

**Confidentiality Agreement Between
Department of Water Resources And
San Luis Obispo County Flood Control and Water Conservation District**

Purpose of Agreement

The Department of Water Resources (DWR) is beginning to have informal discussions with its long-term water contractors (Contractor) on issues pertaining to DWR's State Water Project long-term water supply contracts. The subjects considered in these discussions will include but not be limited to contract extension and financial issues. Through these informal discussions, DWR and the Contractor want to develop the best approach to engage the public on those items of discussion that may, at a later date, become public contract negotiations. To be successful in this process, it is necessary to include other governmental entities (specifically Contractors) in the development of information.

Recitals

- A. Pursuant to the Settlement Agreement dated May 5, 2003 between DWR and the Planning and Conservation League in Planning and Conservation League, et al. v. Department of Water Resources, 83 Cal.App. 4th 892 (2000), DWR and the Contractors agreed that DWR would follow a public participation process for all project-wide long-term water contract amendments. The principles of this public participation process are that: "1) Negotiations will be conducted in public; 2) The public will be provided with advance notice of the time and place of the negotiations; and 3) The public will be provided the opportunity to observe negotiations and comment in each negotiating session." These public participation principles also provide that "Informal discussions prior to exchange of formal drafts and discussion of topics that are authorized to be kept confidential by law will not be subject to the public participation process."
- B. DWR's Notice to State Water Project Contractors number 03-10, dated July 3, 2003, sets forth the key principles of the Settlement Agreement referenced in the preceding paragraph and is attached as Exhibit A.

AGREEMENT

1. To ensure that DWR and the Contractor named below are able to have effective informal discussions about the contract issues summarized above and consistent with the Public Record Act provisions referenced below, this Confidentiality Agreement (Agreement) is entered as of _____ by the California Department of Water Resources (“DWR”) and San Luis Obispo County Flood Control and Water Conservation District (“Contractor”).
2. DWR and Contractor agree to exchange information designated “Confidential,” enabling DWR and Contractor to participate in the informal discussions about issues associated with the long-term water supply contracts.
3. This Confidentiality Agreement covers the following types of documents:
 - a. Records exempt under federal or State law, including Government Code section 6254(k).
 - b. Information where the public interest is not served through disclosure of the records as approved by the Governor’s Legal Office, Government Code section 6255.
 - c. Any other records exempt as provided by Government Code section 6254.
4. “Confidential Information” means information designated by DWR and/or Contractor, the disclosure of which is restricted, prohibited, or privileged by State or federal law. Confidential Information includes, but is not limited to certain information exempt from disclosure under the California Public Records Act (Government Code sections 6250-6255), including but not limited to, financial, appraisal, statistical, personal, engineering, technical, and other data and information related to operations or planning by DWR and/or Contractor.
5. “Contractor” means a State or local agency including its officers and employees. Contractor personnel allowed access to information designated by DWR as Confidential Information shall be limited to those persons with a demonstrable business need for such access. A list of personnel for which Contractor requests access to Confidential Information shall be submitted to DWR for approval. Contractor shall maintain a current listing of all Contractor personnel with access to Confidential Information.
6. DWR personnel allowed access to information designated by Contractor as Confidential Information shall be limited to those persons with a demonstrable business need for such access. A list of personnel for which DWR requests access to Confidential Information shall be submitted to Contractor for approval. DWR shall maintain a current listing of all DWR personnel with access to Confidential Information.
7. Contractor and DWR may request Confidential Information access for non-employee agents with which Contractor and/or DWR maintain such a

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relationship. Contractor and DWR must submit to each other in writing the names of requested agents, along with their business purpose requiring access to Confidential Information. DWR must approve agent access prior to Contractor providing the Contractor Confidential Information intended for the agent. Contractor must approve agent access prior to DWR providing DWR Confidential Information intended for the agent. Contractor and DWR are responsible to each other for the agents' protection of Confidential Information pursuant to the provisions of this Agreement.

