



**SAN BERNARDINO  
VALLEY** | A REGIONAL WATER  
AGENCY SINCE 1954

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**BOARD OF DIRECTORS WORKSHOP - POLICY/ADMINISTRATION  
2:00 pm Thursday, October 3, 2024**

**In Person:**

380 East Vanderbilt Way  
San Bernardino, CA 92408

**Online via Zoom:**

<https://sbvmwd.zoom.us/j/89386241472>

Meeting ID: 893 8624 1472

**PASSCODE: 3802020**

**By Telephone:**

Dial-in Info: (877) 853 5247 US Toll-free

Meeting ID: 893 8624 1472

**PASSCODE: 3802020**

If you are unable to participate online or by telephone, you may also submit your comments and questions in writing for the District's consideration by sending them to [comments@sbvmwd.com](mailto:comments@sbvmwd.com) with the subject line "Public Comment Item #" (insert the agenda item number relevant to your comment) or "Public Comment Non-Agenda Item". Submit your written comments by 6:00 p.m. on Wednesday, October 2, 2024. All public comments will be provided to the Board President and may be read into the record or compiled as part of the record.

**IMPORTANT PRIVACY NOTE:** Online participants **MUST** log in with a Zoom account. The Zoom app is a free download. Please keep in mind: (1) This is a public meeting; as such, the virtual meeting information is published on the World Wide Web and available to everyone. (2) Should you participate remotely via telephone, your telephone number will be your "identifier" during the meeting and available to all meeting participants; there is no way to protect your privacy if you elect to call in to the meeting.



**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**  
380 E. Vanderbilt Way, San Bernardino, CA 92408

**BOARD OF DIRECTORS' WORKSHOP - POLICY/ADMINISTRATION**  
**2:00 PM Thursday, October 3, 2024**

**CALL TO ORDER**

Chairperson: Director Botello Vice-Chair: Director Kielhold

1) **INTRODUCTIONS**

2) **PUBLIC COMMENT**

Members of the public may address the Board regarding any item within the subject matter jurisdiction of the Board; however, no action may be taken on off-agenda items except as authorized by law. Each speaker is limited to a maximum of three (3) minutes.

3) **DISCUSSION AND POSSIBLE ACTION ITEMS**

- 3.1 Consider Execution of a Reimbursement Agreement with West Valley Water District (30 min) - Page 2  
[Staff Memo - Consider Execution of a Reimbursement Agreement with West Valley Water District](#)  
[Reimbursement Agreement with West Valley Water District](#)  
[Consulting Services Agreement with the Santa Ana Watershed Association](#)
- 3.2 Consider a Memorandum of Understanding with San Bernardino County regarding Cactus Basins Recharge (30 min) - Page 61  
[Staff Memo - Consider a Memorandum of Understanding with San Bernardino County regarding Cactus Basins Recharge](#)  
[Proposed Memorandum of Understanding](#)

4) **FUTURE BUSINESS**

5) **ADJOURNMENT**



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**DATE:** October 3, 2024  
**TO:** Board of Directors' Workshop – Policy/Administration/Engineering  
**FROM:** Joanna Gibson, MS – Executive Director Upper SAR HCP Program  
**SUBJECT:** Consider Execution of a Reimbursement Agreement with West Valley Water District

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**Staff Recommendation**

Staff recommends the Board authorize the CEO/General Manager to execute a Reimbursement Agreement (Attachment 1) with West Valley Water District in the amount of \$42,548 to recover costs associated with habitat management actions being managed by San Bernardino Valley on behalf West Valley Water District.

**Summary**

On May 14, 2024, the Board authorized the execution of a Consulting Services Agreement with the Santa Ana Watershed Association (SAWA; Attachment 2) in the amount of \$919,596. Tasks identified in Exhibit A to the Consulting Services Agreement consist of habitat restoration actions associated with the Upper Santa Ana River Habitat Conservation Plan (HCP) Preserve System (Tributary Restoration Projects, and San Bernardino kangaroo rat mitigation lands), land management actions on properties owned by San Bernardino Valley and habitat restoration actions on lands San Bernardino Valley is managing on behalf of West Valley Water District, and East Valley Water District. The habitat restoration actions San Bernardino Valley is managing on behalf of West Valley Water District and East Valley Water District are associated with permits issued to each agency for projects they are independently implementing. To ensure San Bernardino Valley is fully reimbursed for implementing West Valley Water District's and East Valley Water District's habitat management actions identified in the SAWA Consulting Services Agreement, Staff have prepared Reimbursement Agreements.

The Reimbursement Agreement with West Valley Water District totals \$42,548.10 for the period through March 2025. This amount is identified in the Lower Cactus Basins #2 line item in Exhibit A to the SAWA Consulting Services Agreement. The West Valley Water District Reimbursement

Agreement was reviewed and approved to form by legal counsel and was approved by West Valley Water District's Board of Directors during their September 5, 2024 Board Meeting.

### **Background**

SAWA has been conducting habitat management in the watershed for over 20 years and has conducted vegetation management for San Bernardino Valley for several years. They are widely regarded as professional habitat management experts in the Santa Ana Watershed.

On May 14, 2024, the Board authorized the execution of a Consulting Services Agreement (Attachment 2) with SAWA to perform habitat management actions stipulated in permits issued to San Bernardino Valley, West Valley Water District, and East Valley Water District, and in our Incidental Take Permit (ITP) applications to the USFWS and CDFW that will permit the construction and/or operations and maintenance of 100+ water infrastructure projects identified in the Upper SAR HCP. The work will also ensure that property owned by San Bernardino Valley will remain compliant with California Fire Code and provide capacity for actions to be addressed within the timeframe stipulated in abatement notices).

Staff have been assisting West Valley Water District and East Valley Water District with mitigation obligations associated with permits issued to each agency for projects they are independently implementing. Both agencies have mitigation obligations that involve habitat management actions. Given that San Bernardino Valley was already pursuing a Consulting Services Agreement with SAWA to perform habitat management actions, Staff proposed including West Valley Water District's and East Valley Water District's habitat management obligations in the same Consulting Services Agreement. However, no work associated with West Valley Water District's or East Valley Water District's mitigation obligations (identified in the SAWA Consulting Services Agreement) would occur until reimbursement agreements were executed between San Bernardino Valley and each agency. Once prepared, the reimbursement agreements would be brought before San Bernardino Valley's Board of Director's for approval.

### **District Strategic Plan Application**

The reimbursement agreement between San Bernardino Valley and West Valley Water District demonstrates our mission to work collaboratively and to provide support our partner agencies.

### **Fiscal Impact**

None. West Valley Water District will reimburse San Bernardino Valley for all costs associated with West Valley's habitat management actions identified in the SAWA Consulting Services Agreement (\$42,548.10).

**Attachments**

- 1) Reimbursement Agreement with West Valley Water District
- 2) Consulting Services Agreement with the Santa Ana Watershed Association

**Table 2. Cost Breakdown Summary**

Project	Not to Exceed Cost	Cost recovery	Reimbursement (Grants, Cost-share)	Net Adjusted Cost
Waterman Basins Riparian, and Alluvial, Weaver Basins, and SBVMWD Facilities	\$ 225,000	None		\$ 225,000
West Valley Water District (Lower Cactus Basins #2)	\$ 42,548	100% reimbursed by WVWD	\$ 42,548	\$ -
East Valley Water District (SAR River Corridor)	\$ 146,419	100% reimbursed by EVWD	\$ 146,419	\$ -
Redlands Airport, Mentone, Lytle Creek/Frisbee Wash, Frisbee Wash	\$ 75,000	100% by HCP Partner Agencies needing mitigation at these properties		\$ 75,000
Lower Hole Creek, Anza Creek SARCCUP Ext., Old Ranch Creek	\$ 253,723	50% (Proposition 84 Grant Monies), then 100% by HCP Partner Agencies needing mitigation at these locations	\$ 126,861	\$ 126,861
Anza Creek, Hidden Valley Creek, Restoration Planting - Hidden Valley, and Anza Creek	\$ 176,906	50% (Proposition 84 Grant Monies), plus 75% of balance (USBR Grants), then 100% by HCP Partner Agencies needing mitigation at these properties	\$ 154,793	\$ 22,113
<b>TOTALS</b>	<b>\$ 919,596</b>		<b>\$ 470,621</b>	<b>\$ 448,975</b>

## REIMBURSEMENT AGREEMENT

**THIS REIMBURSEMENT AGREEMENT** (“*Agreement*”) is entered into and effective as of \_\_\_\_\_, 2024 (“*Effective Date*”), by and between WEST VALLEY WATER DISTRICT, a county water district organized and operating pursuant to California Water Code section 30000 *et seq.* (“*WVWD*”), and SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, a municipal water district organized and operating pursuant to California Water Code section 71000 *et seq.* (“*SAN BERNARDINO VALLEY*”). WVWD and SAN BERNARDINO VALLEY are sometimes referred to herein individually as “*Party*” and collectively as “*Parties*”.

### RECITALS

A. On or about September 19, 2018, pursuant to Fish and Game Code section 1602, WVWD notified California Department of Fish and Wildlife (“*CDFW*”) of its intent to complete the Lower Cactus Basin 2 Maintenance Project to conduct vegetation management on an as-needed basis to ensure adequate water spreading and percolation.

B. On October 26, 2020, CDFW issued Streambed Alteration Agreement Number 1600-2018-0153-R6 (“*SAA*”) to WVWD to conduct vegetation management at Lower Cactus Basin 2 for a term of 12 years.

C. The SAA required WVWD to prepare and submit for approval to CDFW a Habitat Mitigation and Monitoring Plan (“*HMMP*”) for short-term monitoring and management of a 12-acre site at Hidden Valley Wildlife Area (“*HVWA*”) in Riverside County, California.

D. In 2021, SAN BERNARDINO VALLEY, on behalf of WVWD, prepared and submitted to CDFW for review and approval a HMMP for the short-term monitoring and management of WVWD’s 12-acre site at HVWA.

E. On November 18, 2021, CDFW approved the HMMP.

F. On May 14, 2024, SAN BERNARDINO VALLEY executed a Consulting Services Agreement with the Santa Ana Watershed Association (“*SAWA*”) for habitat management actions on multiple projects/properties, including WVWD’s 12-acre habitat management area at HVWA. The cost of habitat management actions for WVWD’s 12-acre site over the next 12 months is Forty-Two Thousand Five Hundred Forty-Eight Dollars and Ten Cents (\$42,548.10) (“*Maximum Reimbursement*”), as identified in Exhibit “A” (Nonnative Plant Management Spring 2024 Project Scope of Work) to the SAWA Consulting Services Agreement attached as *Exhibit 1* hereto and incorporated herein by reference.

G. WVWD wishes to establish and agree to a framework and reimburse SAN BERNARDINO VALLEY for expenses incurred in implementing the habitat management actions associated with the HMMP for the SAA at WVWD’s 12-acre mitigation area at HVWA, as identified in Exhibit 1.

**NOW THEREFORE**, in consideration of the matters recited and the mutual promises, covenants, and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **OPERATIVE PROVISIONS**

1. Incorporation of Recitals. Each and every one of the Recitals set forth above is a material part of this Agreement and is hereby incorporated by reference into and made part of this Agreement by this reference.

2. HMMP Management and Implementation. Except as expressly provided herein, WVWD shall perform all obligations to be performed by WVWD under the SAA and the HMMP related to the HVWA. Subject to the terms and conditions of this Agreement, including WVWD's approval of appropriate Task Orders as described below, SAN BERNARDINO VALLEY will manage and implement, on behalf of WVWD, the CDFW-approved HMMP for the SAA and associated habitat management actions at WVWD's 12-acre mitigation area at HVWA, as set forth in Exhibit 1.

3. Term. The term of this Agreement shall commence as of the Effective Date and shall terminate on the earlier of: (a) March 31, 2025; or (b) SAN BERNARDINO VALLEY incurs total approved costs equaling the Maximum Reimbursement.

4. Review and Approval. Prior to the commencement of any work, SAN BERNARDINO VALLEY shall submit to WVWD for review and approval one or more Task Orders, as described in the SAWA Consulting Services Agreement, that identifies the scope of the proposed work and a cost estimate. SAN BERNARDINO VALLEY shall not proceed with any work unless and until WVWD approves the scope of such work and cost estimate therefor.

5. Reimbursement. WVWD shall reimburse SAN BERNARDINO VALLEY for all costs incurred by SAN BERNARDINO VALLEY related to work identified and approved in any all Task Order; provided, however, that the total reimbursement shall not exceed the Maximum Reimbursement without an amendment to this Agreement.

6. Payments. SAN BERNARDINO VALLEY shall prepare and submit to WVWD invoices, supported by appropriate and sufficient documentation of costs incurred herein. WVWD shall pay all invoices within thirty (30) days after receipt.

7. Indemnification.

a. WVWD Indemnity. Pursuant to Government Code section 895.4, WVWD shall indemnify, defend, and hold harmless SAN BERNARDINO VALLEY from and against any and all third-party claims, demands, losses, fines, penalties, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies of whatever nature (including reasonable attorneys' fees) (collectively, "**Claims**") arising out of or related to WVWD's performance of its obligations under



this Agreement, except to the extent that such Claims are caused by the negligence or willful misconduct of SAN BERNARDINO VALLEY.

b. *SAN BERNARDINO VALLEY Indemnity.* Pursuant to Government Code section 895.4, SAN BERNARDINO VALLEY shall indemnify, defend, and hold harmless WVWD from and against any and all Claims arising out of or related to SAN BERNARDINO VALLEY's performance of its obligations under this Agreement, except to the extent that such Claims are caused by the negligence or willful misconduct of WVWD.

8. Miscellaneous.

a. *Notices.* Any notice to be given or to be served upon either Party hereto in connection with this Agreement must be in writing and shall be deemed to have been given and received: (a) when personally delivered; (b) two (2) days after it is sent by Federal Express or similar overnight courier, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; (c) three (3) days after it is sent by certified or registered United States mail, return receipt requested, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; or (d) as of the date of electronic mail transmission addressed to the Party for whom it is intended, at that Party's electronic mail address specified below, and provided that an original of such notice is also sent to the intended addressee by means described in clauses (a), (b), or (c) within two (2) business days after such transmission. Either Party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other Party as provided herein.

If to SAN BERNARDINO VALLEY:

San Bernardino Valley Municipal Water  
District  
Attn: Heather Dyer, CEO/General Manager  
380 East Vanderbilt Way  
San Bernardino, CA 92408  
Email: heatherd@sbsvmwd.com

with a copy to:

Varner & Brandt LLP  
Attn: Bradley E. Neufeld  
3750 University Avenue, 6<sup>th</sup> Floor  
Riverside, CA 92501-3323  
Email: bradley.neufeld@varnerbrandt.com

If to WVWD:

West Valley Water District  
Attn: John Thiel  
855 W. Base Line Road  
Rialto, CA 92376  
Email: jthiel@wvwd.org

with a copy to:

Best Best & Krieger LLP  
Attn: Jeff Ferre  
3390 University Ave., 5<sup>th</sup> Floor  
Riverside, CA 92501  
Email: jeff.ferre@bbklaw.com

b. *Further Acts.* Each Party agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

c. *Modifications Must Be Made in Writing.* This Agreement may not be modified, altered, or changed in any manner whatsoever except by a written instrument duly executed by authorized representatives of both Parties.

d. *Governing Law; Venue.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provision that would apply the laws of any other jurisdiction. Any action taken to enforce this Agreement shall be maintained exclusively in the Superior Court of the State of California, San Bernardino County. Each Party expressly consents to the exclusive jurisdiction of said court and waives any right it may otherwise have to challenge the appropriateness of such forum, whether on the basis of the doctrine of forum *non conveniens* or otherwise.

e. *Entire Agreement.* This Agreement contains the entire understanding between the Parties, and supersedes any prior understanding and/or written or oral agreements between them, respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

f. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Signatures may be delivered electronically and shall be binding upon the Parties as if they were originals.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
Heather P. Dyer  
CEO/General Manager

**WEST VALLEY WATER DISTRICT**

By:  \_\_\_\_\_  
John Thiel  
General Manager

**EXHIBIT 1**  
**CONSULTING SERVICES AGREEMENT,**  
**DATED MAY 14, 2024**

## CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT (“*Agreement*”) is entered into as of May 14, 2024 (“*Effective Date*”), by and between San Bernardino Valley Municipal Water District, a municipal water district organized and operating under the Municipal Water District Law of 1911 (“*District*”), and the Santa Ana Watershed Association, a 501(c)(3) non-profit organization (“*Consultant*” or “*Contractor*”). District and Consultant are sometimes referred to herein collectively as “*Parties*” and individually as “*Party*.”

