

AGREEMENT

This Agreement is by and between California-American Water Company, a California Corporation (Owner), and **Zim Industries Inc.** ("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:

Mobilization, well drilling and development, temporary pipeline installations, installation of noise control sound barrier, fluid and cuttings containment and disposal, well testing, site cleanup, site permits, site cleanup, and other requirements as described in the technical specifications

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:

Fitch Park ASR-5 and ASR-6 Wells

ARTICLE 3 – ENGINEER

- 3.01 The Engineer for the Project is California-American Water Company, acting through **Donald Monette** who shall be 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:

Pueblo Water Resources

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 will be substantially completed within **300 Days** after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **330 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) **\$1000** for each day that expires after the time specified in Paragraph 4.02 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) **\$500** for each day that expires after the time specified in Paragraph 4.02 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 **\$3,696,630.00**, 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. All invoices will be processed through the Taulia System. For information on how invoices are to be submitted to Taulia, go to: <http://supplierinfo.taulia.com/americanwater>

Payments shall be remitted to:

**Zim Industries Inc.
4532 E. Jefferson Ave.,
Fresno, CA 93725**

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. Prior to Substantial Completion, progress payments will be made in an amount equal to **90%** percent of Work completed (with the balance being retainage), 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 shall pay an amount sufficient to increase total payments to Contractor to **95%** percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less **100%** percent 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. If checked, Contractor will provide Owner with a performance bond or a payment bond, or any combination thereof, as indicated in this Paragraph and conforming to the specifications in Article 5 of the General Conditions.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following:
1. This Agreement (pages **AG-1** to **AG-11**, inclusive).
 2. Notice of Award. (Note: This document is not attached to this Agreement).

3. General Conditions (pages **GC-i** to **GC-70**, inclusive).
4. California American Water Technical Specifications titled Fitch Park ASR-5 and ASR-6 Wells consisting of 61 pages and organized as follows:
 - a. Section 100 Technical Provisions – 10 Pages
 - b. Section 200 Construction Materials and Methods – 49 Pages
 - c. Well Completion Report – 2 Pages
 - d. Electronic – Gamma Ray Log – 3 Pages
 - e. Well Drawing Project No. 06-0031 January 2012 – 1 Page
 - f. Figure 1 Project Map – 1 Page
 - g. Figure 2 Site Map – 1 Page
 - h. Figure 3 Preliminary Well Design Schematic – 1 Page
 - i. Figure 4 External Sounding Tube Details – 1 Page
 - j. Figure 5 Wellhead and Foundation Details – 1 Page
 - k. Figure 6 Temporary Discharge Piping and Disposal Location Map – 1 Page
5. American Water cut-off and ring saw safety practice, Number PRA-OPS01/01 dated 4/28/2014 consisting of 15 pages.
6. *DBE Good Faith Efforts Requirements* identified as Attachment xx and consisting of 12 pages.
7. *Davis Bacon Contract Provisions* identified as Attachment xx and consisting of 9 pages.
8. 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 pages **C-1** through **C-8**.
 - d. Other exhibits as specified in the General Conditions, which may include but are not limited to, Exhibits G through R, inclusive.
9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (page **NP-1**).
 - b. Work Change Directives substantially conforming to the form attached hereto as Exhibit E.
 - c. 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. 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 to conform its business dealings with the Company in accordance with the underlying principles of the Company's Code of Ethics, a copy of which is available on the Company's website at <http://amwater.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 One 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:

Donald Monette
511 Forest Lodge Road
Pacific Grove, CA 93950

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

Curt Zimmerer
4532 E. Jefferson Ave
Fresno, CA 93725

9.07 *Diverse Business Enterprise Requirement*

- A. Owner utilizes the established guidelines from the California Public Utilities Commission ("CPUC") to qualify diverse suppliers and requires certification as a Diverse Business Enterprise ("DBE") by the Supplier Clearinghouse and/or the California Department of General Services. Generally, a DBE is a business in which 51% or more of the ownership interest is held, and 51% or more of the daily management and control of the business is performed, by one or more certified diverse suppliers. DBEs are divided into four classifications, as follows: Minority Business Enterprises ("MBE"), Women-Owned Business Enterprises ("WBE"), Disabled Veteran Business Enterprises ("DVBE"), and Lesbian, Gay, Bi-Sexual and Transgender Business Enterprises ("LGBTBE").
- B. Consultant represents and warrants that the percentage of the Contract Price that will be paid to DBEs, including to the Consultant and any of Consultant's subcontractors, will be at least 30.68% (the "DBE Requirement"). If Consultant fails to meet the DBE Requirement, such failure will be deemed a Default and may result in termination of this Agreement by Owner pursuant to Section 15.02 of the General Conditions.
- C. The CPUC requires Owner to report the amount of Owner's DBE spend in compliance with General Order 156. In order for Owner to meet this requirement, Consultant is required to submit a quarterly report to Owner, in a form provided by or acceptable to Owner, identifying (1) the total dollar amount of Contract Price paid by Owner to Consultant as of date of report ("Amount Paid to Date"), (2) the percentage of Amount Paid to Date that has been paid to DBEs, whether to Consultant or any of Consultant's subcontractors ("DBE Percentage"), and (3) the breakdown of the DBE Percentage into a percentage for each of the four classifications of DBEs (i.e., MBE, WBE, DVBE, and LGBTBE). Consultant will participate and assist, as requested by Owner, in any audit activities relating to this program. In addition, Consultant will produce copies of invoices and cancelled checks to DBE subcontractors if requested by Owner.

9.08 *Local Resources Goal*

Owner acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. Contractor has submitted a local resources utilization plan which is included in Exhibit C (Local Resources Utilization Plan). Contractor will 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 comply with such plan and shall monitor and report at least quarterly the continued implementation of the Local Resources Utilization Plan throughout the performance of this Contract.

9.09 *Public Funding/Labor Law Compliance*

A. **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>. 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.

B. **CWSRF Funding Responsibilities.**

1. **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.

2. **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:

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

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

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

- (d) familiarizing itself with the terms and conditions of the CWSRF program relating to construction activities and practices;
- (e) 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, including requirements described in Exhibits A and B;
- (f) attending meetings, as necessary, with SWRCB and other governmental bodies; and
- (g) 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.

3. 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 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.

4. 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.

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:

CONTRACTOR

California-American Water Company

Zim Industries Inc.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Title: _____

Date: _____

Contractor's License No.:
