



WEST VALLEY WATER DISTRICT
855 W. Base Line Road, Rialto, CA 92376
PH: (909) 875-1804 FAX: (909) 875-1849

**ENGINEERING, OPERATIONS AND PLANNING COMMITTEE MEETING
AGENDA**

THURSDAY, AUGUST 22, 2024 - 6:00 PM

NOTICE IS HEREBY GIVEN that West Valley Water District has called a meeting of the Engineering, Operations and Planning Committee to meet in the Administrative Conference Room, 855 W. Base Line Road, Rialto, CA 92376.

BOARD OF DIRECTORS

**President Gregory Young, Chair
Director Angela Garcia**

Members of the public may attend the meeting in person at 855 W. Base Line Road, Rialto, CA 92376, or you may join the meeting using Zoom by clicking this link: <https://us02web.zoom.us/j/8402937790>. Public comment may be submitted via Zoom, by telephone by calling the following number and access code: Dial: (888) 475-4499, Access Code: 840-293-7790, or via email to administration@wvwd.org.

If you require additional assistance, please contact administration@wvwd.org.

I. CALL TO ORDER

II. PUBLIC PARTICIPATION

The public may address the Board on matters within its jurisdiction. Speakers are requested to keep their comments to no more than three (3) minutes. However, the Board of Directors is prohibited by State Law to take action on items not included on the printed agenda.

III. DISCUSSION ITEMS

1. Updates to the Engineering, Operations and Planning Committee
2. GIS Presentation
3. Reimbursement Agreement with San Bernardino Valley Municipal Water District.
4. Approve Professional Services for the Lord Ranch Facilities Project.
5. Consider a 3 Year Enterprise Agreement (EA) with Environmental Systems Research Institute (ESRI) for the District's Geographic Information System (GIS).

IV. ADJOURN

DECLARATION OF POSTING:

I declare under penalty of perjury, that I am employed by the West Valley Water District and posted the foregoing Engineering, Operations and Planning Committee Agenda at the District Offices on August 15, 2024.

Elvia Dominguez

Elvia Dominguez, Board Secretary



**BOARD OF DIRECTORS
ENGINEERING, OPERATIONS AND PLANNING COMMITTEE
STAFF REPORT**

DATE: August 22, 2024
TO: Engineering, Operations and Planning Committee
FROM: Joanne Chan, Director of Operations
SUBJECT: REIMBURSEMENT AGREEMENT WITH SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

BACKGROUND:

In May 2016, West Valley Water District (District) and San Bernardino County Flood Control District (SBCFCD) executed an agreement permitting the spreading of water in Cactus Basin 2 to support the District's Fluidized Bed Reactor (FBR) Groundwater Treatment project. The District is responsible for obtaining regulatory permits and performing all maintenance activities related to District's water spreading activities, including, but not limited to, controlling all vectors and vegetation that may occur either directly or indirectly due to the District's water spreading operation in Cactus Basin 2.

The executed Streambed Alteration Agreement between California Department of Fish and Wildlife and the District requires compensatory mitigation to offset the loss of 12 acres of wetland and riparian habitat that has developed within Cactus Basin 2.

DISCUSSION:

The District and San Bernardino Valley Municipal Water District (SBVMWD) partnered in October 2020 to coordinate the development and implementation of the mitigation project at Hidden Valley Wetlands in Riverside County. SBVMWD serves as the lead agency for planning, CEQA, permitting, implementation and compliance reporting. The project consists of 85 acres. The District's proportionate share of all mitigation costs at Hidden Valley shall be equal to the ratio that mitigation acreage requirements for the Cactus Basin 2 project (12 acres) bear to the total mitigation project acreage (85 acres).

The District has no land acquisition costs associated with the mitigation and the cost of habitat management actions for the District's 12-acre site over the next 12 months is \$42,548.10. District staff has worked diligently with SBVMWD staff to develop the Reimbursement Agreement to establish a framework and reimburse SBVMWD for expenses incurred in implementing the habitat management actions at the District's 12-acre mitigation area. Attached as **Exhibit A** is the Reimbursement Agreement. SBVMWD staff will reassess towards the end of spring 2025 to see the level of effort needed for the following 12 months.