8. Contractor and DWR shall take all necessary measures to protect Confidential Information. Contractor and DWR shall impose all the requirements of this Agreement on all of its officers, employees, and agents with access to Confidential Information.
9. Consistent with the provisions of the Public Records Act, DWR and Contractor agree to treat the disclosed material as Confidential. Only persons authorized in writing by the person in charge of Contractor, and approved by DWR, shall be permitted access to obtain the Confidential Information developed by DWR. As provided by Government Code Section 6254.5, any exchange of Confidential Information shall not constitute a "waiver" of any exemption provided under the Public Records Act. Any Confidential Information obtained by Contractor or DWR shall only be used for purposes which are consistent with existing law.
10. Consistent with the provisions of the Public Records Act, DWR and Contractor agree to treat the disclosed material as Confidential. Only persons authorized in writing by the person in charge of DWR, and approved by Contractor, shall be permitted access to obtain the Confidential Information developed by Contractor. As provided by Government Code Section 6254.5, any exchange of Confidential Information shall not constitute a "waiver" of any exemption provided under the Public Records Act. Any Confidential Information obtained by Contractor or DWR shall only be used for purposes which are consistent with existing law.
11. Contractor shall ensure that all media, including electronic media, containing Confidential Information to which Contractor and its officers, employees, and agents are given access are protected at the level of the most confidential or sensitive piece of data on the media. Contractor shall notify DWR promptly if a security breach involving Confidential Information occurs or if Contractor becomes legally compelled to disclose any Confidential Information to parties other than DWR. Contractor agrees to notify DWR promptly of any requests for disclosure of any Confidential Information provided by DWR. If Contractor is legally compelled to disclose any Confidential Information to parties other than DWR, DWR shall promptly provide to Contractor and the court (or other authoritative body) any arguments supporting non-disclosure of the Confidential Information.
12. DWR shall ensure that all media, including electronic media, containing Confidential Information to which DWR and its officers, employees, and agents are given access are protected at the level of the most confidential or sensitive

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piece of data on the media. DWR shall notify Contractor promptly if a security breach involving Confidential Information occurs or if DWR becomes legally compelled to disclose any Confidential Information to parties other than Contractor. DWR agrees to notify Contractor promptly of any requests for disclosure of any Confidential Information provided by Contractor. If DWR is legally compelled to disclose any Confidential Information to parties other than the Contractor, Contractor shall promptly provide to DWR and the court (or other authoritative body) any arguments supporting non-disclosure of the Confidential Information.

13. All data, reports, information, compiled, developed, processed, stored, or created by Contractor or Contractor's agents using Confidential Information shall be treated as Confidential Information by the Contractor and its agents. No such data, reports, or other information in any form derived from Confidential Information shall be released, published, or made available to any person, except to DWR, without prior written approval from DWR.
14. All data, reports, information, compiled, developed, processed, stored or created by DWR or DWR's agents using Confidential Information shall be treated as Confidential Information by DWR and its agents. No such data, reports, or other information in any form derived from Confidential Information shall be released, published, or made available to any person, except to Contractor, without prior written approval from Contractor.
15. Contractor and DWR agree that this Agreement may only be amended in writing.
16. Failure to adhere to these requirements may be grounds for immediate termination of the Agreement.
17.
 - a. DWR will develop an electronic document management system (EDMS) that will serve as the process for sharing Confidential Information under this Agreement.
 - b. In addition to the protections governing the use of the EDMS, the parties to this Agreement shall maintain the confidentiality of all documents generated and used by the parties in hard copy.
 - c. Each document provided under this Agreement will be labeled as "Confidential" or "Confidential Information."
 - d. Each document will be stored in EDMS for distribution.
 - e. DWR staff will monitor the EDMS for compliance with the terms of this Agreement.
 - f. DWR and Contractor retain the authority to request the return of any and all copies of Confidential Information if disclosure is not permissible under the terms of this Agreement.

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- 18. This Agreement will terminate either upon the first exchange of a formal draft of proposed contract amendments or upon a decision by DWR and/or another public agency to begin public contract discussions. Upon such termination all previously protected data and information shared confidentially under the terms of this Agreement shall remain protected and confidential to the extent permitted by law. The parties acknowledge that such contract negotiations will be conducted in public as described in Notice to State Water Project Contractors Number 03-10, dated July 3, 2003 after the first exchange of formal drafts.

Upon termination, DWR and Contractor shall notify the other in writing to either (a) destroy all Confidential Information; (b) return all Confidential Information to the party originating the Confidential Information; or (c) retain such information beyond the termination of the Agreement. Contractor and DWR agree to comply with these termination obligations within 14 days of receipt of the notification that the Agreement has terminated.

- 19. By their signatures below, DWR and Contractor represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.
- 20. This Agreement may be executed in counterpart. The parties agree to accept facsimile or electronically scanned signatures as original signatures. The agreement shall take effect as soon as all parties have signed. Immediately after execution, Contractor shall transmit a copy of the executed Agreement by facsimile or electronic file to Robert Cooke, Chief, State Water Project Analysis Office at (916) 653-9628 or cooke@water.ca.gov. In turn, DWR shall furnish all signatories with copies of the executed Agreement.

IN WITNESS WHEREOF, the Parties hereto, by their authorized representatives, have executed this Agreement on the last date set forth below.

State of California
Department of Water Resources

San Luis Obispo County Flood Control
and Water Conservation District

Cathy Crothers

Name

Chief Counsel

Title

Date

Date

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