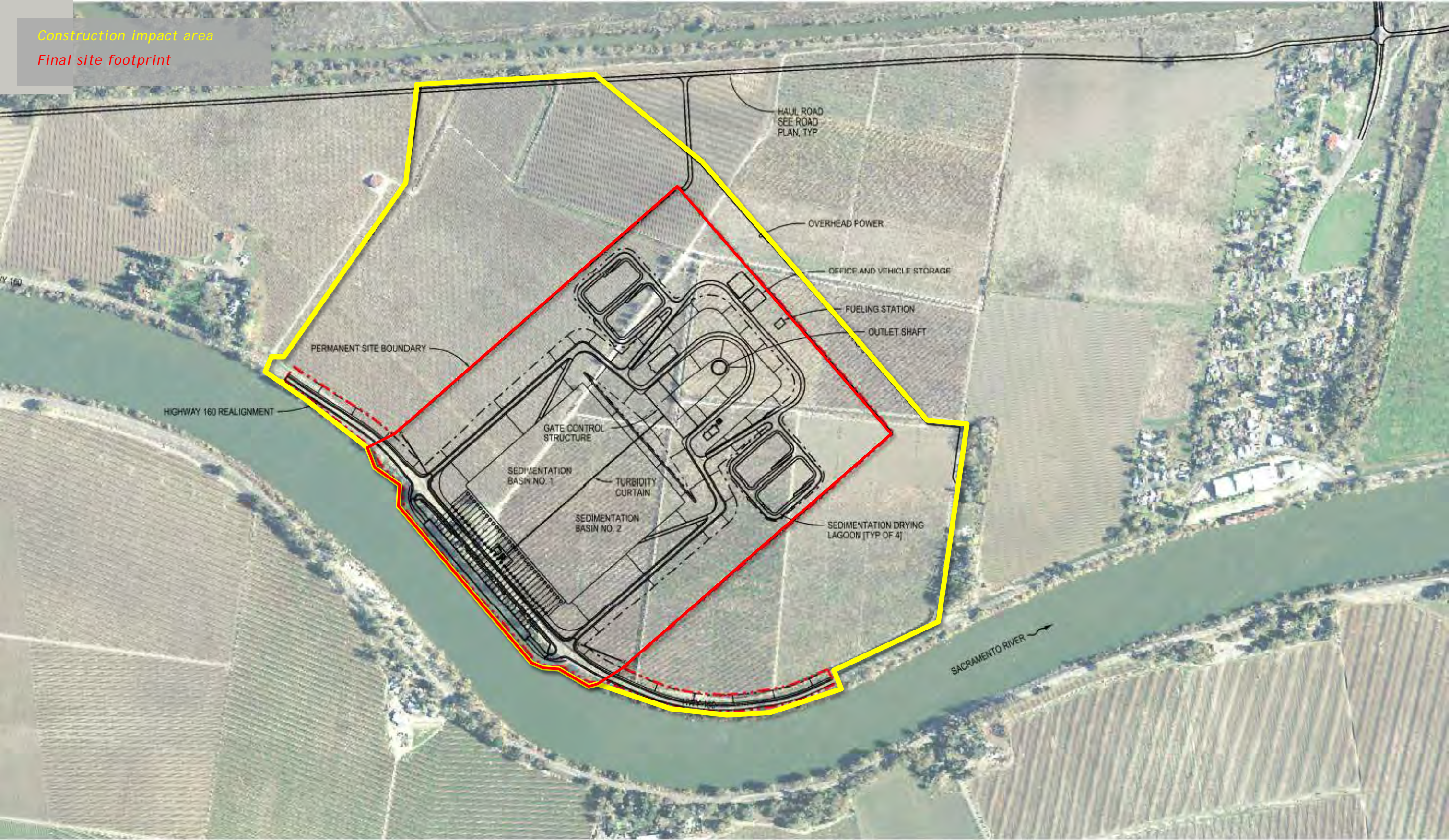
Northern Intakes & Shaft Sites



Intake 3 Site Aerial, Construction