### RECITALS

A. District is a public agency of the State of California and is in need of a qualified consultant to provide professional services for the following project:

**JOB NAME:** Upper Santa Ana River HCP

**JOB NUMBER:** 1770

B. Consultant is duly licensed in the State of California and has the necessary qualifications to provide such professional services.

C. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Consultant will render such professional services to District.

**NOW, THEREFORE**, the Parties agree as follows:

### ARTICLE I

#### SCOPE OF SERVICES TO BE PERFORMED, TIME OF PERFORMANCE AND TERM

1.1 Term. The term (“*Term*”) of this Agreement shall commence on the Effective Date and shall automatically terminate when the Compensation Amount has been spent, unless earlier terminated.

1.2 Scope of Services and Time of Performance. During the Term of this Agreement, Consultant shall perform all services, and provide all materials, equipment, tools, labor, and expertise, necessary to furnish the professional services set forth in Consultant’s proposal (“*Proposal*”), a true and correct copy of which is attached as *Exhibit “A”* hereto and incorporated herein by reference (collectively, “*Services*”). All Services shall be performed in accordance with the timeframes set forth in the Proposal.

1.3 Task Orders. From time to time, the Parties may make changes to or authorize certain work set forth in the scope of Services, including without limitation issuing additional instructions, requiring additional work, or deleting work previously ordered, by executing one or more task orders (each a “*Task Order*”). The provisions of this Agreement shall apply to all such Task Orders. The costs of each Task Order, or any modification of time for completion that might be required thereby, shall be mutually agreed upon in writing by District and Consultant before

commencement of the work called for by such Task Order. A Task Order is a request for additional Services and/or changes to Services, and shall not be effective unless and until accepted in writing by both Parties. Consultant shall be solely responsible for all costs and expenses associated with any additional Services, including additional Services already performed, that have not been specifically agreed upon in writing by Consultant and District. As used in this Agreement, the term “*Services*” shall include Services added, deleted, or modified by any Task Order.

1.4 Qualifications. Consultant represents and warrants to District that it has the qualifications, experience, licenses, and facilities necessary to properly perform the Services in a timely, competent, and professional manner.

1.5 Licenses. Consultant shall, in accordance with applicable laws and ordinances, obtain and maintain at its expense all permits and licenses necessary to accomplish the Services. Failure to maintain a required permit or license may result in immediate termination of this Agreement.

1.6 Standard of Care. Consultant shall perform all Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and competence ordinarily exercised by members of the profession currently practicing under similar conditions and in compliance with all federal, state, and local laws, rules, regulations, or ordinances applicable to the Services.

1.7 Relations with Construction Contractor. Outside of the normal commission of Consultant’s scope of work for the project, Consultant shall not directly or indirectly communicate with or consult with any construction or other District contractor utilized in the project, except in the presence of or with the specific written consent of the District.

1.8 Non-Exclusivity. District agrees that Consultant may perform services in matters that are not substantially related to the Services for people or entities that are or might be adverse to District. Subject to the restrictions of this Section 1.8 and Sections 3.2 and 3.3, Consultant will have no obligation to limit or restrict the assignment of its consultants, employees, and principals to other projects as a result of their performance of the Services.

## ARTICLE II COMPENSATION AND EXPENSES

2.1 Compensation. As full and complete compensation for the Services to be rendered by Consultant, District shall pay Consultant for all Services performed pursuant to this Agreement, inclusive of subconsultants and miscellaneous expenses, in the amount and on the schedule set forth in the Proposal (“*Compensation*”), which amount shall not exceed Nine Hundred Nineteen Thousand Five Hundred Ninety-Six Dollars (\$919,596) (“*Maximum Fee*”). To the extent different payment terms are set forth in a Task Order that conflict with the general payment terms set forth in the Proposal, the terms in the Task Order shall control. Consultant acknowledges and agrees that in no event shall Consultant receive or have a claim of any kind for any payment in excess of the Maximum Fee for any work, including additional Services under any Task Order, performed under this Agreement, unless such amount exceeding the Maximum Fee is specifically approved in writing by District.

2.2 Billing Procedure. No more frequently than once per month, Consultant will submit to District an accurate and complete statement ("**Invoice**") for Services actually performed during the previous month and other amounts due under this Agreement. Each Invoice shall include, at a minimum: (a) District's job name; (b) District's job number; (c) Consultant's point of contact for billing questions; (d) basis of billing; (e) total contract value; (f) total billing to date; (g) amount remaining in contract; (h) estimated percentage of completion at time of billing; and (i) a summary of Services actually performed during the billing period. Each Invoice shall be supported by such data substantiating Consultant's right to payment as District may reasonably require.

2.3 Payment. District shall pay to Consultant within thirty (30) calendar days after receipt of an Invoice, or the resolution of any billing dispute, all undisputed amounts. District may withhold a portion of an Invoice because of defective Services not remedied or unsatisfactory prosecution of the Services by Consultant. District will release any withheld funds upon Consultant satisfactorily remedying the issue that resulted in the withholding. District will not pay late fees to Consultant on the compensation due Consultant under the terms of this Agreement. Payment of any Invoice shall not constitute acceptance of any Services completed by Consultant, and the making of final payment shall not constitute a waiver of any claims by District for any reason whatsoever.

2.4 Disputed Invoices. In the event District disputes an Invoice, District shall provide a written explanation of the dispute to Consultant within thirty (30) days after receiving the Invoice. District and Consultant shall cooperate to resolve any disputed amount. District shall not be penalized for any reasonable dispute and shall not be obligated to pay any amount in dispute until the dispute has been resolved.

2.5 Expenses. District must pre-approve in writing each reasonable and necessary expense for which Consultant intends to seek reimbursement, which expenses are directly related to the performance of the Services. If pre-approved, such expenses for reasonable and necessary travel, lodging, or miscellaneous expenses incurred in the performance of this Agreement will be reimbursed to Consultant in accordance with District's general reimbursement policy. Consultant shall submit an Invoice of all incurred expenses accompanied by reasonable supporting documentation or transaction receipts. Invoices that fail to include reasonable supporting documentation or receipts will not be honored and District will have no obligation of any kind to reimburse Consultant for unsupported expenses listed on such Invoices.

2.6 Taxes. Any Taxes imposed by governing taxing authorities with respect to the Services will be the responsibility of Consultant. "**Taxes**" shall mean all taxes imposed with respect to the provision of the Services and associated amounts payable with respect to the Services, whether denominated as sales taxes, gross receipts taxes, transaction privilege taxes, use taxes, excise taxes, or otherwise.

**ARTICLE III**  
**WORK PRODUCT; CONFIDENTIAL INFORMATION**

3.1 Project Data. Consultant shall be exclusively responsible for obtaining from the appropriate sources, persons or third parties, all data and information necessary for the proper, timely and complete performance and satisfaction of the Services.

3.2 Work Product. Upon completion or other termination of this Agreement, Consultant shall provide to District, and such other consultants approved by District, all papers, maps, models, designs, calculations, surveys, reports, data, notes, computer files, documents, drawings and other work product (collectively "**Work Product**") developed from or associated with the Services. Upon completion of the Services, Consultant shall provide one reproducible physical copy and one electronic copy of all final Work Product described in the Proposal, in forms acceptable to District. Consultant acknowledges that all Services performed or Work Product prepared for District by Consultant hereunder, including without limitation all data, calculations, reports, models, working notes, drawings, designs, improvements, trademarks, patents, copyrights (whether or not registered or patentable), and specifications developed or prepared by Consultant in connection with or related to such Services or Work Product shall become the sole and exclusive property of District, unless specifically otherwise agreed upon in writing by District and Consultant. Consultant hereby unconditionally assigns, transfers and conveys to District all rights, interests and claims of any kind related thereto, including copyright. Consultant shall promptly disclose such Work Product to District and, at the District's expense, perform all actions reasonably requested by District (whether during or after the Term) to establish and confirm such ownership (including, without limitation, executing any necessary assignments, consents, powers of attorney, and other instruments). Notwithstanding the preceding, all pre-existing intellectual property owned by Consultant which is incorporated in or utilized to develop the Services performed or Work Product prepared for District hereunder shall remain the sole and exclusive property of Consultant; provided, however, that Consultant grants to District a non-exclusive, perpetual, fully transferable, worldwide, royalty-free, limited license to use such pre-existing intellectual property in connection with such Services or Work Product. Consultant shall not be held liable for reuse of Work Product or modifications thereof by District or its representatives for any purpose other than the original intent of this Agreement, without written authorization of Consultant.

3.3 Confidential Information. Consultant acknowledges that during the Term it may receive or have access to certain information, observations, and data (including without limitation trade secrets, designs, ideas, products, research, software, financial data, and personal information) concerning the business or affairs of District which is designated as confidential or proprietary or should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure ("**Confidential Information**"). All Confidential Information is, and shall remain, the property of District. Consultant shall: (a) use all Confidential Information solely for the purpose of providing the Services described in this Agreement; (b) hold all Confidential Information in strict confidence; (c) protect all Confidential Information from dissemination to, and unauthorized access or use by, any third party, using the same level of care and discretion that it uses with its own similar information, which in no case will be less than commercially reasonable care; (d) restrict access to all Confidential Information to such of its personnel, agents, and/or subconsultants, if any, who have a need to have access in order to provide



the Services and who are under obligations of confidentiality substantially similar to those in this Agreement; and (e) return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement and promptly confirm such return or destruction. Consultant shall not sell or make any unauthorized use of any Confidential Information.

#### **ARTICLE IV BOOKS AND RECORDS**

4.1 Books and Records. Consultant shall keep and preserve for no less than four (4) years after the date of final billing or termination of this Agreement, whichever shall first occur, accurate and detailed records of all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the Services and disbursements charged to District under this Agreement (collectively, "***Books and Records***"). All Books and Records shall be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the Services provided by Consultant under this Agreement. District and its agents shall be given full access to such Books and Records during normal business hours. District and its agents shall have the right to make copies of any of the said Books and Records.

4.2 Work Product Documentation. Consultant further agrees to maintain all design calculations and final Work Product on file in legible and readily accessible form. In addition to the requirements of Section 3.2, Consultant shall make copies of such material available to District, at District's sole cost and expense, and Consultant shall not destroy the originals of such materials and items, including any additions, amendments or modification thereto, unless District fails to object to such destruction upon Consultant providing District with sixty (60) days advance written notice, indicating that such material is scheduled to be destroyed.

#### **ARTICLE V INDEPENDENT CONTRACTOR**

5.1 Status. The Parties hereby acknowledge that in rendering the Services provided hereunder, Consultant shall be deemed to be an independent contractor and shall not be deemed in any way an agent, partner, or joint venturer of District. Consultant acknowledges and agrees that, as an independent contractor, it is solely responsible for the payment of any and all taxes and/or assessments imposed on account of payment to Consultant or the performance of Services by Consultant pursuant to this Agreement.

5.2 Agency Restrictions. Consultant understands and agrees that Consultant shall not represent itself to third parties to be the agent, employee, partner, or joint venturer of District. Furthermore, Consultant shall not make any statements on behalf of or otherwise purporting to bind the District in any contract or otherwise related agreement. Consultant further agrees and acknowledges that Consultant does not have the authority to and shall not sign any contract on behalf of District. Consultant shall not obligate District to do any other act that would bind District in any manner.

5.3 Further Assurances. Consultant shall furnish District with any documents or records that District reasonably believes necessary to properly and timely carry out the Services. District shall first tender written notice to Consultant regarding any documents or records that it reasonably believes necessary to properly carry out the Services. Consultant shall then have ten (10) days from the receipt of such notice to provide District with the requested documents or records.

## **ARTICLE VI TERMINATION**

6.1 Termination. At any time during the Term of this Agreement, District may terminate this Agreement, in whole or in part, with or without cause, upon ten (10) working days' written notice to Consultant. Upon receipt of the termination notice, Consultant shall promptly discontinue Services except to the extent the notice otherwise directs. In the event District renders such written termination notice to Consultant, Consultant shall be entitled to compensation for all Services properly rendered prior to the effective date of the notice and all further Services set forth in the notice. District shall be entitled to reimbursement for any compensation paid in excess of Services properly rendered and shall be entitled to withhold compensation for defective Services or other damages caused by Consultant's work. Consultant acknowledges District's right to terminate this Agreement as provided in this Article VI, and hereby waives any and all claims for damages that might arise from District's termination of this Agreement. Consultant shall deliver to District and transfer title (if necessary) to all completed Work Product. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation for termination of Services.

## **ARTICLE VII CALIFORNIA LABOR CODE PROVISIONS FOR PUBLIC WORKS PROJECTS**

7.1 Prevailing Wage Rates. Consultant is aware of the requirements of California Labor Code sections 1720 *et seq.* and 1770 *et seq.* (collectively, "**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall indemnify, defend, and hold harmless District and its directors, officers, employees, and agents from any claims, liabilities, costs, fines, penalties, or interest arising out of any failure or alleged failure of Consultant or its subconsultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, including without limitation prevailing wages, employment of apprentices, hours of labor, and debarment of contractors and subcontractors.

7.2 Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to California Labor Code sections 1725.5 and 1771.1, Consultant and all subconsultants must be registered with the Department of Industrial Relations (“**DIR**”). Consultant shall maintain registration for the duration of this Agreement and require the same of any of its subconsultants. This Agreement may also be subject to compliance monitoring and enforcement by the DIR. Consultant shall have sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

7.3 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of California Labor Code section 3700, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant agrees to comply with such provisions before commencing the performance of any Services.

**ARTICLE VIII**  
**ENVIRONMENTAL PROTECTION AGENCY**  
**WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT**  
**(“WIFIA”) PROVISIONS FOR WIFIA FUNDED PROJECTS**

8.1 Debarment and Suspension. Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the Services. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

8.2 Federal Lobbying Restrictions (31 U.S.C. 1352). Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to District the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

8.3 Civil Rights Obligations. Contractor shall comply with the following federal non-discrimination requirements:

(a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (42 U.S.C 2000D *et seq.*)

(b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (29 U.S.C. 794, supplemented by EO 11914, 41 FR 17871, April 29, 1976 and EO 11250, 30 FR 13003, October 13, 1965)

(c) The Age Discrimination Act of 1975, which prohibits age discrimination. (42 U.S.C 6101 *et seq.*)

(d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.

(e) 40 CFR Part 7, as it relates to the foregoing.

8.4 Equal Employment Opportunity (EEO). The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (EO 11246, 30 FR 12319, September 28, 1965).

Contractor's compliance with Executive Order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

During the performance of this contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has

inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

8.5 Affirmative Action. (41 CFR 60-2) The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 12086, and 13672. (EO 12086, 43 FR 46501, and EO 13672, 79 FR 42971).

- a) *General.* The requirements of this part apply to nonconstruction (supply and service) contractors. The regulations prescribe the contents of affirmative action programs, standards and procedures for evaluating the compliance of affirmative action programs implemented pursuant to this part, and related matters.
- b) *Affirmative action programs.*
  - 1) Each nonconstruction contractor must develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:
    - i. Has a contract of \$50,000 or more; or
    - ii. Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or
    - iii. Serves as a depository of Government funds in any amount; or
    - iv. Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.
  - 2) Each contractor and subcontractor must require each nonconstruction subcontractor to develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:
    - i. Has a subcontract of \$50,000 or more; or
    - ii. Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or
    - iii. Serves as a depository of Government funds in any amount; or
    - iv. Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.
- c) *When affirmative action programs must be developed.* The affirmative action programs required under paragraph (b) of this section must be developed within 120 days from the commencement of a contract and must be updated annually.

