

AGREEMENT

This Agreement is by and between California-American Water Company, a California corporation (Owner), and **Boart Longyear Company, a Utah corporation** ("Contractor"). Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of seven to nine subsurface slant wells to produce the source water supply for a desalination plant

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Monterey Peninsula Water Supply Project - Construction of Source Water Slant Wells

ARTICLE 3 – ENGINEER

- 3.01 The Engineer for the Project will act as the Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.
- 3.02 The following Owner-affiliated entities or independent engineers, consultants, or managers have been retained by Owner to undertake some or all of Engineer's or Owner's authority, duties, or responsibilities under the Contract Documents:

GEOSCIENCE Support Services, Inc.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and final completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 4.02 *Days to Achieve Substantial Completion and Final Completion*

A. The Work shall be substantially completed within **450 days** after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions.

- B. The Work will be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **540 days** after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner: (1) **\$10,000** for each day that expires after the time specified in Paragraph 4.02.A for Substantial Completion, or any extension thereof in accordance with Paragraph 12.02 of the General Conditions, until the Work is substantially complete ; and (2) **\$10,000** for each day that expires after the time specified in Paragraph 4.02.B for completion and readiness for final payment, or any extension thereof in accordance with Paragraph 12.02 of the General Conditions, until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- A. The Contract Price for all Work is [**to be identified in the Notice to Proceed**], as further specified in Exhibit C, subject to any subsequent amendments.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer and as otherwise specified in Paragraph 14.02 of the General Conditions. All such payments will be measured by the schedule of values established as provided in Paragraph 2.05.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- B. Progress payments will be made in an amount equal to **90%** of Work completed (with the balance being retainage) until 50% of the Contract Price has been paid, at which time remaining progress payments will be paid in an amount equal to 100% of the Work completed thereafter, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may

withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- C. Upon Substantial Completion, Owner may withhold **100%** of Owner's determination of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- D. All applications for progress payments shall be accompanied by a conditional lien release and, for payments after the first, an affidavit of payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price, and any retained funds, as provided in said Paragraph 14.07.
- B. An application for final payment shall be accompanied by a conditional lien release and an affidavit of payment.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

7.01 To induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been provided pursuant to Paragraph 4.02 of the General Conditions.
- E. Contractor has considered the information known to Contractor, information and observations obtained from visits to the Site, information commonly known to contractors doing business in the locality of the Site, the Contract Documents, and the reports and drawings identified in the Contract Documents and referred to in Paragraph 7.01.D above with respect to the effect of such information and observations on: (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 7.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor is prepared to comply with the applicable requirements of Owner's safety program, if any.
- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- K. Contractor will provide Owner with a performance bond and a payment bond conforming to Article 5 of the General Conditions.
- L. To the best of its knowledge, neither the execution nor delivery of the Contract by Contractor nor the performance by Contractor of its obligations in connection with the Contract or the fulfillment by Contractor of the terms or conditions of the Contract (1) conflicts with, violates or results in a breach of any law, governmental regulation, bylaws or certificate of incorporation applicable to Contractor or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.
- M. Contractor has determined that in performing its obligations in connection with the Contract, no potential exists for any conflict of interest or unfair advantage. Contractor shall immediately notify Owner in writing if Contractor becomes aware of any potential conflict of interest or unfair advantage that arises in connection with the Contract, including any potential perceived conflict or unfair advantage.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages **AG-1** to **AG-10**, inclusive).
 - 2. General Conditions (pages **GC-i** to **GC-71**, inclusive).
 - 3. Specifications bearing the title(s): **Monterey Peninsula Water Supply Project, Nine Subsurface Desalination Feed Water Slant Wells, Design Documents,**

Supplemental General Conditions and Technical Specifications, November 20, 2015, including Appendices A through E