FISCAL IMPACT:

This is a reimbursable cost. Raytheon Technologies will reimburse the District the full cost. The mitigation project cost currently estimated to be approximately \$45,000 annually for the first 5 years.

STAFF RECOMMENDATION:

Staff recommends that the Committee forward a recommendation to the Board of Directors to:

1. Approve the Reimbursement Agreement with San Bernardino Valley Municipal Water District; and
2. Authorize the General Manager to execute all necessary documents.

ATTACHMENT(S):

1. Exhibit A - Reimbursement Agreement

EXHIBIT A

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@sbvmwd.com

with a copy to: Varner & Brandt LLP
Attn: Bradley E. Neufeld
3750 University Avenue, 6th 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., 5th 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: _____

Name: _____

Its: _____

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#sixgoodfaihefforts>.

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@sbsvmwd.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 Parkes, Treasurer
Teri Biancardi, Secretary
David McMichael, Director

To: San Bernardino Valley Municipal Water District (SBVMWMD)
From: Santa Ana Watershed Association (SAWA)
Subject: SBVMWMD-SAWA Spring 2024 Proposal

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 SBVMWMD. SAWA will work closely with SBVMWMD staff to coordinate treatments at multiple project locations at the direction of SBVMWMD staff. SAWA will propose and calendar treatments for SBVMWMD 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 SBVMWMD 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 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
Totals		373	819,623.55		
SBVMWD Long Term Projects					
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
Totals			\$919,596.05		

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.

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
Lytle 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
Totals	229	60	2				\$805,250.00	\$15,617.89	\$98,728.16	\$919,596.05		



**BOARD OF DIRECTORS
ENGINEERING, OPERATIONS AND PLANNING COMMITTEE
STAFF REPORT**

DATE: August 22, 2024
TO: Engineering, Operations and Planning Committee
FROM: Rocky Welborn, Director of Engineering
SUBJECT: APPROVE PROFESSIONAL SERVICES FOR THE LORD RANCH FACILITIES PROJECT

BACKGROUND:

The Lord Ranch Site (Site) is located on the east side of Pepper Avenue north of Baseline Road and south of the 210 Freeway, in the City of Rialto, and is currently occupied by existing pump station 4-1, 3-2 Reservoir, and groundwater wells 7, 8A, and 36.

West Valley Water District (District) proposes to construct several projects at the Site which would allow the District to utilize additional capacity through the Base Line Feeder (BLF) transmission pipeline, the source of which is purchased groundwater from the San Bernardino Valley Municipal Water District. Water supplied through the BLF is boosted into the District's northern service area. The proposed infrastructure projects include the construction and operation of a 1-million gallon aeration tank (R3-5), a booster pump station 4-3 (PS4-3) within a concrete masonry building, pipelines connecting the proposed tank and pump station to existing facilities, and site grading and drainage (Site Improvements).

In September 2022, the District entered into a Task Order with Engineering Resources of Southern California (ERSC) for additional services for the Lord Ranch Facilities bidding phase. These additional services included assisting Staff in answering/addressing questions by bidders, responding to RFIs, miscellaneous coordination, and preparing addendums which may require modifications to the current drawings, and specifications. During this time, the District's controls and communication systems were in transition, with limited direction that would require further input from the District at a later stage.

DISCUSSION:

ERSC submitted a proposal for additional services to update the Lord Ranch Facilities bidding phase plans and specifications (Bid Design Package) as requested by District Staff. District Staff desires to redesign certain elements of the Bid Design Package that had previously been finalized to meet the District's evolving needs and updated standards. The additional services include, but are not limited to, the following:

- Add wrought iron fence, Knox box, traffic rated trench cover, and transducer vault;
- Update the electrical and communication systems by removing the past practices of sole sourcing Tesco Controls as District's Control System Integrator to allow an open-source bidding process for other integrators to bid on;
- Add Input/Output Schedule to include Well 7 and Well 8A, Power and Instrumental Drawing plan, PLC connections plan, pump schematic control diagram, exterior lighting control diagram, control panel elevation plan, and communication and controls for on-site well sites;
- Incorporate mechanical seals per operations;
- Add BLF vault and flowmeter;
- Add cathodic protection system to R3-5;
- Coordinate and make required modifications to the current drawings

Attached as Exhibit A is a copy of the proposal received by ERSC to cover the cost for the additional work.