- d) *Who is included in affirmative action programs.* Contractors subject to the affirmative action program requirements must develop and maintain a written affirmative action program for each of their establishments. Each employee in the contractor's workforce must be included in an affirmative action program. Each employee must be included in the affirmative action program of the establishment at which he or she works, except that:
- 1) Employees who work at establishments other than that of the manager to whom they report, must be included in the affirmative action program of their manager.
  - 2) Employees who work at an establishment where the contractor employs fewer than 50 employees, may be included under any of the following three options: In an affirmative action program which covers just that establishment; in the affirmative action program which covers the location of the personnel function which supports the establishment; or, in the affirmative action program which covers the location of the official to whom they report.
  - 3) Employees for whom selection decisions are made at a higher level establishment within the organization must be included in the affirmative action program of the establishment where the selection decision is made.
  - 4) If a contractor wishes to establish an affirmative action program other than by establishment, the contractor may reach agreement with OFCCP on the development and use of affirmative action programs based on functional or business units. The Director, or his or her designee, must approve such agreements. Agreements allowing the use of functional or business unit affirmative action programs cannot be construed to limit or restrict how the OFCCP structures its compliance evaluations.
- e) *How to identify employees included in affirmative action programs other than where they are located.* If pursuant to paragraphs (d)(1) through (3) of this section employees are included in an affirmative action program for an establishment other than the one in which the employees are located, the organizational profile and job group analysis of the affirmative action program in which the employees are included must be annotated to identify the actual location of such employees. If the establishment at which the employees actually are located maintains an affirmative action program, the organizational profile and job group analysis of that program must be annotated to identify the program in which the employees are included.

8.6 Segregated Facilities. (41 CFR 60-1.8). The Contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the Contractor's control, where the

facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term “facilities,” as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; provided, that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

8.7 Disadvantaged Business Enterprises (DBE). The Contractor must ensure that the DBE’s six good faith efforts are used during the procurement of subcontractors for the Services. The six good faith efforts are found at: <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements#sixgoodfaithefforts>.

8.8 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (effective August 13, 2020). The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889, prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, “covered telecommunications equipment or services” means:

(a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(c) Telecommunications or video surveillance services provided by such entities or using such equipment.

(d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Act does not prohibit:

(a) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.

(b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.



**ARTICLE IX  
PROJECT MANAGEMENT**

9.1 Consultant's Representative. James Law ("*Consultant's Representative*") is hereby designated as the principal and representative of Consultant authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection herewith. Consultant shall not substitute Consultant's Representative without first notifying District in writing of Consultant's intent. District shall have the right to review the qualifications of said substitute. If District determines said substitute Consultant's Representative is unacceptable, Consultant shall submit alternate candidates until District determines the substitute Consultant Representative is acceptable.

9.2 District's Representative. Kai Palenscar ("*District's Representative*") is hereby designated to represent District and except as otherwise provided herein authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection therewith. District may substitute District's Representative at any time upon written notice to Consultant.

**ARTICLE X  
INDEMNIFICATION; LIMITATION OF LIABILITY**

10.1 Indemnification. To the maximum extent permitted by law, Consultant shall indemnify, defend, and hold harmless District and District's directors, officers, employees, representatives, agents, affiliates, subsidiaries, predecessors, successors, and assigns from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, judgments, fines, penalties, and deficiencies, including attorneys' fees (collectively, "*Claims*"), arising out of or related to any acts or omissions, or goods, products, or services made, furnished, or otherwise provided, or alleged to be made, furnished, or otherwise provided, by Consultant or Consultant's employees, representatives, agents, subconsultants, contractors, subcontractors, suppliers, successors, permitted assigns, or anyone acting on behalf of Consultant in connection with the performance of the Services; provided, however, that Consultant's indemnification obligations shall not apply to the extent any Claim arises from District's sole negligence or willful misconduct. Consultant's indemnification responsibility with respect to the Services shall exist and continue regardless of the extent to which District may have reviewed and approved the Services performed by Consultant, except that Consultant shall not be responsible for any Claim attributable to the Services to the extent such Claim is attributable to a decision made by District with respect to which Consultant and District have specifically agreed in writing that District shall be the responsible party. Consultant's indemnification obligations shall not be affected by any insurance provisions or limitations of liability contained in this Agreement. Consultant's indemnification obligations shall continue in full force and effect notwithstanding the completion, expiration, or other termination of this Agreement.

10.2 Limitation of Liability. DISTRICT'S CUMULATIVE AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING UNDER CONTRACT OR BASED UPON A CLAIM OF STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER TORT OR STATUTORY BASIS, SHALL BE LIMITED TO THE TOTAL PAYMENTS MADE

BY DISTRICT TO CONSULTANT HEREUNDER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT UPON WHICH LIABILITY IS PREDICATED. IN NO EVENT WILL DISTRICT OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, OR AFFILIATES BE LIABLE FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST REVENUES, OR FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, DELAY, INDIRECT, OR CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER DISTRICT HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THE PARTIES EACH ACKNOWLEDGE THAT THE FORGOING LIMITATION OF LIABILITY IS A MATERIAL CONDITION OF DISTRICT'S WILLINGNESS TO ENTER INTO THIS AGREEMENT, AND THAT DISTRICT WOULD NOT ENTER INTO THIS AGREEMENT BUT FOR SUCH LIMITATION.

## ARTICLE XI INSURANCE

11.1 Insurance. Consultant shall provide, pay for, and maintain in force at all times during the performance of the Services hereunder, the policies of insurance set forth below. Consultant shall provide original certificates of insurance and endorsements evidencing coverage on forms reasonably acceptable to District prior to commencing any Services under this Agreement and promptly upon request thereafter, and District reserves the right to require complete, certified copies of all required insurance policies, including policy declaration pages and endorsement pages. The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy, substitute for, or otherwise limit Consultant's indemnification obligations under this Agreement. Consultant acknowledges that the insurance coverage and the policy limits set forth in this Agreement constitute the minimum coverage and policy limits required; if Consultant maintains broader coverage and/or higher limits than the minimums shown above, District requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant and any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to District.

(a) Commercial General Liability Insurance covering liabilities for death and personal injury, liabilities for loss of or damage to property, and contractual indemnity obligations with a combined single limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.

(b) Automobile Liability Insurance for bodily injury or death and property damage, including coverage for owned, non-owned, leased, and hired auto, with a minimum \$1,000,000 per person and \$2,000,000 per occurrence.

(c) Workers' Compensation Insurance as required by applicable law.

(d) Employers' Liability Insurance with limits of at least \$1,000,000 per occurrence.

(e) Professional Liability Insurance/Errors and Omissions Liability Insurance appropriate to Consultant's profession, with limits of liability of not less than \$2,000,000 each claim/annual aggregate.

11.2 Policy Requirements. All insurance policies required pursuant to this Agreement shall:

(a) For all liability policies, include an additional insured endorsement at least as broad as ISO CG 20 10 10 01 and consistent therewith naming as additional insureds "San Bernardino Valley Municipal Water District and its directors, officers, employees, representatives, agents, affiliates, subsidiaries, predecessors, successors, and assigns".

(b) Be on an "occurrence" basis, not a "claims-made" basis. The foregoing policies must contain an aggregate limit not less than the occurrence limit. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

(c) Be primary and non-contributory with any insurance programs carried by or available to District and, with respect to Commercial General Liability Insurance, include a primary and non-contributory endorsement at least as broad as ISO CG 20 01 04 13.

(d) Waive all rights of subrogation and contribution against District and its insurers; provided, however, this provision shall apply regardless of whether or not District has received a waiver of subrogation from the insurer.

(e) Provide that coverage shall not be revised, cancelled or reduced until at least thirty (30) days' written notice of such revision, cancellation or reduction shall have been given to District. In the event any policies of insurance are revised, cancelled or reduced, Consultant shall prior to the revision, reduction or cancellation date, submit evidence of new insurance to District complying with this Agreement.

(f) Be issued by insurance companies which are qualified to do business in the State of California and which have a current rating of A-VII or better in Best's Insurance Report.

11.3 Subconsultant Insurance. In the event Consultant subcontracts any portion of its performance, the agreement between Consultant and the subconsultant shall require the subconsultant to carry the same policies of insurance that Consultant is required to maintain pursuant to this Agreement.

## ARTICLE XII REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties. Each Party represents and warrants the following:

(a) Such Party is duly organized, validly existing, and in good standing under the laws of its state of formation or incorporation and has all requisite power and authority to conduct the business with which it conducts and proposes to conduct.

(b) All action on the part of such Party necessary for the authorization, execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated herein, has been properly taken and obtained in compliance with applicable law.

(c) Such Party has not entered into nor will either enter into any agreement (whether written or oral) in conflict with this Agreement or which would prevent such Party from performing its obligations under this Agreement.

(d) Such Party has the contacts and expertise, and will reasonably allocate its financial and time resources on a best efforts basis to enable it to perform its obligations hereunder.

### **ARTICLE XIII MISCELLANEOUS**

13.1 Entire Agreement. This Agreement contains the entire understanding between the Parties, and supersedes any prior understanding and/or written or oral agreements between them, respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

13.2 Assignment. Consultant may not assign its rights and obligations hereunder, in part or in whole, without the prior written consent of District, which consent may be granted or withheld in District's sole discretion.

13.3 Succession. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

13.4 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and permitted assigns.

13.5 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

13.6 Notices. Any notice to be given or to be served upon either Party hereto in connection with this Agreement must be in writing and shall be deemed to have been given and received: (a) when personally delivered; (b) two (2) days after it is sent by Federal Express or similar overnight courier, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; (c) three (3) days after it is sent by certified or registered United States mail, return receipt requested, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; or (d) as of the date of electronic mail transmission addressed to the Party for whom it is intended, at that Party's electronic mail address specified below, and provided that an original of such notice is also sent to the intended addressee by means described in clauses (a), (b), or (c) within two (2) business days after such transmission. Either Party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other Party as provided herein.

If to District: San Bernardino Valley Municipal Water District  
Attn: Heather Dyer, CEO/General Manager  
380 East Vanderbilt Way  
San Bernardino, CA 92408  
Telephone: (909) 387-9253  
E-Mail: heatherd@sbumwd.com

If to Consultant: Santa Ana Watershed Association  
Attn: Brian Brady, Executive Director  
1835 Chicago Avenue Suite C  
Riverside, CA 92507  
Telephone: (951) 780-1012, ext. 102  
E-Mail: bbrady@sawatershed.org

13.7 Governing Law; Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provision that would apply the laws of any other jurisdiction. The Superior Court of the State of California in and for San Bernardino County shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the jurisdiction of such court and waives any right it may otherwise have to challenge the appropriateness of such forum, whether on the basis of the doctrine of forum *non conveniens* or otherwise.

13.8 Waivers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

13.9 Amendment. Except as expressly provided otherwise herein, this Agreement may not be modified, altered, or changed in any manner whatsoever except by a written instrument duly executed by authorized representatives of both Parties.

13.10 Severability. If any provision of this Agreement shall be deemed or held to be invalid or unenforceable for any reason, such provision shall be adjusted, if possible, rather than voided, so as to achieve the intent of the Parties to the fullest extent possible. In any event, such provision shall be severable from, and shall not be construed to have any effect on, the remaining provisions of this Agreement, which shall continue in full force and effect.

13.11 Time of the Essence. Time is of the essence in the performance of each and every provision or obligation of this Agreement as to which time is an element.

13.12 Release of Information and Advertising. Consultant shall not, without the prior written consent of District, make any news release or other public disclosure regarding this Agreement.

13.13 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of

proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

13.14 Attorneys’ Fees. If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys’ fees, reasonable expert witness fees, costs, and necessary disbursements in addition to any other relief to which that Party may be entitled.

13.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Signatures may be delivered electronically or by facsimile and shall be binding upon the Parties as if they were originals.

***[Signature Page Follows]***

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the Effective Date.

**DISTRICT:**

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

By: W. B. H. J.

Name: Wen Huang

for Its: General Manager

**CONSULTANT:**

**SANTA ANA WATERSHED ASSOCIATION**

By: Brizen J. Brady

Name: Brizen J. Brady

Its: Executive Director

**EXHIBIT “A”**

*Santa Ana Watershed Association*

*Nonnative Plant Management, Spring 2024 Project*

*Scope of Work*





1835 Chicago Avenue, Suite C  
 Riverside, CA 92507  
 (951) 780-1012  
 Fax (951) 780-5893  
<http://www.sawatershed.org>

**Board of Directors:**  
 Brett Mills,  
 Chair

Kerwin Russell,  
 Vice-Chair

Mandy Parks,  
 Treasurer

Teri Biancardi,  
 Secretary

David McMichael,  
 Director

The Santa Ana Watershed Association (SAWA) is a 501 C3 nonprofit corporation. SAWA has been involved in native habitat restoration since it was founded in 1997 and strives to provide quality habitat restoration work throughout the Santa Ana Watershed. SAWA is excited at the potential partnership with San Bernardino Valley Municipal Water District to assist in the habitat restoration plans presented by SBVMWD. SAWA will work closely with SBVMWD staff to coordinate treatments at multiple project locations at the direction of SBVMWD staff. SAWA will propose and calendar treatments for SBVMWD staff to approve prior to conducting work. Since SAWA is a non-profit corporation only actual costs are charged as they are incurred by SAWA. All not to exceed amounts will be monitored to ensure accurate budgeting. SAWA looks forward to working closely with SBVMWD staff to achieve their desired habitat goals. If you have any questions, concerns or comments feel free to contact me.