4. Drawings bearing the title(s): **Monterey Peninsula Water Supply Project, Construction Plans for; Nine Desalination Feed Water Slant Wells, November 20, 2015, consisting of 36 pages (included with Specifications identified in Item 3 above)**
5. Exhibits to this Agreement (enumerated as follows):
 - a. Performance bond form, identified as Exhibit A consisting of pages **A-1** through **A-2**;
 - b. Payment bond form, identified as Exhibit B, consisting of pages **B-1** through **B-2**.
 - c. Contractor's Bid identified as Exhibit C and consisting of **13** pages.
 - d. WMDVBE and Local Resources Utilization identified as Exhibit D.
 - e. List of Required Additional Insureds, identified as Exhibit G.
 - f. Insurance Requirements, identified as Exhibit H.
 - g. Project Team Member List and Key Personnel, identified as Exhibit I.
 - h. Conditional Release of Lien forms, identified as Exhibits J and K.
 - i. Affidavit of Payment to Subcontractors form, identified as Exhibit L.
6. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Pre-Mobilization Notice.
 - b. Notice to Proceed.
 - c. Work Change Directives substantially conforming to the form attached hereto as Exhibit E.
 - d. Change Orders substantially conforming to the form attached hereto as Exhibit F.
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 *Terms*

- A. Capitalized terms used in this Agreement will have the meanings stated in the General Conditions.

9.02 *Assignment of Contract*

- A. No assignment by Contractor of any rights under or interests in the Contract will be binding on Owner without the written consent of Owner; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge Contractor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:
 1. "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution.
 2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
 3. "Collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels.

4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- B. Contractor certifies that Contractor will conform its business dealings with Owner in accordance with the underlying principles of the Owner's Code of Ethics, a copy of which is available on the Owner's website at <http://californiaamwater.com>.

9.06 *Other Provisions*

A. Government Regulations

The following clauses, where applicable, are incorporated in this Agreement by reference as if fully set out: The Equal Opportunity Clause prescribed in 41 CFR 60-1.40, the Affirmative Action Clause prescribed in 41 CFR 60-250.4, regarding veterans and veterans of the Vietnam Era, and the Affirmative Action Clause for Handicapped Workers prescribed in 41 CFR 60-741.4.

B. Background Check

Contractor shall conduct a background check on each of its employees prior to the employee performing any function or activity under this Agreement involving any direct customer contact, or on-site at any of the Owner's water treatment plants. As used in the Agreement, "direct customer contact" shall include but not be limited to, any activity by the Contractor's employee at or near a customer's premises. The background check conducted by Contractor shall consist of a check of at least the following: Previous employers and dates of employment; Education; Driving record; Criminal history (state and federal); References; Credit history. Prior to commencing any work under this Agreement, Contractor shall provide proof to the Owner that the requirements of this Paragraph have been met. Contractor shall make available to the Owner, upon request, the documentation and results of the background check with respect to any employee of Contractor performing any function under this Agreement involving any direct customer contact.

C. Project Manuals

Owner shall furnish to Contractor up to two (2) printed copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

D. Notices

Unless other specified in a specific provision of this Agreement, any notice required by the Contract Documents to be given to the Owner shall be addressed as follows:

**Ian Crooks
California American Water
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950**

Any notice required by the Contract Documents to be given to the Contractor shall be addressed as follows:

Jason Lamb
2745 W California Avenue
Salt Lake City, UT 84104

E. WMDVBE Goal.

Owner has established a combined women, minority and disabled veteran owned business enterprises ("WMDVBE") non-mandatory participation goal for the Work of twenty-five percent (25%) of the Contract Price in accordance with CPUC General Order 156. In contribution to this goal, Contractor must make a good faith effort to employ WMDVBE subcontractors for any subcontracted portion of the Work, and must monitor and report to Owner any WMDVBE utilization during the term of the Contract. Contractor's WMDVBE utilization for the Work is described in Exhibit D.

F. Local Resources Goal.

Owner acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. In contribution to this goal, Contractor must make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than fifty percent of Contractor's total work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. Contractor must monitor and report to Owner any local resources utilization during the term of the Contract. Contractor's local resources utilization for the Work is described in Exhibit D.