FISCAL IMPACT:

The cost to perform the additional professional services for the Project proposed by ERSC, in a not to exceed amount is \$71,700.00. This item is included in the Fiscal Year 2024/25 Capital Improvement Budget under the W15004 Lord Ranch Pump Station and Facilities. Sufficient funds are available in the project budget to cover the cost of Amendment No. 1 to Task Order No. 2.

STAFF RECOMMENDATION:

Staff recommends that the Committee forward a recommendation to the Board of Directors to:

1. Authorize entering into Amendment No. 1 to Task Order No. 2 with Engineering Resources of Southern California, Inc. in the amount of \$71,700.00 for the professional engineering services for the bidding phase design for Lord Ranch Facilities Project; and
2. Authorize the General Manager to execute all necessary documents.

ATTACHMENT(S):

1. Exhibit A - Proposal Submitted by ERSC

EXHIBIT A



62026.193

August 6, 2024

Rosa Gutierrez, PE - Senior Engineer
Via Email Only: rgutierrez@wwwd.org

West Valley Water District
855 W. Baseline Road (P.O. Box 920)
Rialto, CA 92377

**SUBJECT: LORD RANCH WATER FACILITIES PROJECT
CHANGE ORDER REQUEST FOR REDESIGN SERVICES**

Dear Ms. Gutierrez,

Engineering Resources of Southern California (ERSC) is pleased to submit our proposal to the District for subject project. Based on our recent correspondence and discussions, Staff desires us to redesign certain elements of the project design package that had previously been finalized (Signed and Sealed) in March & April 2022. Considering the project actually started in November 2014, we understand that the changes are now driven by Staff to meet District's evolving needs and updated standards. Due to the extensive nature of the new comments list, I have enclosed an annotated copy of the provided spreadsheet to which I will briefly refer to herein.

1. Bid Schedule I – Site Improvements

These comments are generally straight forward but still requires a coordinated effort as some items may actually be covered on the other Bid Schedules / Plan Sets. Fees associated with any updates are summarized at the end of this proposal.

2. Bid Schedule II – Pump Station 4-3

Some of these comments are generally straight forward, but the majority pertain to the plant's electrical and communication systems by removing the past practice of sole sourcing Tesco Controls as District's Control System Integrator. This as you know triggers the preparation of additional drawings (estimated @ 10 sheets) by Mark Balan (our Electrical Engineering Consultant) to allow an open-source bidding process for other integrators to bid on. The addition of a Baseline Feeder flowmeter and communication and controls for on-site well sites, are other design considerations that had not previously been part of the project. Fees associated with any updates are summarized at the end of this proposal.

3. Bid Schedule III – Reservoir 3-5

Some of these comments are again generally straight forward, but the addition of a cathodic protection system will require a new sheet (or two), along with various updates to the sheet count and title block's numbering convention. Fees associated with any updates are summarized at the end of this proposal.

4. Specifications

As with the drawing updates, the effort of revising and / or updating the specifications is commensurate with changes to the various design drawing sets. In this case, the removal of Tesco Controls as District’s sole-source Control System Integrator requires a fundamental change to the current structure that has been utilized for various District facilities for many decades with the current design team. There are a dozen or so “Consider” items that will need to be properly evaluated as well, to which further dialog with Staff is inevitable.