Cordially,

James Law  
 Habitat Restoration Services Manager  
 Cell – (909)7871-6903

Project Name	Project Description	Project Acreage	Not To Exceed Amount	Project Work Description	Notes
Weaver Basins	Control non-native grasses, castorbean and mustard	18	25,000.00	SBVMWD - Access Improvements SAWA to treat non-native grasses and mustards SBVMWD to mow accessible areas-7 days after treatment SAWA to conduct post treatment Potential SAWA or CCC Line Trimming	SAWA to treat non-native vegetation in Winter 24 - 3 People 4 Days SAWA to treat non-native vegetation as needed - 3 People 3Days
Redlands Airport	Control non-native grasses, tumbleweeds, castorbean and mustard	40	25,000.00	SAWA to conduct Code Enforcement as Requested SAWA to treat non-native vegetation in Winter 24 SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 4 Days SBVMWD to mow accessible areas SAWA post mow application 2 = 3 People 3 Days
Mentone	Control non-native grasses, castorbean, tumbleweeds and mustard	10	15,000.00	SAWA to conduct Code Enforcement as Requested SAWA to treat non-native vegetation in Winter 25 SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 2 Days SBVMWD to mow accessible areas SAWA post mow application 2 = 3 People 2 Days
Lytle Creek/Frisbee Wash	Control non-native grasses, castorbean, giant reed and mustard, Eucalyptus ...?	48	10,000.00	SAWA to conduct code enforcement work to ensure SBVMWD is compliant with code enforcement SAWA to treat non-native vegetation in Winter 25 SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 2 Days SBVMWD Mow Application >7 Days after Treatment SAWA post mow application 2 = 3 People 1 Day Potential CCC line trimming, trash removal and eucalyptus removal
Frisbee Wash	Control non-native grasses, castorbean and mustard	30	25,000.00	SAWA to conduct code enforcement work to ensure SBVMWD is compliant with code enforcement SAWA to treat non-native vegetation in Winter 25 SBVMWD to mow >7 days after treatment SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 4 Days SBVMWD to mow >7 Days after Treatment SAWA post mow application 2 = 3 People 3 Days Potential CCC line trimming trash removal and eucalyptus removal
Lower Hole Creek	Control castorbean, tamarisk, arundo and palm ssp.	5	20,682.70	SAWA to treat non-native vegetation in Summer 24 SAWA to remove giant reed, tamarisk Fall 24 SAWA follow up treatment Winter 25 SAWA follow up treatment Spring 25	SAWA non-native application 1 - 3 People 2 Days SAWA non-native removal - Green Climber 2 Days with Spotter SAWA non-native application 2 - 3 People 2 Days
Anza Creek	Palm tree control/Woody Non-Native Vegetation + Pepperweed	21	101,934.00	SAWA to treat non-native palms, Woody Species + Pepperweed in Summer 24 SAWA to treat non-native vegetation in Fall 24 SAWA follow up treatment Spring 25	SAWA - 2 Person Crew = Treat ~ 50 Palms/Day Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days
Anza Creek SARCCUP Ext.	Palm tree control/Woody Non-Native Vegetation + Pepperweed	12	101,934.00	SAWA to treat non-native Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days in Summer 24 SAWA to treat non-native vegetation in Fall 24 SAWA follow up treatment Spring 25	SAWA - 2 Person Crew = Treat ~ 50 Palms/Day Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days

Old Ranch Creek	Palm tree control/Woody Non-Native Vegetation + Pepperweed	17	131,106.00	SAWA to treat non-native palms, Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days in Summer 24 SAWA to treat non-native vegetation in Fall 24	SAWA - 2 Person Crew = Treat ~ 50 Palms/Day Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days
Hidden Valley Creek	Field Assessment + Mapping -> Treat all living palm spp.	22	25,000.00	SAWA to assess palms at Hidden Valley Creek SAWA to treat palm spp.	SAWA palm treatment - ~ 20 palms per day (increased distance between palms)
Waterman Basins Riparian	Treat non-native herbaceous weeds	40	100,000.00	SAWA to treat non-native herbaceous species in Spring 24 SBVMWD/Riv Parks to Mow/Pile Fallen Trees in Fall 24 SAWA Treatment 2 in Fall 24 SAWA Treatment 3 in Winter 24	SAWA - 3 Person Crew Treatment 1 - 8 Days SAWA - 3 Person Crew Treatment 2 - 6 Days SAWA - 3 Person Crew Treatment 3 - 6 Days SAWA - 3 Person Crew Treatment 4 - 6 Days
Lower Cactus Basins #2	Treat non-native herbaceous weeds	12	42,548.10	SAWA to treat non-native herbaceous species in Spring 24 SBVMWD/Riv Parks to Mow in Fall 24 SAWA Treatment 2 in Fall 24 SAWA Treatment 3 in Winter 24	Treatment Rate ~ 2 Acres Per Day (estimated at 2 acres/day, crew first day treated ~ 3.5 Acres)
Waterman Basins Alluvial	Treat non-native herbaceous weeds	20	50,000.00	SAWA to treat non-native herbaceous species in Spring 24 SBVMWD/Riv Parks to Mow in Fall 24 SAWA Treatment 2 in Fall 24 SAWA Treatment 3 in Winter 24	SAWA - 3 Person Crew Treatment 1 - 6 Days SAWA - 3 Person Crew Treatment 2 - 3 Days SAWA - 3 Person Crew Treatment 3 - 3 Days SAWA - 3 Person Crew Treatment 4 - 3 Days
SAR River Corridor (1.4 miles X 200 feet)	Treat non-native fig, tree of heaven, salt cedar, giant reed, castorbean and pepperweed.	78	146,418.75	SAWA to treat non-native species in Spring 24 SAWA Treatment 2 in Summer 24 SAWA Treatment 3 in Winter 24 SAWA Treatment 4 in Spring 25	SAWA to treat non-native vegetation in Summer 24 = 3 People 12 Days SAWA to treat non-native vegetation in Fall 24 = 3 People 12 Days SAWA to treat non-native vegetation in Winter 24 = 3 People 12 Days SAWA follow up treatment Spring 25 = 3 People 12 Days
<b>Totals</b>		<b>373</b>	<b>819,623.55</b>		
<b>SBVMWD Long Term Projects</b>					
SBVMWD Facilities		Variable	\$50,000.00	Maintain access and ensure code enforcement compliance as requested by SBVMWD staff.	To ensure access to SBVMWD Facilities and code enforcement compliance
Restoration Planting - Hidden Valley		Variable	\$24,986.25	# of Days Desired?	Collection of Pole Cuttings - ~ 100 per day with 3 person crew Planting of Pole Cuttings - ~ 75 per day with 3 person crew
Restoration Planting - Anza Creek		Variable	\$24,986.25	# of Days Desired?	Collection of Pole Cuttings - ~ 100 per day with 3 person crew Planting of Pole Cuttings - ~ 75 per day with 3 person crew
<b>Totals</b>			<b>\$919,596.05</b>		
<p>These rates are subject to change on January 1st, 2025 to reflect merit and cost of living adjustments for employees  No biological monitoring, permitting or Ranger assistance is covered under this proposal.</p>					

Project	3 Person Crew Number of Days	Palm Tree Crew Number of Days	Removal Crew Number of Days	3 Person Daily Rate	Palm Tree Crew Daily Rate	Removal Daily Rate	Staff Total	Mileage	Chemical	Project Total	Miles Per Trip	# of Trips
Weaver Basins	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$382.80	\$4,667.20	\$25,000.00	40	11
Redlands Airport	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$382.80	\$4,667.20	\$25,000.00	40	11
Mentone	4			\$2,850.00	\$1,750.00	\$3,800.00	\$11,400.00	\$243.60	\$3,356.40	\$15,000.00	40	7
Lyle Creek/Frisbee Wash	3			\$2,850.00	\$1,750.00	\$3,800.00	\$8,550.00	\$174.00	\$1,276.00	\$10,000.00	40	5
Frisbee Wash	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$375.84	\$4,674.16	\$25,000.00	36	12
Lower Hole Creek	4		2	\$2,850.00	\$1,750.00	\$3,800.00	\$19,000.00	\$182.70	\$1,500.00	\$20,682.70	21	10
Anza Creek	24	15		\$2,850.00	\$1,750.00	\$3,800.00	\$94,650.00	\$1,044.00	\$6,240.00	\$101,934.00	20	60
Anza Creek SARCCUP Ext.	24	15		\$2,850.00	\$1,750.00	\$3,800.00	\$94,650.00	\$1,044.00	\$6,240.00	\$101,934.00	20	60
Old Ranch Creek	24	30		\$2,850.00	\$1,750.00	\$3,800.00	\$120,900.00	\$1,566.00	\$8,640.00	\$131,106.00	24	75
Hidden Valley Creek	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$3,050.00	\$2,000.00	\$25,000.00	35	
Waterman Basins Riparian	26			\$2,850.00	\$1,750.00	\$3,800.00	\$74,100.00	\$1,392.00	\$24,508.00	\$100,000.00	40	40
Lower Cactus Basins #2	12			\$2,850.00	\$1,750.00	\$3,800.00	\$34,200.00	\$548.10	\$7,800.00	\$42,548.10	35	18
Waterman Basins Alluvial	15			\$2,850.00	\$1,750.00	\$3,800.00	\$42,750.00	\$730.80	\$6,519.20	\$50,000.00	35	24
SAR River Corridor (1.4 miles X 200 feet)	48			\$2,850.00	\$1,750.00	\$3,800.00	\$136,800.00	\$978.75	\$8,640.00	\$146,418.75	15	75
SBVMWD Facilities				\$2,850.00	\$1,750.00	\$3,800.00	\$40,000.00	\$2,000.00	\$8,000.00	\$50,000.00		
Restoration Planting - Hidden Valley	8.5			\$2,850.00	\$1,750.00	\$3,800.00	\$24,225.00	\$761.25	\$0.00	\$24,986.25	35	25
Restoration Planting - Anza Creek	8.5			\$2,850.00	\$1,750.00	\$3,800.00	\$24,225.00	\$761.25	\$0.00	\$24,986.25	35	25
<b>Totals</b>	<b>229</b>	<b>60</b>	<b>2</b>				<b>\$805,250.00</b>	<b>\$15,617.89</b>	<b>\$98,728.16</b>	<b>\$919,596.05</b>		

## CONSULTING SERVICES AGREEMENT

**THIS CONSULTING SERVICES AGREEMENT (“*Agreement*”)** is entered into as of May 14, 2024 (“*Effective Date*”), by and between San Bernardino Valley Municipal Water District, a municipal water district organized and operating under the Municipal Water District Law of 1911 (“*District*”), and the Santa Ana Watershed Association, a 501(c)(3) non-profit organization (“*Consultant*” or “*Contractor*”). District and Consultant are sometimes referred to herein collectively as “*Parties*” and individually as “*Party*.”

### RECITALS

A. District is a public agency of the State of California and is in need of a qualified consultant to provide professional services for the following project:

**JOB NAME:** Upper Santa Ana River HCP

**JOB NUMBER:** 1770

B. Consultant is duly licensed in the State of California and has the necessary qualifications to provide such professional services.

C. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Consultant will render such professional services to District.

**NOW, THEREFORE**, the Parties agree as follows:

### ARTICLE I

#### SCOPE OF SERVICES TO BE PERFORMED, TIME OF PERFORMANCE AND TERM

1.1 Term. The term (“*Term*”) of this Agreement shall commence on the Effective Date and shall automatically terminate when the Compensation Amount has been spent, unless earlier terminated.

1.2 Scope of Services and Time of Performance. During the Term of this Agreement, Consultant shall perform all services, and provide all materials, equipment, tools, labor, and expertise, necessary to furnish the professional services set forth in Consultant’s proposal (“*Proposal*”), a true and correct copy of which is attached as *Exhibit “A”* hereto and incorporated herein by reference (collectively, “*Services*”). All Services shall be performed in accordance with the timeframes set forth in the Proposal.

1.3 Task Orders. From time to time, the Parties may make changes to or authorize certain work set forth in the scope of Services, including without limitation issuing additional instructions, requiring additional work, or deleting work previously ordered, by executing one or more task orders (each a “*Task Order*”). The provisions of this Agreement shall apply to all such Task Orders. The costs of each Task Order, or any modification of time for completion that might be required thereby, shall be mutually agreed upon in writing by District and Consultant before

commencement of the work called for by such Task Order. A Task Order is a request for additional Services and/or changes to Services, and shall not be effective unless and until accepted in writing by both Parties. Consultant shall be solely responsible for all costs and expenses associated with any additional Services, including additional Services already performed, that have not been specifically agreed upon in writing by Consultant and District. As used in this Agreement, the term “*Services*” shall include Services added, deleted, or modified by any Task Order.

1.4 Qualifications. Consultant represents and warrants to District that it has the qualifications, experience, licenses, and facilities necessary to properly perform the Services in a timely, competent, and professional manner.

1.5 Licenses. Consultant shall, in accordance with applicable laws and ordinances, obtain and maintain at its expense all permits and licenses necessary to accomplish the Services. Failure to maintain a required permit or license may result in immediate termination of this Agreement.

1.6 Standard of Care. Consultant shall perform all Services in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and competence ordinarily exercised by members of the profession currently practicing under similar conditions and in compliance with all federal, state, and local laws, rules, regulations, or ordinances applicable to the Services.

1.7 Relations with Construction Contractor. Outside of the normal commission of Consultant’s scope of work for the project, Consultant shall not directly or indirectly communicate with or consult with any construction or other District contractor utilized in the project, except in the presence of or with the specific written consent of the District.

1.8 Non-Exclusivity. District agrees that Consultant may perform services in matters that are not substantially related to the Services for people or entities that are or might be adverse to District. Subject to the restrictions of this Section 1.8 and Sections 3.2 and 3.3, Consultant will have no obligation to limit or restrict the assignment of its consultants, employees, and principals to other projects as a result of their performance of the Services.

## ARTICLE II COMPENSATION AND EXPENSES

2.1 Compensation. As full and complete compensation for the Services to be rendered by Consultant, District shall pay Consultant for all Services performed pursuant to this Agreement, inclusive of subconsultants and miscellaneous expenses, in the amount and on the schedule set forth in the Proposal (“*Compensation*”), which amount shall not exceed Nine Hundred Nineteen Thousand Five Hundred Ninety-Six Dollars (\$919,596) (“*Maximum Fee*”). To the extent different payment terms are set forth in a Task Order that conflict with the general payment terms set forth in the Proposal, the terms in the Task Order shall control. Consultant acknowledges and agrees that in no event shall Consultant receive or have a claim of any kind for any payment in excess of the Maximum Fee for any work, including additional Services under any Task Order, performed under this Agreement, unless such amount exceeding the Maximum Fee is specifically approved in writing by District.

2.2 Billing Procedure. No more frequently than once per month, Consultant will submit to District an accurate and complete statement (“*Invoice*”) for Services actually performed during the previous month and other amounts due under this Agreement. Each Invoice shall include, at a minimum: (a) District’s job name; (b) District’s job number; (c) Consultant’s point of contact for billing questions; (d) basis of billing; (e) total contract value; (f) total billing to date; (g) amount remaining in contract; (h) estimated percentage of completion at time of billing; and (i) a summary of Services actually performed during the billing period. Each Invoice shall be supported by such data substantiating Consultant’s right to payment as District may reasonably require.

2.3 Payment. District shall pay to Consultant within thirty (30) calendar days after receipt of an Invoice, or the resolution of any billing dispute, all undisputed amounts. District may withhold a portion of an Invoice because of defective Services not remedied or unsatisfactory prosecution of the Services by Consultant. District will release any withheld funds upon Consultant satisfactorily remedying the issue that resulted in the withholding. District will not pay late fees to Consultant on the compensation due Consultant under the terms of this Agreement. Payment of any Invoice shall not constitute acceptance of any Services completed by Consultant, and the making of final payment shall not constitute a waiver of any claims by District for any reason whatsoever.

2.4 Disputed Invoices. In the event District disputes an Invoice, District shall provide a written explanation of the dispute to Consultant within thirty (30) days after receiving the Invoice. District and Consultant shall cooperate to resolve any disputed amount. District shall not be penalized for any reasonable dispute and shall not be obligated to pay any amount in dispute until the dispute has been resolved.

2.5 Expenses. District must pre-approve in writing each reasonable and necessary expense for which Consultant intends to seek reimbursement, which expenses are directly related to the performance of the Services. If pre-approved, such expenses for reasonable and necessary travel, lodging, or miscellaneous expenses incurred in the performance of this Agreement will be reimbursed to Consultant in accordance with District’s general reimbursement policy. Consultant shall submit an Invoice of all incurred expenses accompanied by reasonable supporting documentation or transaction receipts. Invoices that fail to include reasonable supporting documentation or receipts will not be honored and District will have no obligation of any kind to reimburse Consultant for unsupported expenses listed on such Invoices.

2.6 Taxes. Any Taxes imposed by governing taxing authorities with respect to the Services will be the responsibility of Consultant. “*Taxes*” shall mean all taxes imposed with respect to the provision of the Services and associated amounts payable with respect to the Services, whether denominated as sales taxes, gross receipts taxes, transaction privilege taxes, use taxes, excise taxes, or otherwise.

**ARTICLE III**  
**WORK PRODUCT; CONFIDENTIAL INFORMATION**

3.1 Project Data. Consultant shall be exclusively responsible for obtaining from the appropriate sources, persons or third parties, all data and information necessary for the proper, timely and complete performance and satisfaction of the Services.