Impact Area



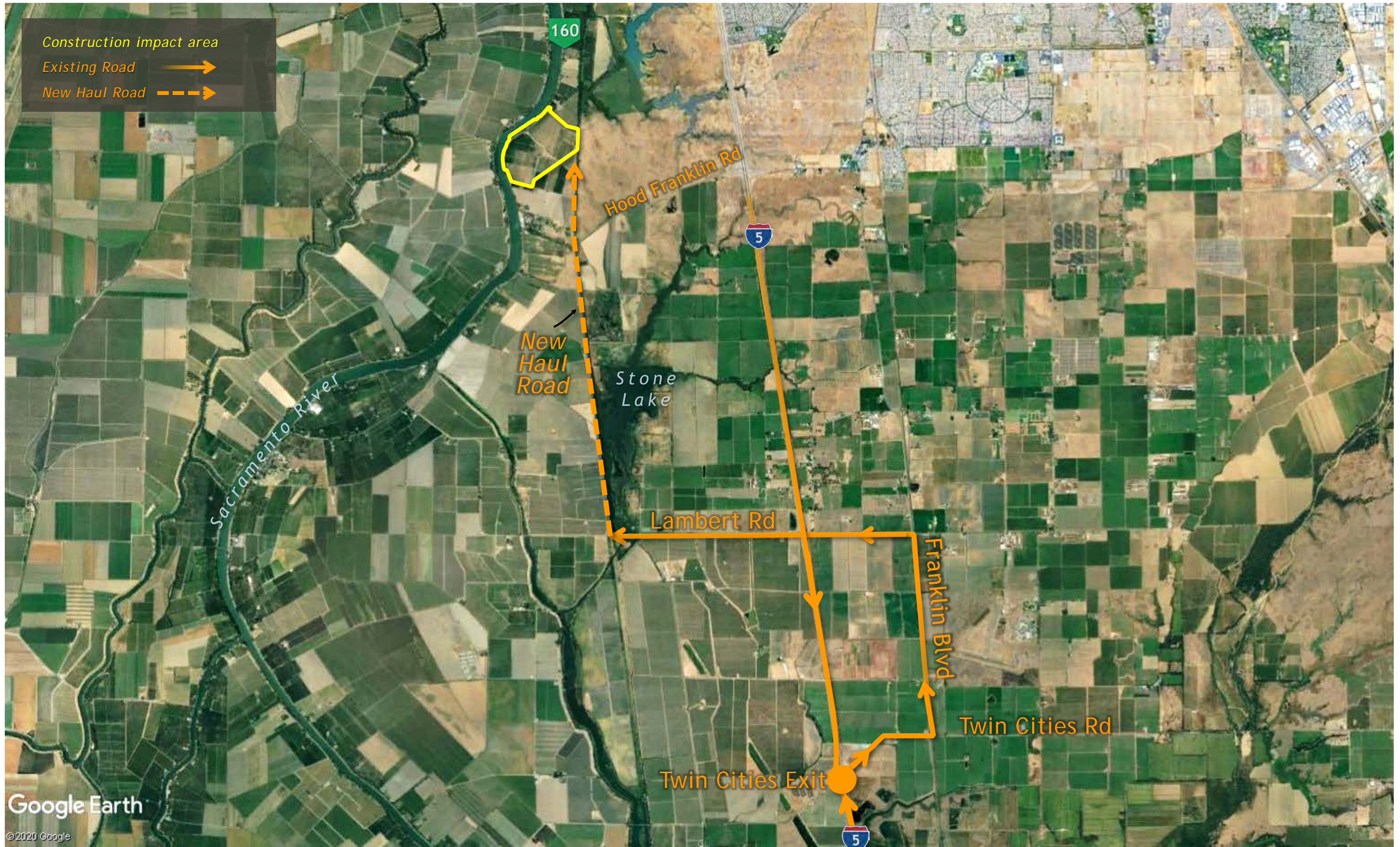
Intake 3 Site Layout, Construction Impact Area