A Fee Estimate summary for the above listed Items is as follows:

Item No.	Description / Firm	Fees
1	Site Improvement Updates / ERSC	\$2,400
2a	Pump Station 4-3 / ERSC	\$7,800
2b	Pump Station 4-3 / MBA (Electrical & Controls)	\$47,000
3	Reservoir 3-5 / ERSC	\$6,500
4	Specifications / ERSC	\$8,000
	TOTAL	\$71,700

Therefore, we hereby request a Task Order amendment in a not-to-exceed amount of **\$71,700** (\$24,700 for ERSC and \$47,000 for MBA) to allow our team to attend to Staff’s latest direction and perform the additional work. Given the extent of the changes, we also estimate a 3-4 month duration to complete the requested effort. Please note that although there are some electrical / control systems in all Bid Schedule drawing sets, MBA addresses all systems in the Bid Schedule II package (which similarly contain all his above costs).

As always, we look forward to the opportunity of working with District on this matter and appreciate our continued relationship. If you have any questions or require additional information, please call me at 909.890.1255 (Ext. 126). Thank you.

Sincerely,

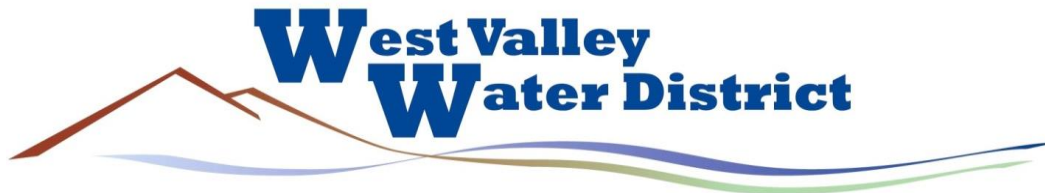


Erik T. Howard, PE, PLS
Sr. Principal Engineer

A	B	C	D	E	F	G	
1						COMMENTS LETTERS A. Incorporate B. Confirm C. Consider D. Note	Designer Response "NO." 1 - Incorporated 2 - Confirmed 3 - Noted 4 - No Change, Designer Preference 5 - Need additional clarification/direction 6 - Requires further investigation, next design Submit 7 - Not in scope
2	Project No. :	W15003, W15004, W15006					
3	Project Name:	Lord Rand Site Improvements (Schedule 1), Pump Station 4-3 (Schedule 2), and Reservoir 3-5 (Schedule 3) Specifications					
4	Project Manager:	Rosa Gutierrez					
5	Submittal Description:	Final Bid Package Preparation					
6	Ref. Doc./	Comments				Designer Response	
7	No.	Section	Ltr	Discussion	Rwvr	NO. Discussion	
8	Schedule 1						
9	1	Page 1	A	Update cover sheet date, names, title (the new Board president is Gregory Young, Vice President is Dan Jenkins the other are Directors). District admin staff John Thiel is the General Manager, Linda Jadeski is the Assistant General Manager, Rocky Welborn, P.E. is the Director of Engineering, Bertha Perez no longer works with the District.	RW		
10	2	Page 3	A	Update note 3 to be districts new standard for wrought iron fencing.	RW		
11	3	Page 3	A	Add knox box to main point of entry	RW		
12	4	Page 6 or 7	C	Consider adding a headwall. See D01.	MBI		
13	5	Page 4	A	Add H-20 Traffic Rated Cover for trench	RMG		
14	6	Page 4	A	Add 4' x 4' Transducer vault with traffic rated cover	RMG		
15							
16	Schedule 2						
17	1	Page 1	A	Same as first comment from Schedule 1 regarding names, dates and titles.	RW		
18	2	Page 7	A	Incorporate mechanical seals per operations.	RW		
19	3	Page 15	C	Consider possible VFD. Operations may request VFD's on two of the pumps. WVWD engineering to confirm.	RW		
20	4	P&ID	C	Consider providing a P&ID for the integrator	RW		
21	5	Page 6	B	Please confirm hose rack is provide near interior building hose bib.	RW		
22	6	Page 3	D	Update detail typo from 1 to 2 and 2 to 1 to match details on page 5.	RMG		
23	7	Page 3	A	Add Furnish and Install 1" ball valve and 1" GIP, wrap w/ PVC tape to 40-Mil thickness	RMG		
24	8	Page 3	A	Add Line A, Line B, and Line C label	RMG		
25	9	Page 6	A	Add 4' x 4' vaule size to callout	RMG		
26	10	Page 17	A	Update the location of the transducer vault as shown on page 6 of 26	RMG		
27	11	Page 18	A	Update the location of the transducer vault as shown on page 6 of 26	RMG		
28	12	Page 20	A	Update I/O Schedule to include Well 7 and Well 8A. See C09.	RMG		
29	13		A	Add Power and Instrumentation Plan sheet for I/O plan and include PLC connection plan. See C13.	RMG		
30			A	Add Pump Schematic Control Diagrams	RMG		
31			A	Add Exterior Lighting Connection Diagram	RMG		
32			A	Add Control Panel Elevation Plan	RMG		
33		Page 3	A	Add vault and flow meter for Base Line Feeder (BLF)	RMG		
34							