3.2 Work Product. Upon completion or other termination of this Agreement, Consultant shall provide to District, and such other consultants approved by District, all papers, maps, models, designs, calculations, surveys, reports, data, notes, computer files, documents, drawings and other work product (collectively "**Work Product**") developed from or associated with the Services. Upon completion of the Services, Consultant shall provide one reproducible physical copy and one electronic copy of all final Work Product described in the Proposal, in forms acceptable to District. Consultant acknowledges that all Services performed or Work Product prepared for District by Consultant hereunder, including without limitation all data, calculations, reports, models, working notes, drawings, designs, improvements, trademarks, patents, copyrights (whether or not registered or patentable), and specifications developed or prepared by Consultant in connection with or related to such Services or Work Product shall become the sole and exclusive property of District, unless specifically otherwise agreed upon in writing by District and Consultant. Consultant hereby unconditionally assigns, transfers and conveys to District all rights, interests and claims of any kind related thereto, including copyright. Consultant shall promptly disclose such Work Product to District and, at the District's expense, perform all actions reasonably requested by District (whether during or after the Term) to establish and confirm such ownership (including, without limitation, executing any necessary assignments, consents, powers of attorney, and other instruments). Notwithstanding the preceding, all pre-existing intellectual property owned by Consultant which is incorporated in or utilized to develop the Services performed or Work Product prepared for District hereunder shall remain the sole and exclusive property of Consultant; provided, however, that Consultant grants to District a non-exclusive, perpetual, fully transferable, worldwide, royalty-free, limited license to use such pre-existing intellectual property in connection with such Services or Work Product. Consultant shall not be held liable for reuse of Work Product or modifications thereof by District or its representatives for any purpose other than the original intent of this Agreement, without written authorization of Consultant.

3.3 Confidential Information. Consultant acknowledges that during the Term it may receive or have access to certain information, observations, and data (including without limitation trade secrets, designs, ideas, products, research, software, financial data, and personal information) concerning the business or affairs of District which is designated as confidential or proprietary or should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure ("**Confidential Information**"). All Confidential Information is, and shall remain, the property of District. Consultant shall: (a) use all Confidential Information solely for the purpose of providing the Services described in this Agreement; (b) hold all Confidential Information in strict confidence; (c) protect all Confidential Information from dissemination to, and unauthorized access or use by, any third party, using the same level of care and discretion that it uses with its own similar information, which in no case will be less than commercially reasonable care; (d) restrict access to all Confidential Information to such of its personnel, agents, and/or subconsultants, if any, who have a need to have access in order to provide



the Services and who are under obligations of confidentiality substantially similar to those in this Agreement; and (e) return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement and promptly confirm such return or destruction. Consultant shall not sell or make any unauthorized use of any Confidential Information.

#### **ARTICLE IV BOOKS AND RECORDS**

4.1 Books and Records. Consultant shall keep and preserve for no less than four (4) years after the date of final billing or termination of this Agreement, whichever shall first occur, accurate and detailed records of all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the Services and disbursements charged to District under this Agreement (collectively, "***Books and Records***"). All Books and Records shall be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the Services provided by Consultant under this Agreement. District and its agents shall be given full access to such Books and Records during normal business hours. District and its agents shall have the right to make copies of any of the said Books and Records.

4.2 Work Product Documentation. Consultant further agrees to maintain all design calculations and final Work Product on file in legible and readily accessible form. In addition to the requirements of Section 3.2, Consultant shall make copies of such material available to District, at District's sole cost and expense, and Consultant shall not destroy the originals of such materials and items, including any additions, amendments or modification thereto, unless District fails to object to such destruction upon Consultant providing District with sixty (60) days advance written notice, indicating that such material is scheduled to be destroyed.

#### **ARTICLE V INDEPENDENT CONTRACTOR**

5.1 Status. The Parties hereby acknowledge that in rendering the Services provided hereunder, Consultant shall be deemed to be an independent contractor and shall not be deemed in any way an agent, partner, or joint venturer of District. Consultant acknowledges and agrees that, as an independent contractor, it is solely responsible for the payment of any and all taxes and/or assessments imposed on account of payment to Consultant or the performance of Services by Consultant pursuant to this Agreement.

5.2 Agency Restrictions. Consultant understands and agrees that Consultant shall not represent itself to third parties to be the agent, employee, partner, or joint venturer of District. Furthermore, Consultant shall not make any statements on behalf of or otherwise purporting to bind the District in any contract or otherwise related agreement. Consultant further agrees and acknowledges that Consultant does not have the authority to and shall not sign any contract on behalf of District. Consultant shall not obligate District to do any other act that would bind District in any manner.

5.3 Further Assurances. Consultant shall furnish District with any documents or records that District reasonably believes necessary to properly and timely carry out the Services. District shall first tender written notice to Consultant regarding any documents or records that it reasonably believes necessary to properly carry out the Services. Consultant shall then have ten (10) days from the receipt of such notice to provide District with the requested documents or records.

## **ARTICLE VI TERMINATION**

6.1 Termination. At any time during the Term of this Agreement, District may terminate this Agreement, in whole or in part, with or without cause, upon ten (10) working days' written notice to Consultant. Upon receipt of the termination notice, Consultant shall promptly discontinue Services except to the extent the notice otherwise directs. In the event District renders such written termination notice to Consultant, Consultant shall be entitled to compensation for all Services properly rendered prior to the effective date of the notice and all further Services set forth in the notice. District shall be entitled to reimbursement for any compensation paid in excess of Services properly rendered and shall be entitled to withhold compensation for defective Services or other damages caused by Consultant's work. Consultant acknowledges District's right to terminate this Agreement as provided in this Article VI, and hereby waives any and all claims for damages that might arise from District's termination of this Agreement. Consultant shall deliver to District and transfer title (if necessary) to all completed Work Product. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation for termination of Services.

## **ARTICLE VII CALIFORNIA LABOR CODE PROVISIONS FOR PUBLIC WORKS PROJECTS**

7.1 Prevailing Wage Rates. Consultant is aware of the requirements of California Labor Code sections 1720 *et seq.* and 1770 *et seq.* (collectively, "**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall indemnify, defend, and hold harmless District and its directors, officers, employees, and agents from any claims, liabilities, costs, fines, penalties, or interest arising out of any failure or alleged failure of Consultant or its subconsultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, including without limitation prevailing wages, employment of apprentices, hours of labor, and debarment of contractors and subcontractors.

7.2 Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to California Labor Code sections 1725.5 and 1771.1, Consultant and all subconsultants must be registered with the Department of Industrial Relations (“*DIR*”). Consultant shall maintain registration for the duration of this Agreement and require the same of any of its subconsultants. This Agreement may also be subject to compliance monitoring and enforcement by the DIR. Consultant shall have sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

7.3 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of California Labor Code section 3700, which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant agrees to comply with such provisions before commencing the performance of any Services.

**ARTICLE VIII**  
**ENVIRONMENTAL PROTECTION AGENCY**  
**WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT**  
**(“*WIFIA*”) PROVISIONS FOR WIFIA FUNDED PROJECTS**

8.1 Debarment and Suspension. Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the Services. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

8.2 Federal Lobbying Restrictions (31 U.S.C. 1352). Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to District the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

8.3 Civil Rights Obligations. Contractor shall comply with the following federal non-discrimination requirements:

(a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (42 U.S.C 2000D *et seq.*)

(b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (29 U.S.C. 794, supplemented by EO 11914, 41 FR 17871, April 29, 1976 and EO 11250, 30 FR 13003, October 13, 1965)

(c) The Age Discrimination Act of 1975, which prohibits age discrimination. (42 U.S.C 6101 *et seq.*)

(d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.

(e) 40 CFR Part 7, as it relates to the foregoing.

8.4 Equal Employment Opportunity (EEO). The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (EO 11246, 30 FR 12319, September 28, 1965).

Contractor's compliance with Executive Order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

During the performance of this contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has

inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

8.5 Affirmative Action. (41 CFR 60-2) The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 12086, and 13672. (EO 12086, 43 FR 46501, and EO 13672, 79 FR 42971).

- a) *General.* The requirements of this part apply to nonconstruction (supply and service) contractors. The regulations prescribe the contents of affirmative action programs, standards and procedures for evaluating the compliance of affirmative action programs implemented pursuant to this part, and related matters.
- b) *Affirmative action programs.*
  - 1) Each nonconstruction contractor must develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:
    - i. Has a contract of \$50,000 or more; or
    - ii. Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or
    - iii. Serves as a depository of Government funds in any amount; or
    - iv. Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.
  - 2) Each contractor and subcontractor must require each nonconstruction subcontractor to develop and maintain a written affirmative action program for each of its establishments if it has 50 or more employees and:
    - i. Has a subcontract of \$50,000 or more; or
    - ii. Has Government bills of lading which in any 12-month period, total or can reasonably be expected to total \$50,000 or more; or
    - iii. Serves as a depository of Government funds in any amount; or
    - iv. Is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.
- c) *When affirmative action programs must be developed.* The affirmative action programs required under paragraph (b) of this section must be developed within 120 days from the commencement of a contract and must be updated annually.

- d) *Who is included in affirmative action programs.* Contractors subject to the affirmative action program requirements must develop and maintain a written affirmative action program for each of their establishments. Each employee in the contractor's workforce must be included in an affirmative action program. Each employee must be included in the affirmative action program of the establishment at which he or she works, except that:
- 1) Employees who work at establishments other than that of the manager to whom they report, must be included in the affirmative action program of their manager.
  - 2) Employees who work at an establishment where the contractor employs fewer than 50 employees, may be included under any of the following three options: In an affirmative action program which covers just that establishment; in the affirmative action program which covers the location of the personnel function which supports the establishment; or, in the affirmative action program which covers the location of the official to whom they report.
  - 3) Employees for whom selection decisions are made at a higher level establishment within the organization must be included in the affirmative action program of the establishment where the selection decision is made.
  - 4) If a contractor wishes to establish an affirmative action program other than by establishment, the contractor may reach agreement with OFCCP on the development and use of affirmative action programs based on functional or business units. The Director, or his or her designee, must approve such agreements. Agreements allowing the use of functional or business unit affirmative action programs cannot be construed to limit or restrict how the OFCCP structures its compliance evaluations.
- e) *How to identify employees included in affirmative action programs other than where they are located.* If pursuant to paragraphs (d)(1) through (3) of this section employees are included in an affirmative action program for an establishment other than the one in which the employees are located, the organizational profile and job group analysis of the affirmative action program in which the employees are included must be annotated to identify the actual location of such employees. If the establishment at which the employees actually are located maintains an affirmative action program, the organizational profile and job group analysis of that program must be annotated to identify the program in which the employees are included.

8.6 Segregated Facilities. (41 CFR 60-1.8). The Contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the Contractor's control, where the

facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term “facilities,” as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; provided, that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

8.7 Disadvantaged Business Enterprises (DBE). The Contractor must ensure that the DBE’s six good faith efforts are used during the procurement of subcontractors for the Services. The six good faith efforts are found at: <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements#sixgoodfaithefforts>.

8.8 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (effective August 13, 2020). The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889, prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, “covered telecommunications equipment or services” means:

(a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(c) Telecommunications or video surveillance services provided by such entities or using such equipment.

(d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Act does not prohibit:

(a) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.

(b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.



**ARTICLE IX  
PROJECT MANAGEMENT**

9.1 Consultant's Representative. James Law ("*Consultant's Representative*") is hereby designated as the principal and representative of Consultant authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection herewith. Consultant shall not substitute Consultant's Representative without first notifying District in writing of Consultant's intent. District shall have the right to review the qualifications of said substitute. If District determines said substitute Consultant's Representative is unacceptable, Consultant shall submit alternate candidates until District determines the substitute Consultant Representative is acceptable.

9.2 District's Representative. Kai Palenscar ("*District's Representative*") is hereby designated to represent District and except as otherwise provided herein authorized to act on its behalf with respect to the Services specified herein and to make all decisions in connection therewith. District may substitute District's Representative at any time upon written notice to Consultant.

**ARTICLE X  
INDEMNIFICATION; LIMITATION OF LIABILITY**

10.1 Indemnification. To the maximum extent permitted by law, Consultant shall indemnify, defend, and hold harmless District and District's directors, officers, employees, representatives, agents, affiliates, subsidiaries, predecessors, successors, and assigns from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, judgments, fines, penalties, and deficiencies, including attorneys' fees (collectively, "*Claims*"), arising out of or related to any acts or omissions, or goods, products, or services made, furnished, or otherwise provided, or alleged to be made, furnished, or otherwise provided, by Consultant or Consultant's employees, representatives, agents, subconsultants, contractors, subcontractors, suppliers, successors, permitted assigns, or anyone acting on behalf of Consultant in connection with the performance of the Services; provided, however, that Consultant's indemnification obligations shall not apply to the extent any Claim arises from District's sole negligence or willful misconduct. Consultant's indemnification responsibility with respect to the Services shall exist and continue regardless of the extent to which District may have reviewed and approved the Services performed by Consultant, except that Consultant shall not be responsible for any Claim attributable to the Services to the extent such Claim is attributable to a decision made by District with respect to which Consultant and District have specifically agreed in writing that District shall be the responsible party. Consultant's indemnification obligations shall not be affected by any insurance provisions or limitations of liability contained in this Agreement. Consultant's indemnification obligations shall continue in full force and effect notwithstanding the completion, expiration, or other termination of this Agreement.

10.2 Limitation of Liability. DISTRICT'S CUMULATIVE AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING UNDER CONTRACT OR BASED UPON A CLAIM OF STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER TORT OR STATUTORY BASIS, SHALL BE LIMITED TO THE TOTAL PAYMENTS MADE

BY DISTRICT TO CONSULTANT HEREUNDER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT UPON WHICH LIABILITY IS PREDICATED. IN NO EVENT WILL DISTRICT OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, OR AFFILIATES BE LIABLE FOR LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST REVENUES, OR FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, DELAY, INDIRECT, OR CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER DISTRICT HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THE PARTIES EACH ACKNOWLEDGE THAT THE FORGOING LIMITATION OF LIABILITY IS A MATERIAL CONDITION OF DISTRICT'S WILLINGNESS TO ENTER INTO THIS AGREEMENT, AND THAT DISTRICT WOULD NOT ENTER INTO THIS AGREEMENT BUT FOR SUCH LIMITATION.

## ARTICLE XI INSURANCE

11.1 Insurance. Consultant shall provide, pay for, and maintain in force at all times during the performance of the Services hereunder, the policies of insurance set forth below. Consultant shall provide original certificates of insurance and endorsements evidencing coverage on forms reasonably acceptable to District prior to commencing any Services under this Agreement and promptly upon request thereafter, and District reserves the right to require complete, certified copies of all required insurance policies, including policy declaration pages and endorsement pages. The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy, substitute for, or otherwise limit Consultant's indemnification obligations under this Agreement. Consultant acknowledges that the insurance coverage and the policy limits set forth in this Agreement constitute the minimum coverage and policy limits required; if Consultant maintains broader coverage and/or higher limits than the minimums shown above, District requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant and any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to District.

(a) Commercial General Liability Insurance covering liabilities for death and personal injury, liabilities for loss of or damage to property, and contractual indemnity obligations with a combined single limit of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.

(b) Automobile Liability Insurance for bodily injury or death and property damage, including coverage for owned, non-owned, leased, and hired auto, with a minimum \$1,000,000 per person and \$2,000,000 per occurrence.

(c) Workers' Compensation Insurance as required by applicable law.

(d) Employers' Liability Insurance with limits of at least \$1,000,000 per occurrence.

(e) Professional Liability Insurance/Errors and Omissions Liability Insurance appropriate to Consultant's profession, with limits of liability of not less than \$2,000,000 each claim/annual aggregate.

11.2 Policy Requirements. All insurance policies required pursuant to this Agreement shall:

(a) For all liability policies, include an additional insured endorsement at least as broad as ISO CG 20 10 10 01 and consistent therewith naming as additional insureds "San Bernardino Valley Municipal Water District and its directors, officers, employees, representatives, agents, affiliates, subsidiaries, predecessors, successors, and assigns".

(b) Be on an "occurrence" basis, not a "claims-made" basis. The foregoing policies must contain an aggregate limit not less than the occurrence limit. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

(c) Be primary and non-contributory with any insurance programs carried by or available to District and, with respect to Commercial General Liability Insurance, include a primary and non-contributory endorsement at least as broad as ISO CG 20 01 04 13.

(d) Waive all rights of subrogation and contribution against District and its insurers; provided, however, this provision shall apply regardless of whether or not District has received a waiver of subrogation from the insurer.