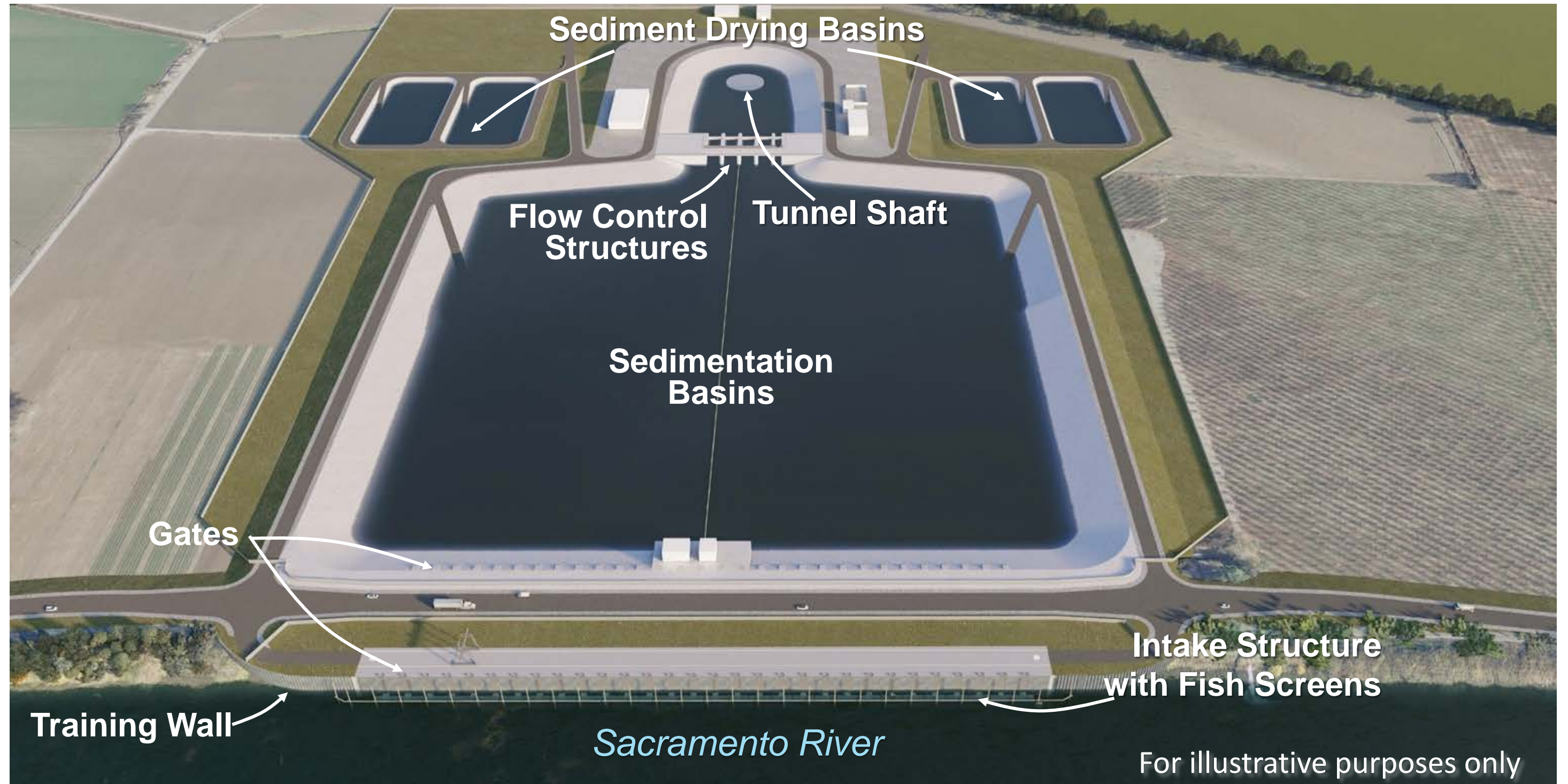
Intake 3 Site Photos



Intake 3 Site Access Routes



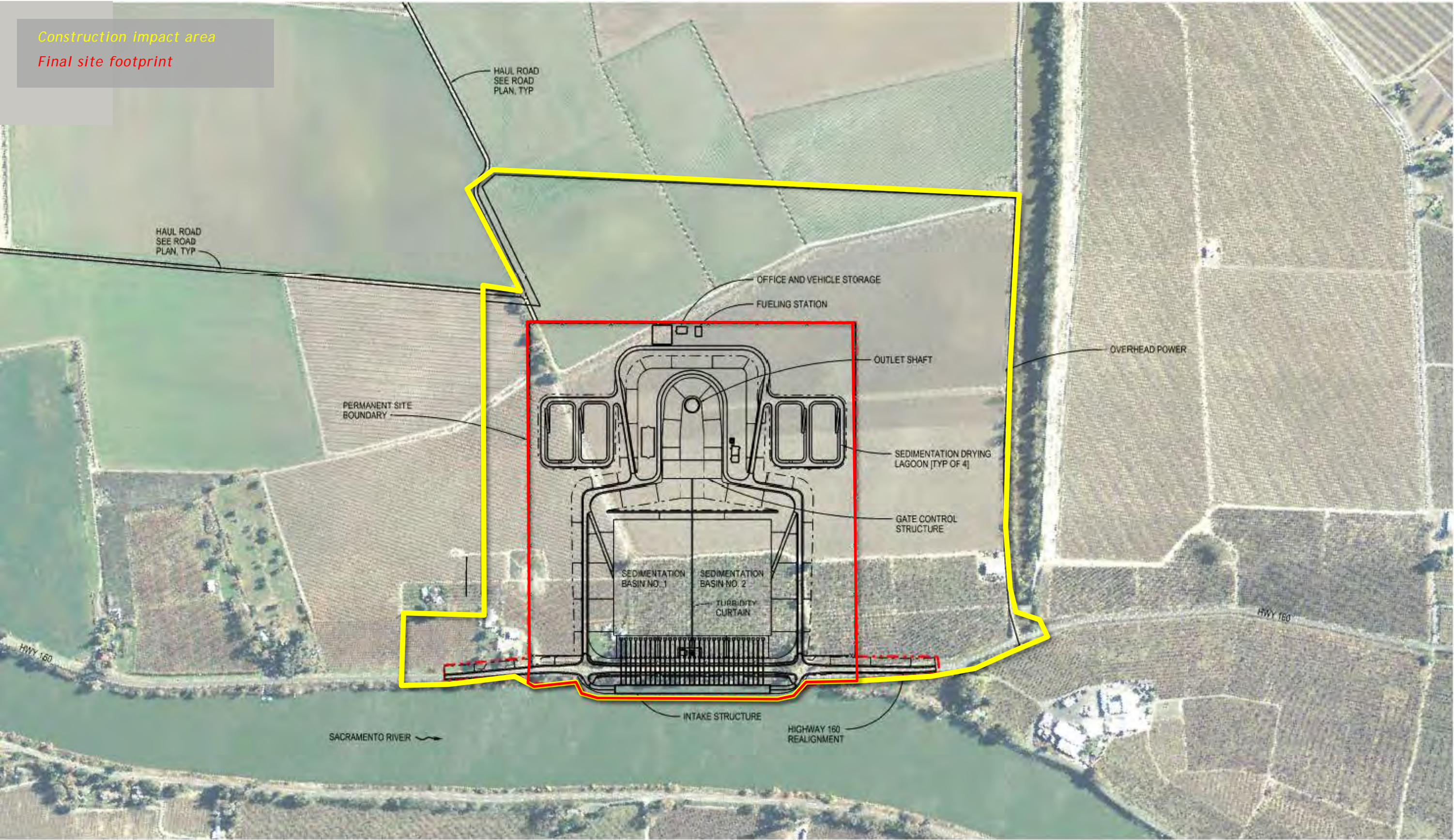