	A	B	C	D	E	F	G
2	Project No. :			W15003, W15004, W15006			
3	Project Name:			Lord Rand Site Improvements (Schedule 1), Pump Station 4-3 (Schedule 2), and Reservoir 3-5 (Schedule 3)			
4	Project Manager:			Rosa Gutierrez			
5	Submittal Description:			Final Bid Package Preparation			
6		Ref. Doc./		Comments		Designer Response	
7	No.	Section	Ltr	Discussion	Rvwr	NO.	Discussion
35	Schedule 3						
36	1	Page 1	A	Same as first comment from Schedule 1 regarding names, dates and titles.	RW		
37	2	Page 9	B	Confirm type of overflow. The drawing appears to show a box and funnel overflow weir.	RW		
38	3		C	Consider why cathodic protection was not included in this project.	RW		
39	4		C	Consider adding a tank mixer	RW		
40	5		B	Confirm how tank level is communicated back to control cabinet. See C12.	RW		
41	9	Page 6 or 9	C	Consider adding landing for bottom of stairs for Reservoir. See D02a and D02b.	MBI		
42							
43	Specifications						
44							
45	1	Title Page	A	Update dates, names and titles	RW		
46	2	2.1.4	A	Update award of contract to 60 days, to allow for lead time delays, lets talk about incremental milestones and schedules for major components. (i.e. Site work, reservoir and pump station complete in 1.5 years, generator install and integration can take 2.5 years). And update construction	RW		
47	3	2.3.7	C	Consider adding optional item for cathodic protection.	RW		
48	4	3.14-1	A	Update bullet f to read. "All change orders shall be approved by the District"	RW		
49	5	4.2.1	C	Please review concrete requirements on plans and confirm there are not discrepancies between this section and plan requirements	RW		
50	6	4.17-1	A	Update to new fencing standard.	RW		
51	7	01000-2 Item 1.4.A	A	Update liquidated damages to be consistent with other LD's in bid docs. Some places had \$1000k per day and others had \$750. Consider how to have varied LD's if we allow for longer durations for long lead items.	RW		
52	8	11100-5 Item 1.5A	A	This section calls out 250HP pumps but the plans show 300HP. Please confirm and update.	RW		
53	9	16465-6 Item 2.1.A	A	Update spelling	RW		
54	10	16465-7 Item 2.1.e	A	Update this whole section to reflect Allen Bradley compact logic PLC and open source control panels	RW		
55	11	16465-17 Item 2.3	A	This control description doesn't seem to be our project. Consider providing updated Control Description for Integrator. Also please review control description with operations	RW		
56	12	16923	A	Incorporate new touchscreen panels. Cabinet mounted displays 15-inch Allen-Bradley PanelView Plus	RW		
57	13	16990	B	Confirm all AQMD permit requirements are included in this specification.	RW		
58	14		B	Radio Survey See C10 and Radio Cabinet See C11.	RW		
59	15		A	Provided updated schedule and Engineers estimate	RW		
60	16		C	Consider prepurchasing or creative procurement solutions to address long lead time items.	RW		
61	17		C	Consider adding supplemental section for Testing and Start-up (i.e., 01 75 17 or 40-80-01). See C01a and C01b.	MBI		