(e) Provide that coverage shall not be revised, cancelled or reduced until at least thirty (30) days' written notice of such revision, cancellation or reduction shall have been given to District. In the event any policies of insurance are revised, cancelled or reduced, Consultant shall prior to the revision, reduction or cancellation date, submit evidence of new insurance to District complying with this Agreement.

(f) Be issued by insurance companies which are qualified to do business in the State of California and which have a current rating of A-VII or better in Best's Insurance Report.

11.3 Subconsultant Insurance. In the event Consultant subcontracts any portion of its performance, the agreement between Consultant and the subconsultant shall require the subconsultant to carry the same policies of insurance that Consultant is required to maintain pursuant to this Agreement.

**ARTICLE XII  
REPRESENTATIONS AND WARRANTIES**

12.1 Representations and Warranties. Each Party represents and warrants the following:

(a) Such Party is duly organized, validly existing, and in good standing under the laws of its state of formation or incorporation and has all requisite power and authority to conduct the business with which it conducts and proposes to conduct.

(b) All action on the part of such Party necessary for the authorization, execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated herein, has been properly taken and obtained in compliance with applicable law.

(c) Such Party has not entered into nor will either enter into any agreement (whether written or oral) in conflict with this Agreement or which would prevent such Party from performing its obligations under this Agreement.

(d) Such Party has the contacts and expertise, and will reasonably allocate its financial and time resources on a best efforts basis to enable it to perform its obligations hereunder.

### **ARTICLE XIII MISCELLANEOUS**

13.1 Entire Agreement. This Agreement contains the entire understanding between the Parties, and supersedes any prior understanding and/or written or oral agreements between them, respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

13.2 Assignment. Consultant may not assign its rights and obligations hereunder, in part or in whole, without the prior written consent of District, which consent may be granted or withheld in District's sole discretion.

13.3 Succession. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

13.4 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and permitted assigns.

13.5 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

13.6 Notices. Any notice to be given or to be served upon either Party hereto in connection with this Agreement must be in writing and shall be deemed to have been given and received: (a) when personally delivered; (b) two (2) days after it is sent by Federal Express or similar overnight courier, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; (c) three (3) days after it is sent by certified or registered United States mail, return receipt requested, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; or (d) as of the date of electronic mail transmission addressed to the Party for whom it is intended, at that Party's electronic mail address specified below, and provided that an original of such notice is also sent to the intended addressee by means described in clauses (a), (b), or (c) within two (2) business days after such transmission. Either Party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other Party as provided herein.

If to District: San Bernardino Valley Municipal Water District  
Attn: Heather Dyer, CEO/General Manager  
380 East Vanderbilt Way  
San Bernardino, CA 92408  
Telephone: (909) 387-9253  
E-Mail: heatherd@sbumwd.com

If to Consultant: Santa Ana Watershed Association  
Attn: Brian Brady, Executive Director  
1835 Chicago Avenue Suite C  
Riverside, CA 92507  
Telephone: (951) 780-1012, ext. 102  
E-Mail: bbrady@sawatershed.org

13.7 Governing Law; Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provision that would apply the laws of any other jurisdiction. The Superior Court of the State of California in and for San Bernardino County shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the jurisdiction of such court and waives any right it may otherwise have to challenge the appropriateness of such forum, whether on the basis of the doctrine of forum *non conveniens* or otherwise.

13.8 Waivers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

13.9 Amendment. Except as expressly provided otherwise herein, this Agreement may not be modified, altered, or changed in any manner whatsoever except by a written instrument duly executed by authorized representatives of both Parties.

13.10 Severability. If any provision of this Agreement shall be deemed or held to be invalid or unenforceable for any reason, such provision shall be adjusted, if possible, rather than voided, so as to achieve the intent of the Parties to the fullest extent possible. In any event, such provision shall be severable from, and shall not be construed to have any effect on, the remaining provisions of this Agreement, which shall continue in full force and effect.

13.11 Time of the Essence. Time is of the essence in the performance of each and every provision or obligation of this Agreement as to which time is an element.

13.12 Release of Information and Advertising. Consultant shall not, without the prior written consent of District, make any news release or other public disclosure regarding this Agreement.

13.13 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of

proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

13.14 Attorneys’ Fees. If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys’ fees, reasonable expert witness fees, costs, and necessary disbursements in addition to any other relief to which that Party may be entitled.

13.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Signatures may be delivered electronically or by facsimile and shall be binding upon the Parties as if they were originals.

***[Signature Page Follows]***

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the Effective Date.

**DISTRICT:**

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

By: W. B. H. J.

Name: Wen Huang

for Its: General Manager

**CONSULTANT:**

**SANTA ANA WATERSHED ASSOCIATION**

By: Brian J. Brady

Name: Brian J. Brady

Its: Executive Director

**EXHIBIT “A”**

*Santa Ana Watershed Association*

*Nonnative Plant Management, Spring 2024 Project*

*Scope of Work*





1835 Chicago Avenue, Suite C  
 Riverside, CA 92507  
 (951) 780-1012  
 Fax (951) 780-5893  
<http://www.sawatershed.org>

**Board of Directors:**  
 Brett Mills,  
 Chair

Kerwin Russell,  
 Vice-Chair

Mandy Parkes,  
 Treasurer

Teri Biancardi,  
 Secretary

David McMichael,  
 Director

The Santa Ana Watershed Association (SAWA) is a 501 C3 nonprofit corporation. SAWA has been involved in native habitat restoration since it was founded in 1997 and strives to provide quality habitat restoration work throughout the Santa Ana Watershed. SAWA is excited at the potential partnership with San Bernardino Valley Municipal Water District to assist in the habitat restoration plans presented by SBVMWD. SAWA will work closely with SBVMWD staff to coordinate treatments at multiple project locations at the direction of SBVMWD staff. SAWA will propose and calendar treatments for SBVMWD staff to approve prior to conducting work. Since SAWA is a non-profit corporation only actual costs are charged as they are incurred by SAWA. All not to exceed amounts will be monitored to ensure accurate budgeting. SAWA looks forward to working closely with SBVMWD staff to achieve their desired habitat goals. If you have any questions, concerns or comments feel free to contact me.

Cordially,

James Law  
 Habitat Restoration Services Manager  
 Cell – (909)7871-6903

Project Name	Project Description	Project Acreage	Not To Exceed Amount	Project Work Description	Notes
Weaver Basins	Control non-native grasses, castorbean and mustard	18	25,000.00	SBVMWMD - Access Improvements SAWA to treat non-native grasses and mustards SBVMWMD to mow accessible areas-7 days after treatment SAWA to conduct post treatment Potential SAWA or CCC Line Trimming	SAWA to treat non-native vegetation in Winter 24 - 3 People 4 Days SAWA to treat non-native vegetation as needed - 3 People 3Days
Redlands Airport	Control non-native grasses, tumbleweeds, castorbean and mustard	40	25,000.00	SAWA to conduct Code Enforcement as Requested SAWA to treat non-native vegetation in Winter 24 SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 4 Days SBVMWMD to mow accessible areas SAWA post mow application 2 = 3 People 3 Days
Mentone	Control non-native grasses, castorbean, tumbleweeds and mustard	10	15,000.00	SAWA to conduct Code Enforcement as Requested SAWA to treat non-native vegetation in Winter 25 SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 2 Days SBVMWMD to mow accessible areas SAWA post mow application 2 = 3 People 2 Days
Lytle Creek/Frisbee Wash	Control non-native grasses, castorbean, giant reed and mustard, Eucalyptus ...?	48	10,000.00	SAWA to conduct code enforcement work to ensure SBVMWMD is compliant with code enforcement SAWA to treat non-native vegetation in Winter 25 SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 2 Days SBVMWMD Mow Application >7 Days after Treatment SAWA post mow application 2 = 3 People 1 Day Potential CCC line trimming, trash removal and eucalyptus removal
Frisbee Wash	Control non-native grasses, castorbean and mustard	30	25,000.00	SAWA to conduct code enforcement work to ensure SBVMWMD is compliant with code enforcement SAWA to treat non-native vegetation in Winter 25 SBVMWMD to mow >7 days after treatment SAWA to continue monitoring and treatments as needed to control re-growth	SAWA non-native application 1 = 3 People 4 Days SBVMWMD to mow >7 Days after Treatment SAWA post mow application 2 = 3 People 3 Days Potential CCC line trimming trash removal and eucalyptus removal
Lower Hole Creek	Control castorbean, tamarisk, arundo and palm ssp.	5	20,682.70	SAWA to treat non-native vegetation in Summer 24 SAWA to remove giant reed, tamarisk Fall 24 SAWA follow up treatment Winter 25 SAWA follow up treatment Spring 25	SAWA non-native application 1 - 3 People 2 Days SAWA non-native removal - Green Climber 2 Days with Spotter SAWA non-native application 2 - 3 People 2 Days
Anza Creek	Palm tree control/Woody Non-Native Vegetation + Pepperweed	21	101,934.00	SAWA to treat non-native palms, Woody Species + Pepperweed in Summer 24 SAWA to treat non-native vegetation in Fall 24 SAWA follow up treatment Spring 25	SAWA - 2 Person Crew = Treat ~ 50 Palms/Day Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days
Anza Creek SARCCUP Ext.	Palm tree control/Woody Non-Native Vegetation + Pepperweed	12	101,934.00	SAWA to treat non-native Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days in Summer 24 SAWA to treat non-native vegetation in Fall 24 SAWA follow up treatment Spring 25	SAWA - 2 Person Crew = Treat ~ 50 Palms/Day Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days

Old Ranch Creek	Palm tree control/Woody Non-Native Vegetation + Pepperweed	17	131,106.00	SAWA to treat non-native palms, Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days in Summer 24 SAWA to treat non-native vegetation in Fall 24	SAWA - 2 Person Crew = Treat ~ 50 Palms/Day Pepperweed/Palms/Fig/Tree of Heaven/Salt Cedar/Giant reed - 3 People 8 Days
Hidden Valley Creek	Field Assessment + Mapping > Treat all living palm spp.	22	25,000.00	SAWA to assess palms at Hidden Valley Creek SAWA to treat palm spp.	SAWA to assess palms - Max/James 2 Days SAWA palm treatment - ~ 20 palms per day (increased distance between palms)
Waterman Basins Riparian	Treat non-native herbaceous weeds	40	100,000.00	SAWA to treat non-native herbaceous species in Spring 24 SBVMWD/Riv Parks to Mow/Pile Fallen Trees in Fall 24 SAWA Treatment 2 in Fall 24 SAWA Treatment 3 in Winter 24	SAWA - 3 Person Crew Treatment 1 - 8 Days SAWA - 3 Person Crew Treatment 2 - 6 Days SAWA - 3 Person Crew Treatment 3 - 6 Days SAWA - 3 Person Crew Treatment 4 - 6 Days
Lower Cactus Basins #2	Treat non-native herbaceous weeds	12	42,548.10	SAWA to treat non-native herbaceous species in Spring 24 SBVMWD/Riv Parks to Mow in Fall 24 SAWA Treatment 2 in Fall 24 SAWA Treatment 3 in Winter 24	Treatment Rate ~ 2 Acres Per Day (estimated at 2 acres/day, crew first day treated ~ 3.5 Acres
Waterman Basins Alluvial	Treat non-native herbaceous weeds	20	50,000.00	SAWA to treat non-native herbaceous species in Spring 24 SBVMWD/Riv Parks to Mow in Fall 24 SAWA Treatment 2 in Fall 24 SAWA Treatment 3 in Winter 24	SAWA - 3 Person Crew Treatment 1 - 6 Days SAWA - 3 Person Crew Treatment 2 - 3 Days SAWA - 3 Person Crew Treatment 3 - 3 Days SAWA - 3 Person Crew Treatment 4 - 3 Days
SAR River Corridor (1.4 miles X 200 feet)	Treat non-native fig, tree of heaven, salt cedar, giant reed, castorbean and pepperweed.	78	146,418.75	SAWA to treat non-native species in Spring 24 SAWA Treatment 2 in Summer 24 SAWA Treatment 3 in Winter 24 SAWA Treatment 4 in Spring 25	SAWA to treat non-native vegetation in Summer 24 = 3 People 12 Days SAWA to treat non-native vegetation in Fall 24 = 3 People 12 Days SAWA to treat non-native vegetation in Winter 24 = 3 People 12 Days SAWA follow up treatment Spring 25 = 3 People 12 Days
<b>Totals</b>		<b>373</b>	<b>819,623.55</b>		
<b>SBVMWD Long Term Projects</b>					
SBVMWD Facilities		Variable	\$50,000.00	Maintain access and ensure code enforcement compliance as requested by SBVMWD staff.	To ensure access to SBVMWD Facilities and code enforcement compliance
Restoration Planting - Hidden Valley		Variable	\$24,986.25	# of Days Desired?	Collection of Pole Cuttings - ~ 100 per day with 3 person crew Planting of Pole Cuttings - ~ 75 per day with 3 person crew
Restoration Planting - Anza Creek		Variable	\$24,986.25	# of Days Desired?	Collection of Pole Cuttings - ~ 100 per day with 3 person crew Planting of Pole Cuttings - ~ 75 per day with 3 person crew
<b>Totals</b>			<b>\$919,596.05</b>		
<p>These rates are subject to change on January 1st, 2025 to reflect merit and cost of living adjustments for employees  No biological monitoring, permitting or Ranger assistance is covered under this proposal.</p>					

Project	3 Person Crew Number of Days	Palm Tree Crew Number of Days	Removal Crew Number of Days	3 Person Daily Rate	Palm Tree Crew Daily Rate	Removal Daily Rate	Staff Total	Mileage	Chemical	Project Total	Miles Per Trip	# of Trips
Weaver Basins	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$382.80	\$4,667.20	\$25,000.00	40	11
Redlands Airport	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$382.80	\$4,667.20	\$25,000.00	40	11
Mentone	4			\$2,850.00	\$1,750.00	\$3,800.00	\$11,400.00	\$243.60	\$3,356.40	\$15,000.00	40	7
Lyle Creek/Frisbee Wash	3			\$2,850.00	\$1,750.00	\$3,800.00	\$8,550.00	\$174.00	\$1,276.00	\$10,000.00	40	5
Frisbee Wash	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$375.84	\$4,674.16	\$25,000.00	36	12
Lower Hole Creek	4		2	\$2,850.00	\$1,750.00	\$3,800.00	\$19,000.00	\$182.70	\$1,500.00	\$20,682.70	21	10
Anza Creek	24	15		\$2,850.00	\$1,750.00	\$3,800.00	\$94,650.00	\$1,044.00	\$6,240.00	\$101,934.00	20	60
Anza Creek SARCCUP Ext.	24	15		\$2,850.00	\$1,750.00	\$3,800.00	\$94,650.00	\$1,044.00	\$6,240.00	\$101,934.00	20	60
Old Ranch Creek	24	30		\$2,850.00	\$1,750.00	\$3,800.00	\$120,900.00	\$1,566.00	\$8,640.00	\$131,106.00	24	75
Hidden Valley Creek	7			\$2,850.00	\$1,750.00	\$3,800.00	\$19,950.00	\$3,050.00	\$2,000.00	\$25,000.00	35	
Waterman Basins Riparian	26			\$2,850.00	\$1,750.00	\$3,800.00	\$74,100.00	\$1,392.00	\$24,508.00	\$100,000.00	40	40
Lower Cactus Basins #2	12			\$2,850.00	\$1,750.00	\$3,800.00	\$34,200.00	\$548.10	\$7,800.00	\$42,548.10	35	18
Waterman Basins Alluvial	15			\$2,850.00	\$1,750.00	\$3,800.00	\$42,750.00	\$730.80	\$6,519.20	\$50,000.00	35	24
SAR River Corridor (1.4 miles X 200 feet)	48			\$2,850.00	\$1,750.00	\$3,800.00	\$136,800.00	\$978.75	\$8,640.00	\$146,418.75	15	75
SBVMWD Facilities				\$2,850.00	\$1,750.00	\$3,800.00	\$40,000.00	\$2,000.00	\$8,000.00	\$50,000.00		
Restoration Planting - Hidden Valley	8.5			\$2,850.00	\$1,750.00	\$3,800.00	\$24,225.00	\$761.25	\$0.00	\$24,986.25	35	25
Restoration Planting - Anza Creek	8.5			\$2,850.00	\$1,750.00	\$3,800.00	\$24,225.00	\$761.25	\$0.00	\$24,986.25	35	25
<b>Totals</b>	<b>229</b>	<b>60</b>	<b>2</b>				<b>\$805,250.00</b>	<b>\$15,617.89</b>	<b>\$98,728.16</b>	<b>\$919,596.05</b>		



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**DATE:** October 3, 2024

**TO:** Board of Directors' Workshop – Policy/Administration

**FROM:** Greg Woodside, Chief of Planning and Watershed Resilience  
Wen Huang, Chief Operating Officer/ Assistant General Manager

**SUBJECT:** Consider a Memorandum of Understanding with San Bernardino County regarding Cactus Basins Recharge

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### **Staff Recommendations**

Staff recommends the Board of Directors authorize the CEO/General Manager to execute the Memorandum of Understanding with San Bernardino County and the San Bernardino County Flood Control District regarding State Water Project Water recharge at the Cactus Basins, subject to minor non-substantive changes approved by legal counsel.