Intake Typical, Rendering



Intake 5 Site Aerial, Construction Impact Area



Intake 5 Site Layout, Construction Impact Area



Intake 5 Site Photos



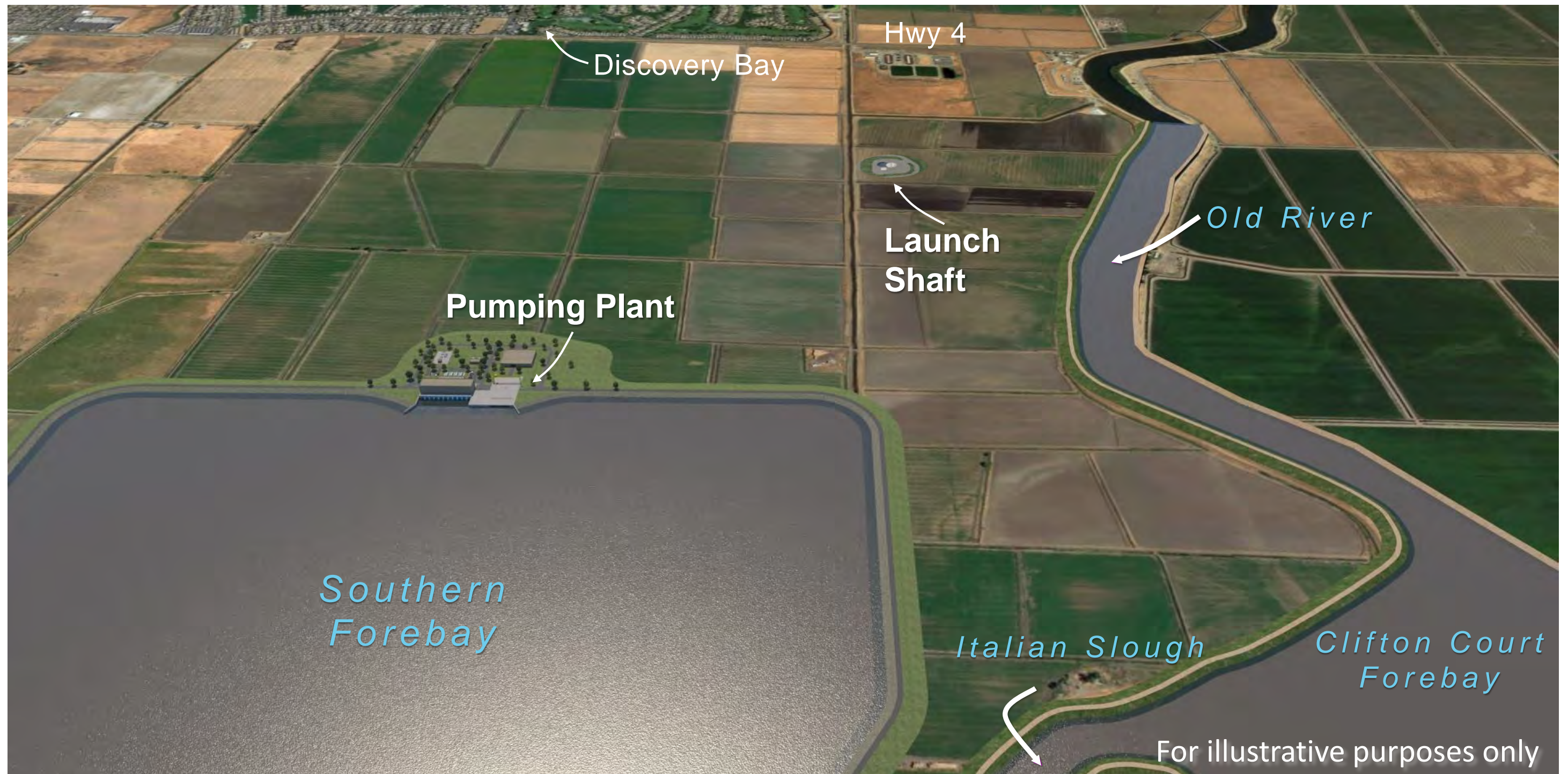
Twin Cities Launch Shaft Site Typical, Rendering