G. Public Funding/Labor Law Compliance.

1. **Prevailing Wages and Labor Compliance Program.** Contractor shall pay prevailing wage rates. The general prevailing wage rates for the Work are available on the California Department of Industrial Relations' website at <http://www.dir.ca.gov>, copies of which are on file at the offices of Owner and are available to Contractor or any interested party upon request. Further, the Work may be subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements. Contractor shall, at no additional cost to Owner, comply with any applicable labor law and labor compliance program requirements. Contractor is responsible for all failures by Subcontractors to comply with labor compliance program requirements. Pursuant to section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the Work is to be done have been determined by the Director of the California Department of Industrial Relations.

2. CWSRF Funding Responsibilities.

(a) Application and Submittals. Owner shall submit all filings, applications and reports necessary to obtain reimbursement from the Clean Water State Revolving Fund ("CWSRF") for the Project.

(b) Contractor Responsibilities. Contractor shall be responsible for cooperating with and providing reasonable assistance to Owner in all activities related to the loan agreement regarding the CWSRF loan from the State Water Resources Control Board ("SWRCB") to the Owner to partially fund the Project ("CWSRF Loan Agreement") including:

(i) coordinating with Owner or Owner's consultant on the schedule and content of the submittals required for the CWSRF program;

(ii) assisting Owner or Owner's consultant in developing and furnishing all necessary and reasonably required supporting material;

(iii) supplying all data and information which may be reasonably required;

(iv) familiarizing itself with the terms and conditions of the CWSRF program relating to construction activities and practices;

(v) complying with the terms and conditions of the CWSRF Loan Agreement or other financing document required by the CWSRF program or by applicable law with respect to construction activities and practices;

(vi) attending meetings, as necessary, with SWRCB and other governmental bodies; and

(vii) taking all other actions reasonably requested by Owner in order to assist and support Owner related to the CWSRF financing for the Project.

Contractor shall take all reasonable actions necessary to comply with the conditions to disbursement of proceeds of the CWSRF Loan Agreement and to maximize Owner's eligibility to receive timely reimbursement under the CWSRF Loan Agreement. Contractor shall perform its CWSRF-related responsibilities in a manner which complies with all CWSRF program requirements.

(c) Data and Information. All data, information and action required to be supplied or taken in connection with any CWSRF financing shall be supplied and taken on a timely basis considering the CWSRF requirements at Contractor's sole cost and expense. The data and information supplied by the Contractor to Owner or Owner's consultant and the SWRCB in connection therewith shall be correct and complete in all material respects and shall be submitted in draft form to Owner or Owner's consultant sufficiently in advance to allow full and meaningful review and comment by Owner. Contractor shall not be entitled to any schedule or price relief or escalation which result from a delay due to the submission of materially incorrect or incomplete information. Owner reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by Contractor pursuant to this Section.

(d) CWSRF Requirements. Owner is informed that in order to obtain CWSRF financing for the Project: (a) American Iron and Steel (AIS) requirements will apply; (b) the State Water Resources Control Board ("SWRCB") CWSRF policy will apply; and (c) the SWRCB applies USEPA guidance on AIS requirements. Contractor agrees to cooperate with Owner to meet all CWSRF financing requirements applicable to the Project and Contractor has included all costs necessary to comply with AIS requirements in the Contract Price.

H. Value Engineering

If requested by Owner, prior to commencement of Work Contractor shall participate in a value engineering process as determined by Owner which process shall take no longer than sixty (60) days to complete.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on the date it has been executed by OWNER (which is the Effective Date of the Agreement).

OWNER:

California-American Water Company

By:

Title:

Date:

[Signature]
VP Engineering
2-15-16

CONTRACTOR

Boart Longyear Company

By:

Title:

Date:

[Signature]
Contracts Manager
1-21-2016

Attest:

Title:

Date:

[Signature]
CONTRACTS ADMINISTRATOR
JAN 21ST 2016

Contractor's License No.: 694686