### **Summary**

District staff have been collaborating with the San Bernardino County executive office and staff to develop a Memorandum of Understanding (MOU) regarding the next steps for planning recharge of State Water Project (SWP) water at the Cactus Basins. The MOU outlines collaborative activities the parties to the MOU will engage in to share data and technical analyses, engage with Rialto-Colton Basin stakeholders, and develop an Adaptive Management Plan (AMP). The goal of implementing this effort is to collaboratively develop an agreement that will facilitate recharge of supplemental water at Cactus Basins in the City of Rialto and include sufficient mechanisms to protect the County and Flood Control District from potential increased risk associated with groundwater movement due to recharge.

### **Background on Proposed Recharge of State Water Project Water at Cactus Basins**

Declining groundwater elevations in the Rialto-Colton Basin have resulted in reductions of allowable pumping in accordance with the court-ordered Rialto Decree. SWP recharge activities in Cactus Basins will help meet current and future water demands and sustain pumping rates from groundwater

remediation systems in the Rialto-Colton Basin. San Bernardino Valley seeks to recharge up to 7,000 acre-feet per year of SWP water at the Cactus Basins to replenish the Rialto-Colton Basin and support sustainable groundwater management. A location map of Cactus Basins is included at the end of this memorandum.

Areas of groundwater contamination exist in the Rialto-Colton Groundwater Basin that are under regulatory oversight of the California Regional Water Quality Control Board, Santa Ana Region (RWQCB-SA) and the United States Environmental Protection Agency (USEPA). The RWQCB-SA has primary regulatory oversight of the western plume and USEPA has primary regulatory oversight of the eastern plume associated with the Rockets, Fireworks and Flares Superfund Site.

The County is under RWQCB-SA order to remediate the western plume; remediation operations are overseen by the San Bernardino County Solid Waste Management Division. The Cactus Basins overlie the eastern plume, and the western plume is located within that area that may be hydraulically influenced by recharge activities at Cactus Basins.

Due to the existence of groundwater contamination in the area of Cactus Basins, the groundwater basin stakeholders need to consider potential impacts of artificial recharge on the groundwater contamination and cleanup efforts led by the USEPA. Previous studies have been conducted examining the issue of SWP recharge at Cactus Basins. In particular, the studies evaluated the potential for recharge to affect movement of groundwater contamination and the existing groundwater remediation systems. Studies done by Geoscience Support Services, Inc. (Geoscience) included development of a groundwater flow and groundwater quality model of the Rialto-Colton Basin. The groundwater quality model simulates the concentration and movement of perchlorate, which is the most significant contaminant associated with the Superfund Site. Simulations of perchlorate movement were conducted with and without SWP recharge to assess the potential impact of SWP recharge at Cactus Basins and indicated there were no significant impacts. However, San Bernardino Valley, San Bernardino County, and San Bernardino County Flood Control District have not yet reached a common understanding of those results due to a lack of agreement regarding the modeling approach and results.

The Flood Control District and San Bernardino Valley entered into an agreement in 2015 for San Bernardino Valley to fund pipelines and related improvements at Cactus Basins to facilitate SWP recharge activities at Cactus Basins when Cactus Basins are not needed for Flood Control Activities and there is no conflict with the Flood Control District's mission.

The Parties (San Bernardino Valley, San Bernardino County, and San Bernardino County Flood Control District) desire to engage in additional discussion of technical issues related to potential impacts of the requested SWP Recharge Activities at Cactus Basins upon groundwater contamination movement and plume remediation activities. If the MOU is approved, the Parties will begin to meet with the express purpose of cooperating to address the technical concerns and comments on prior studies, determine if recharge is feasible, and consider possible mitigative measures that would address potential risks to the County resulting from recharge in Cactus Basins. For example, one perceived potential risk associated with recharge is for the recharge to change the direction and rate of groundwater movement, which could affect movement of the contamination plume and the efficacy of existing groundwater remediation systems. Issues like this perceived risk and others would be addressed through a technical analysis process, development of an AMP, and ultimately a Recharge Agreement for Cactus Basins.

The AMP would describe an approach to monitor groundwater conditions to assess if the proposed SWP recharge activities may have unforeseen, unintended impacts on the movement of groundwater contamination or on existing groundwater remediation systems. The AMP would also identify threshold criteria and mitigative actions, such as adjusting the rate of SWP recharge so that threshold criteria are not exceeded.

The Parties anticipate seeking input from a Technical Advisory Group, which would include interested stakeholders, such as basin producers, regulatory agencies, and responsible entities for the contaminant plumes, in development of the AMP.

### **Summary of Proposed MOU**

The Parties to the MOU are the San Bernardino Valley, San Bernardino County, and San Bernardino County Flood Control District.

Following are key terms of agreement defined in the MOU:

- The Parties agree to consider SWP Recharge Activities at Cactus Basins and will cooperatively meet to determine if an agreement can be reached.
- The Parties will coordinate on development of a regular meeting schedule to discuss an agreement and may, if desired, set a schedule to develop the AMP.
- The County and Flood Control District anticipate a recharge agreement to include adequate legal and cost mechanisms to protect the County and Flood Control District from legal risk and increased response costs for impacts resulting from SWP Recharge Activities, as well as indemnification and cost protections against third-party and regulatory agency claims or orders.

- Prior to entering into a recharge agreement, the Parties will seek input from Rialto-Colton Basin stakeholders to better understand potential associated risks of recharge activities in Cactus Basins.
- The recharge agreement must be approved by the County, Flood Control District and San Bernardino Valley prior to initiation of SWP Recharge Activities in Cactus Basins. The agreement must also be approved by the groundwater producers for the purpose of providing an opportunity for the Parties to evaluate risks and obtain from the Producers adequate legal and cost mechanisms for the County and Flood Control District against claims, legal actions, or increased response costs that could be sought by Rialto-Colton Basin Stakeholders against the County and Flood Control District from recharge activities.
- Entities under regulatory order to treat the eastern plume have the opportunity to review and comment on any recharge agreement prior to approval.
- Formation of a Technical Advisory Committee to assist with preparing the AMP
- This MOU does not bind any of the parties to agree to a recharge agreement or AMP, rather it commits the Parties to work cooperatively to complete the science and technical work needed to decide if recharge is feasible.
- The MOU has a term of one year and can be extended for an additional year by San Bernardino Valley's CEO/General Manager and County's Chief Administrative Officer.

### **District Strategic Plan Application**

The MOU and planning recharge at Cactus Basins implements Strategic Plan Strategy 2 'Proactively manage a diverse, adaptable water supply portfolio to maximize the value of the region's water assets.' This effort also supports Goal 2.3 'Protect and maximize value of local groundwater basins and Goal 2.4 'Maximize operational flexibility and connect of assets within San Bernardino Valley and regional water infrastructure systems.'

### **Fiscal Impact**

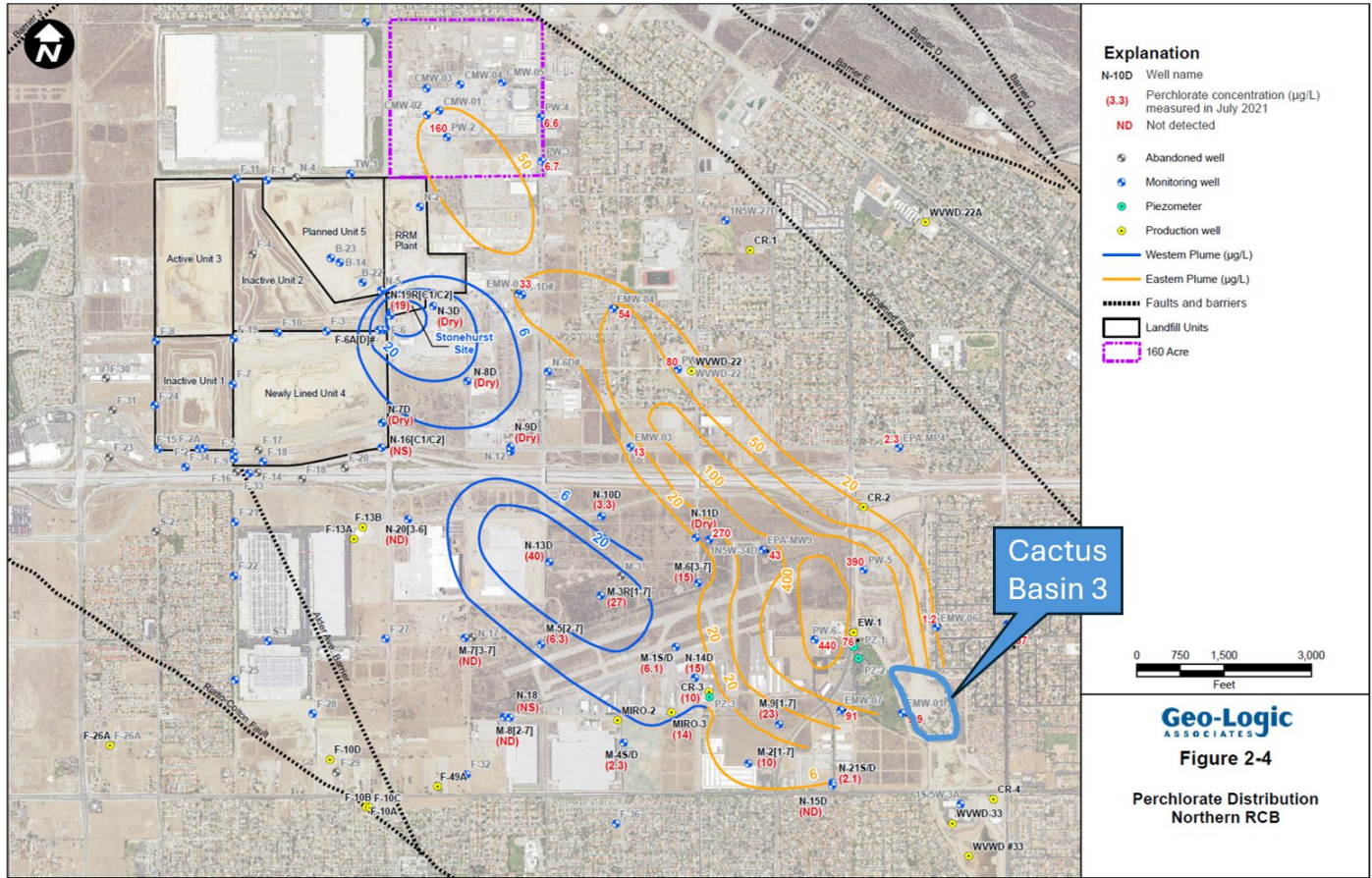
There is no cost associated with approval of the MOU. However, the cost for development of the AMP is not yet well-defined. The adopted Fiscal Year 2024-25 General Fund budget includes \$150,000 for design, environmental and engineering support for Cactus Basins recharge.

### **Attachment:**

1. Proposed Memorandum of Understanding



# Location Map of Cactus Basins and Groundwater Contamination Plumes



Source of Figure: Updated Operations, Maintenance and Monitoring Plan, Rialto Groundwater Treatment System Perchlorate & VOC Remediation; Prepared by Geo-Logic Associates (2022); Location of Cactus Basin 3 added by SB Valley

## Memorandum of Understanding

### Regarding Request for State Water Project Recharge at Cactus Basins

This Memorandum of Understanding Regarding Request for Recharge of State Water Project water at Cactus Basin (“**MOU**”) is entered into and effective as of 8<sup>th</sup> day of October, 2024 (“**Effective Date**”), by and between San Bernardino County (“**County**”), San Bernardino County Flood Control District (“**Flood Control District**”) and the San Bernardino Valley Municipal Water District (“**San Bernardino Valley**”). Flood Control District and San Bernardino Valley may be referred to herein individually as a “**Party**” or together, as the “**Parties**.”

### RECITALS

**WHEREAS**, San Bernardino County is a legal subdivision and body corporate and politic of the State of California, duly organized and existing under and by virtue of the Constitution and laws of the State of California;

**WHEREAS**, the Flood Control District was created by the San Bernardino County Flood Control Act of 1939 (the “**Act**”), found in Chapter 43 of the Water Code Appendix, with the statutory purpose to “provide for the control of the flood and storm waters of the Flood Control District” and “to conserve such waters for beneficial and useful purposes” by capturing, spreading, storing, retaining, and through percolation; and

**WHEREAS**, the Act also empowers the Flood Control District to spread, store, retain and percolate such waters into groundwater basins for the common benefit of the Flood Control District; and

**WHEREAS**, the Flood Control District owns the flood control detention basins and associated appurtenances commonly referred to as the Cactus Basins in the City of Rialto located within its service area (“**Cactus Basins**”) that are used to temporarily detain water from rain events that could cause flooding (“**Flood Control Activities**”), and

**WHEREAS**, San Bernardino Valley was formed in 1954 as a regional agency for the purpose of planning a long-range water supply for the San Bernardino Valley, importing water into its service area from the State Water Project, and managing groundwater storage within its boundaries; and

**WHEREAS**, both the Flood Control District and San Bernardino Valley rely on revenues collected from property taxes on properties located within the Parties’ common service area for the common and mutual benefit of such properties; and

**WHEREAS**, San Bernardino Valley estimates that its ratepayers will, over the period from 1960 to 2085, have invested over \$1 billion on State Water Project payments and on facilities constructed to convey supplemental water for direct delivery and for recharge of the groundwater basins in San Bernardino Valley’s service area; and

**WHEREAS**, the Flood Control District and San Bernardino Valley have a long history of cooperation dating back to an agreement dated September 25, 1972 (“**1972 Agreement**”), whereby Flood Control District allowed San Bernardino Valley to use Flood Control District Facilities for groundwater recharge in the San Bernardino Basin and provided San Bernardino Valley with easements for the construction and operation of facilities relating to water transmission, water capture, spreading, and recharge; and

**WHEREAS**, in 2013, the Flood Control District and San Bernardino Valley entered into a ten year Planning Memorandum of Understanding (Agreement No. 13-608; the “**2013 Agreement**”) to outline the cooperative manner in which the Flood Control District and San Bernardino Valley would work together to identify and analyze the suitability of Flood Control District facilities for recharge purposes; and

**WHEREAS**, the 1972 and 2013 Agreement were terminated by the Flood Control District and San Bernardino Valley and superseded in 2023 by the “Joint Groundwater Recharge and Facilities Planning Agreement” (“**2023 Agreement**”); and

**WHEREAS**, the 2023 Agreement excluded recharge of State Water Project water at Cactus Basins and stated that if recharge were to occur at Cactus Basin, it will be subject to a separate agreement mutually agreed upon by the Parties, that may include an implementation and adaptive management plan (“AMP”), or other conditions; and