Twin Cities Launch Shaft Site Aerial, Construction Impact Area



Southern Forebay Facilities Typical, Rendering



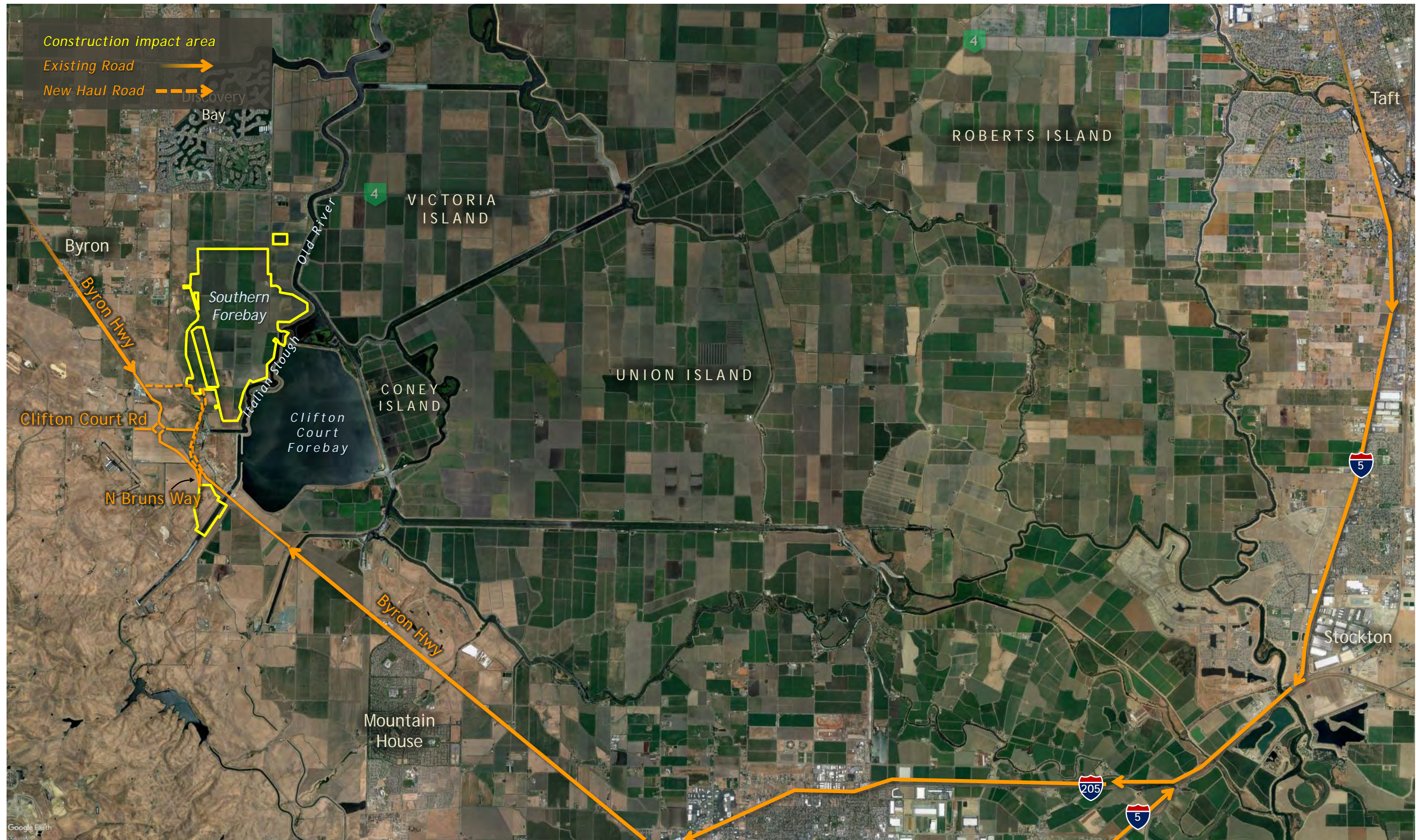
South Delta Pumping Plant Typical, Rendering