	A	B	C	D	E	F	G
2	Project No. :		W15003, W15004, W15006				
3	Project Name:		Lord Rand Site Improvements (Schedule 1), Pump Station 4-3 (Schedule 2), and Reservoir 3-5 (Schedule 3)				
4	Project Manager:		Rosa Gutierrez				
5	Submittal Description:		Final Bid Package Preparation				
6		Ref. Doc./	Comments				Designer Response
7	No.	Section	Ltr	Discussion		Rvwr	NO.
62	18		C	Consider adding subsections as referenced in Testing and Start-up section specification: 46 05 10 Common Work Results for Mechanical Equipment. See C02a. 46 05 94 Mechanical Equipment Testing. See C02b. 26 08 00 Field Electrical Acceptance Tests 40 61 00 Common Work Related to Process Control and Instrumental System 01 33 00 Submittal Procedures 40 61 15 Control Strategies		RMG	
63	19		C	Consider adding supplemental section for Work Restrictions (i.e., 01 14). See C06.		MBI	
64	20		C	Consider adding supplemental section for Submittal Requirements. See C08.		MBI	
65	21		C	Consider adding supplemental section for SCE Green Tag procedure, See D03.		MBI	
66	22		C	Consider adding supplemental section for General Operations (i.e., 17100). See C03.		MBI	
67	23		C	Consider adding supplemental section for two Milestone completion language – NIB and Contract Times. See C04.			
68	24		C	Consider adding supplemental section for Method of Procedure – MOP. See C05.			
69	25	16460	D	Update City of Anaheim typo in the Switchboard section. See C07.		MBI	
70	26		C	Consider adding supplemental section for Wrought Iron Fencing Installation language		MBI/RMG	



**BOARD OF DIRECTORS
ENGINEERING, OPERATIONS AND PLANNING COMMITTEE
STAFF REPORT**

DATE: August 22, 2024
TO: Engineering, Operations and Planning Committee
FROM: Rocky Welborn, Director of Engineering
SUBJECT: CONSIDER A 3 YEAR ENTERPRISE AGREEMENT (EA) WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE (ESRI) FOR THE DISTRICT'S GEOGRAPHIC INFORMATION SYSTEM (GIS)

DISCUSSION:

Geographic Information System (“GIS”) technology combines mapping software with database management tools to collect, organize, and share many types of information. Data is stored as layers in a geodatabase that can be accessed and shared from the field and across multiple departments. In September of 2015, in August of 2018, and August 2021 the District’s Board of Directors authorized a 3-year Enterprise Agreement (“EA”) with Environmental Systems Research Institute, Inc. (“ESRI”) for the needed software to host and edit the GIS information. The term of this agreement is nearing completion and needs to be renewed.

This EA will grant the district access to ESRI's term license GIS software on an unlimited basis including maintenance and support services. Renewing the GIS agreement will allow West Valley Water District (“WVWD”) office and field staff to continue to have access to GIS applications such as GIS Viewer, USA Tickets, Valve Turning, Hydrant Flushing, and Water Leaks through the use of mobile devices and office computers. This agreement renewal will also allow WVWD customers to have access to current online applications such as Service Area Look Up, and Election Divisions through WVWD’s website. Attached as Exhibit A is the EA with ESRI.

FISCAL IMPACT:

The cost associated with the ELA has increased to \$29,300 per year. This is the first increase in the EA since the original agreement in 2015. The cost remains at \$29,300 per year for the next three years. This is a budgeted item in the fiscal year 2024/25 GIS budget and will be presented in the future fiscal year budgets.

STAFF RECOMMENDATION:

Staff recommends that this item be submitted for consideration and approval by the Board at a future Board of Directors meeting. Staff also recommends that the Board of Directors approve this item and authorize the General Manager to execute the necessary agreements.