**WHEREAS**, similar to the uses of other Flood Control District facilities under the 2023 Agreement, San Bernardino Valley desires to explore and evaluate the opportunity to utilize Cactus Basins, when they are not needed for Flood Control Activities, for groundwater water transport, capture, spreading and recharge of State Water Project water (“**SWP Recharge Activities**”); and

**WHEREAS**, the use of the Devil Canyon-Azusa Pipeline, as well as other facilities owned or operated by San Bernardino Valley for the purpose of groundwater recharge, is of benefit to San Bernardino Valley’s customers who reside in the San Bernardino Valley and within the Flood Control District’s Zone 2; and

**WHEREAS**, SWP Recharge Activities, related environmental permits and mitigation, and project funding collaboration will likely reduce Flood Control District’s costs due to the reduction or elimination of duplicative Flood Control District’s activities thereby generating a Flood Control District benefit; and

**WHEREAS**, the Flood Control District and San Bernardino Valley entered into an agreement in 2015 (“**2015 Funding Agreement**”) for San Bernardino Valley to fund certain pipelines and related facilities and improvements at Cactus Basins to facilitate SWP Recharge Activities at Cactus Basins when Cactus Basins are not needed for Flood Control Activities and when the use of such basins does not otherwise compromise the Flood Control District’s mission of protecting life and property from the significant risks posed by flooding; and

**WHEREAS**, Amendment No. 1 to the 2015 Funding Agreement was approved by the Flood Control District and San Bernardino Valley in February 2019, and Amendment No. 1 provided for increasing the budget for the facilities to be constructed at Cactus Basins and clarified the phasing of the project; and

**WHEREAS**, the facilities described in the 2015 Funding Agreement and Amendment No. 1 to the 2015 Funding Agreement have been constructed; and,

**WHEREAS**, the 2015 Funding Agreement anticipated a future agreement between the Flood Control District and San Bernardino Valley regarding SWP Recharge Activities within the Cactus Basins; and

**WHEREAS**, the Flood Control District and San Bernardino Valley are both signatories to the Upper Santa Ana River Watershed Integrated Regional Watershed Management Plan which establishes goals and objectives for water management, including groundwater recharge in various locations which include Flood Control District detention basins; and

**WHEREAS**, the California Department of Water Resources Bulletin 118 defines the boundaries of Groundwater Basin 8-002.04 Upper Santa Ana Valley – Rialto-Colton, commonly referred to as the “**Rialto-Colton Basin**”; and

**WHEREAS**, there are areas of groundwater contamination in the Rialto-Colton Basin that are under regulatory oversight of the California Regional Water Quality Control Board, Santa Ana Region (RWQCB-SA) and the United States Environmental Protection Agency (USEPA); the contamination consists of perchlorate and various volatile organic compounds (“**VOCs**”) and are described as a western and eastern perchlorate plume; and

**WHEREAS**, the RWQCB-SA has primary regulatory oversight of the western plume and USEPA has primary regulatory oversight of the eastern plume that stems from the Rockets, Fireworks and Flares Superfund Site, and both western and eastern plumes are located in the Rialto-Colton Basin; and

**WHEREAS**, the County is under RWQCB-SA order to remediate the western plume which remediation operations are overseen by the San Bernardino County Solid Waste Management Division and that since 2006 the County has been implementing treatment for the western plume, and a VOC plume also exists on the western portion of the Rialto Colton Basin, which the County is paying to remediate; and

**WHEREAS**, Emhart Industries, Inc. is currently implementing remediation activities related to a portion of the eastern plume under the oversight of USEPA and the remediation activities include pumping of groundwater and treatment of pumped groundwater; the other responsible entities for the eastern plume have not initiated implementation remediation activities; and

**WHEREAS**, the Cactus Basins overlie the eastern plume, and the western plume is located within that area that is likely to be hydraulically influenced by SWP Recharge Activities; and

**WHEREAS**, the Decree in Case No. 81264 in the Superior Court of the State of California for the County of San Bernardino (“**Rialto Decree**”) entered in 1961 established reductions in allowable pumping from the Rialto Basin, which, in general, is a subset of the Rialto-Colton Basin, if the average spring-high groundwater elevation at three index wells declines below a specified elevation; and

**WHEREAS**, due to declining groundwater elevations in the Rialto-Colton Basin, reductions in allowable pumping have occurred in accordance with the Rialto Decree and the reductions in pumping have affected water supply; and

**WHEREAS**, San Bernardino Valley desires to make certain improvements to facilitate SWP Recharge Activities at Cactus Basins, subject to review and approval by Flood Control District; and

**WHEREAS**, SWP Recharge Activities in Cactus Basins will help meet current and future demands for water among Flood Control District’s and San Bernardino Valley’s shared constituents, it could also pose a threat of exposure of contaminants to wells not currently impacted by the western and eastern plumes, impact current remedial systems, and extend the length of treatment; and

**WHEREAS**, San Bernardino Valley issued a Notice of Preparation of an Environmental Impact Report (“**EIR**”) (SCH #2022070127) in July 2022 for the Cactus Basins Recharge Project (“**Project**”) to assess potential environmental impacts of the Project; and

**WHEREAS**, the Project identified in the Notice of Preparation would facilitate SWP Recharge Activities in Cactus Basins, and includes recharge of State Water Project water to the Cactus Basins 3 as related to recharge operations, and construction and operation of the Cactus Basins Pipeline; the proposed pipeline will flow under pressure to a concrete distribution structure where it will flow by gravity to a City of Rialto storm drain; a concrete structure housing the flow control valves and meters will be constructed adjacent to the turnout off of the Devil Canyon Azusa Pipeline, in which San Bernardino Valley has access to State Water Project water; and

**WHEREAS**, San Bernardino Valley contracted with Geoscience Support Services Inc (Geoscience) to conduct groundwater modeling of perchlorate in groundwater in the Rialto-Colton Basin associated with the proposed Project; and

**WHEREAS**, Geoscience prepared a technical memorandum titled ‘Modeling Evaluation for Proposed Artificial Recharge Project at The Cactus Basins’ dated March 2022 and a subsequent technical memorandum dated July 2022 in which Geoscience evaluated a baseline

condition with no SWP Recharge Activities and four scenarios with varying amounts of SWP Recharge Activities at Cactus Basins, with a maximum annual recharge of 6,904 acre-feet; and,

**WHEREAS**, the Parties have not yet reached a common understanding of impacts of the requested SWP Recharge Activities at Cactus Basins upon perchlorate plume movement and plume remediation activities in the Rialto-Colton Basin; and

**WHEREAS**, additional discussion of technical and cost issues related to impacts of the requested SWP Recharge Activities at Cactus Basins upon perchlorate plume movement and plume remediation activities is therefore necessary; and

**WHEREAS**, the SWP Recharge Activities increase financial and legal risk to the County and Flood Control District; and

**WHEREAS**, preparation of the draft EIR for the Project began in year 2022 but preparation of the EIR was stopped to provide time for Flood Control District and San Bernardino Valley to develop an approach to address concerns raised by the County and Flood Control District regarding the potential impact of the Project upon movement of groundwater contamination including perchlorate and VOCs and groundwater remediation systems; and

**WHEREAS**, due to San Bernardino Valley's request for SWP Recharge Activities at Cactus Basins, the Parties agree that they will meet to determine if recharge is feasible, address the technical concerns and comments, consider legal and financial protections to mitigate the risks of recharge, and that in developing a recharge agreement it may include an AMP; and

**WHEREAS**, the AMP may describe the hydrogeological conditions in the vicinity of the Cactus Basins including groundwater contaminant plumes, groundwater remediation systems for the western and eastern plumes, regulatory oversight of groundwater remediation, existing groundwater monitoring programs, and other relevant information; and

**WHEREAS**, the AMP may describe an approach to monitor groundwater conditions to assess if the proposed Project may have unforeseen, unintended impacts on the movement of perchlorate in groundwater or on existing groundwater remediation systems; and

**WHEREAS**, the AMP will describe an approach to assess the data collected, how the data will be assessed, and threshold criteria whereby if the threshold criteria are exceeded, the rate of SWP Recharge Activities will be reduced so that the threshold criteria are no longer exceeded; and

**WHEREAS**, since development of an AMP can be difficult and challenging and contentious to apply, the Parties are committed to mechanisms that offer legal and cost protections for the County and Flood Control District, including indemnity and release provisions, financial guarantees, and Rialto-Colton Basin wide partnership and planning opportunities; and

**WHEREAS**, the Parties may desire to seek input from a Technical Advisory Group, which may include interested stakeholders, such as Rialto-Colton Basin producers, regulatory agencies such as the California Regional Water Quality Control Board Santa Ana Region and United States Environmental Protection Agency, and Responsible Entities, in development of the AMP and assist the County and Flood Control District to ensure adequate legal and cost protections from recharge activities; and

**WHEREAS**, as provided herein, this MOU does not authorize nor guarantee any specific project, and the Parties will comply with the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) (“**CEQA**”) prior to approving any specific project; and

### **AGREEMENT**

The Parties hereby agree as follows:

#### 1. Recharge Agreement

- a. The Parties agree to consider the request for SWP Recharge Activities at Cactus Basins and will meet to determine if an agreement can be reached.
- b. The Parties will coordinate on development of a regular meeting schedule to discuss an agreement and may, if desired, set a schedule to develop the AMP.
- c. If the Parties are able to reach agreement for recharge, the agreement is anticipated to include a framework with adequate legal and cost mechanisms to protect the County and Flood Control District from increased response costs due to recharge activities, which mechanisms will include indemnification and cost protections (i.e. financial guarantees, bonds, letter of credit, assumption of remedial programs, etc.) against third-party and regulatory agency claims or orders, and any other necessary mechanisms including, but not limited to, insurance, and waiver and release of claims.
- d. Prior to entering into an agreement, the Parties will seek input from Rialto-Colton Basin Stakeholders to better understand potential associated risks of recharge activities in Cactus Basins. The term “Stakeholders” means the Producers as defined herein, regulatory agencies such as but not limited to the RWQCB-SA and USEPA, and entities under regulatory order to treat the eastern plume. The term “Producers” shall mean water purveyors in the Rialto-Colton Basin and include, but not limited to, the West Valley Water District, Fontana Water Company, San Gabriel Valley Water Company, and the Cities of Rialto and Colton.
- e. Any recharge agreement must be approved by the County, Flood Control District and San Bernardino Valley prior to initiation of SWP Recharge Activities in Cactus Basins. The agreement must also be approved by the Producers for the purpose of providing an opportunity for the Parties to evaluate risks and obtain from the Producers adequate legal and cost mechanisms for the County and Flood Control District against claims, legal actions, or increased response costs that could be sought by Rialto-Colton Basin Stakeholders against the County and Flood Control District from recharge activities. Entities under regulatory order to treat the eastern plume shall have the opportunity to review and comment on any recharge agreement prior to approval.

- f. Nothing in this MOU requires the Parties to agree to a final recharge agreement and any activities undertaken by San Bernardino Valley to pursue recharge in Cactus Basins, such as, but not limited to, applying for grant funding, retaining consultants, etc., shall be at its sole risk and cost.

## 2. AMP

- a. If the Parties come to an agreement and desire to develop an AMP, they may share information and collaborate in developing an AMP for SWP Recharge Activities at Cactus Basins 3 for State Water Project recharge.
- b. The AMP is anticipated to include the following:
  - i. A description of the Rialto-Colton Basin, inflow and outflow of groundwater from the Rialto-Colton Basin, a groundwater budget for the basin, groundwater quality and associated plumes in the area of the Cactus Basins, a description of available numerical groundwater models of the basin, a description of existing groundwater level and groundwater quality monitoring program, and information on sources of contamination that contributed to groundwater contamination plumes in the vicinity of Cactus Basins.
  - ii. Documentation of baseline groundwater elevation and perchlorate and VOCs groundwater quality conditions at the time of the AMP preparation and prior to the start of SWP Recharge Activities.
  - iii. Selection of the numerical groundwater model that will be used to evaluate SWP Recharge Activities, potential adverse effects on groundwater flow and contaminant conditions, and the rates of State Water Project recharged during SWP Recharge Activities.
  - iv. A description of groundwater contamination pump-and-treat remediation systems that currently exist or are being planned or designed; including costs and anticipated future costs and timelines to treat the contamination.
  - v. Development of threshold criteria that if the threshold criteria are exceeded, SWP Recharge Activities at the Cactus Basins should be evaluated, adjusted or suspended.
  - vi. A proposed monitoring program to assess the degree to which recharge of imported water at Cactus Basins affects (1) groundwater elevations, (2) transport or movement of contaminated groundwater, and (3) groundwater remediation systems for the perchlorate plumes.
  - vii. A description of the process that will be undertaken to analyze the data collected and assessed if the threshold criteria are exceeded.
  - viii. A description of the process that will be undertaken to update the numerical groundwater model using new data collected, if needed.



- ix. A description of how the monitoring program will be periodically reviewed as to its adequacy and how revisions will be made to the monitoring program, if needed.
- c. All costs to develop, implement, and adjust the AMP will be borne solely by San Bernardino Valley with the exception that each party shall bear its own internal staffing and legal costs. San Bernardino Valley shall reimburse the County for fees charged by a hydrogeology consultant retained by the County upon San Bernardino Valley's review and approval of the scope of work and estimated fee for such consultant.
- d. Technical Advisory Committee
  - i. The Parties may coordinate meetings of a Technical Advisory Group to assist with preparing the AMP.
  - ii. The membership of the Technical Advisory Group has not been finalized but it is anticipated to include the Parties; additionally the Technical Advisory Group would be open to participation of the Retail Water Agencies in the Rialto Colton Basin, regulatory agencies involved with oversight of remediation of contamination that occurs in the vicinity of the Cactus Basins, and Responsible Entities for operating groundwater remediation systems in the vicinity of Cactus Basins; consultants to each of the above listed entities may also participate in the Technical Advisory Group.
  - iii. The role of the Technical Advisory Group is to provide input on factors to consider in developing the AMP, provide input on assumptions used in preparation of the AMP, providing information and data, provide comments on the proposed AMP and to discuss legal and cost protections for the County and Flood Control District in the event of recharge consistent with Section 1 above; the Technical Advisory Group does not have approval authority over the AMP but may indicate if it concurs with the AMP.
- 3. Nothing in this MOU requires the Parties to agree to a final recharge agreement or AMP.
- 4. The Parties will not make any public relations-related announcements to the effect that recharge at Cactus Basins will occur unless a final recharge agreement has been formally approved by all Parties and their respective boards.
- 5. TERM: The term of this MOU shall be for one year from October 8, 2024 until October 7, 2025, with the option to extend for one additional year upon mutual written approval from the County Chief Executive Officer and the San Bernardino Valley Chief Executive Officer/General Manager.

SIGNATURE SECTION (continued on next page)

**IN WITNESS THEREOF**, the Parties hereto have each caused this Memorandum of Understanding to be subscribed by its respective duly authorized officers, on their behalf.

SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT

APPROVED AS TO FORM FOR SAN  
BERNARDINO VALLEY MUNICIPAL  
WATER DISTRICT:

By: \_\_\_\_\_  
Name: Paul R. Kielhold  
Title: President, Board of Directors

By: \_\_\_\_\_  
Meredith E. Nikkel,  
San Bernardino Valley Municipal  
Water District Special Counsel

Date: \_\_\_\_\_

ATTEST:

**COUNTY:**

**DISTRICT:**

SAN BERNARDINO COUNTY

SAN BERNARDINO COUNTY FLOOD  
CONTROL DISTRICT

\_\_\_\_\_  
Dawn Rowe, Chair of the Board of  
Supervisors

\_\_\_\_\_  
Dawn Rowe, Chair of the Board of  
Supervisors of the San Bernardino County  
Flood Control District

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY  
OF THIS DOCUMENT HAS BEEN  
DELIVERED TO THE CHAIR OF THE  
BOARD

APPROVED AS TO LEGAL FORM FOR  
COUNTY AND DISTRICT:

Tom Bunton, County Counsel

Lynna Monell,  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Sophie Curtis  
Deputy County Counsel

By: \_\_\_\_\_

Date: \_\_\_\_\_