South Delta Outlet and Control Structure Typical, Rendering



Southern Forebay Facilities & S Delta Flow Control Facilities Site Access Routes



Bethany Alignment Facilities & Shaft Sites



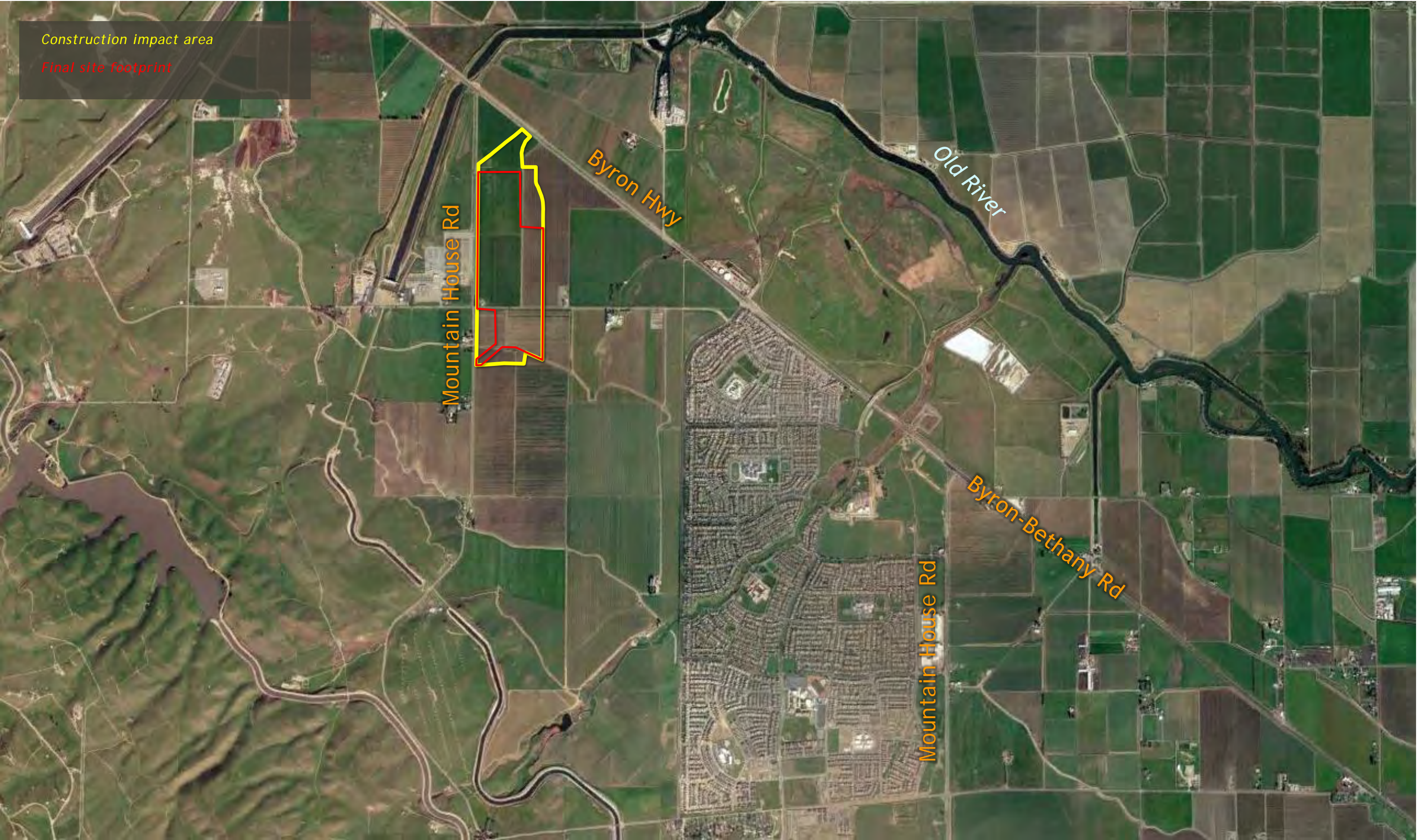
BETHANY ALTERNATIVE ALIGNMENT SITES

- Lower Roberts Island Launch Shaft *page 78*
- Upper Jones Tract Maintenance Shaft *page 82*
- Union Island Maintenance Shaft *page 86*
- Bethany Reservoir Pump Station, Surge Basin and Reception Shaft *page 90*
- Bethany Reservoir Aqueduct *page 95*
- Bethany Reservoir Discharge Structure *page 99*

Surge Basin and Pumping Plant Typical, Rendering



Surge Basin and Pumping Plant Site Aerial, Construction Impact Area



Bethany Reservoir Aqueduct Site Layout, Construction Impact Area



Bethany Reservoir Discharge Structure Typical, Rendering



Bethany Reservoir Discharge Structure Site Aerial, Construction Impact Area