ATTACHMENT(S):

1. Exhibit A - West Valley Water District 2024-2027 SUEA Renewal Q-526076

EXHIBIT A



July 5, 2024

Bruce Miller
West Valley Water District
855 W Baseline Rd
Rialto, CA 92377

Dear Bruce,

The Esri Small Utility Enterprise Agreement (SUEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Utility EA terms and conditions.

- Licenses are valid for the term of the EA.

The terms and conditions in this Small Utility EA offer are for utilities with a total meter count which falls under the applicable tier in the Esri EA Small Utility Program. By accepting this offer, you confirm that your organization's meter count falls within this range on the date of signature and that you are therefore eligible for this pricing. If your organization's meter count does not fall within this range, please confirm your current meter count, and Esri will provide a revised quotation.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL UTILITY EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri	e-mail: service@esri.com
Attn: Customer Service SU-EA	fax documents to: 909-307-3083
380 New York Street	
Redlands, CA 92373-8100	

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,
Jay Hoffman



Quotation # Q-526076

Date: July 5, 2024

Customer # 125046 Contract # ENTERPRISE AGREEMENT

West Valley Water District
855 W Baseline Rd
Rialto, CA 92377

ATTENTION: Bruce Miller
PHONE: (909) 543-9462
EMAIL: bmillier@wvwd.org

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 7/5/2024 To: 10/3/2024*

Material	Qty	Term	Unit Price	Total
168089	1	Year 1	\$29,300.00	\$29,300.00
Meter Counts 10,001 to 50,000 Small Utility Enterprise Agreement Annual Subscription				
168089	1	Year 2	\$29,300.00	\$29,300.00
Meter Counts 10,001 to 50,000 Small Utility Enterprise Agreement Annual Subscription				
168089	1	Year 3	\$29,300.00	\$29,300.00
Meter Counts 10,001 to 50,000 Small Utility Enterprise Agreement Annual Subscription				

Subtotal:	\$87,900.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (Surface Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$87,900.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:

Jay Hoffman

Email:

jhoffman@esri.com

Phone:

1-800-447-9778 x5675

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.



Quotation # Q-526076

Date: July 5, 2024

Customer # 125046 Contract # ENTERPRISE AGREEMENT

West Valley Water District
855 W Baseline Rd
Rialto, CA 92377

ATTENTION: Bruce Miller
PHONE: (909) 543-9462
EMAIL: bmillier@wvwd.org

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: OAMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 7/5/2024 To: 10/3/2024

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

BY SIGNING BELOW, YOU CONFIRM THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION, AND YOU ARE AUTHORIZING ESRI TO ISSUE AN INVOICE FOR THE ITEMS INCLUDED IN THE ABOVE QUOTE IN THE AMOUNT OF \$_____, PLUS SALES TAXES IF APPLICABLE. DO NOT USE THIS FORM IF YOUR ORGANIZATION WILL NOT HONOR AND PAY ESRI'S INVOICE WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

Please check one of the following:

I agree to pay any applicable sales tax.

I am tax exempt, please contact me if exempt information is not currently on file with Esri.

Signature of Authorized Representative

Date

Name (Please Print)

Title

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax reflected on this quote has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state tax directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:

Jay Hoffman

Email:

jhoffman@esri.com

Phone:

1-800-447-9778 x5675

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

Esri Use Only:
 Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____

SMALL ENTERPRISE AGREEMENT SMALL UTILITY (E215-2)

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

Table A List of Products

Uncapped Quantities**Desktop Software and Extensions (Single Use)**
 ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS
 Schematics, ArcGIS Workflow Manager, ArcGIS Data
 Reviewer
Enterprise Software and Extensions
 ArcGIS Enterprise (Advanced and Standard)
 ArcGIS Monitor
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst,
 ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS
 Workflow Manager, ArcGIS Data Reviewer
Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools
 ArcGIS Runtime Standard
 ArcGIS Runtime Analysis Extension
Limited Quantities
 One (1) Professional subscription to ArcGIS Developer
 Two (2) ArcGIS CityEngine Single Use Licenses
 50 ArcGIS Online Viewers
 50 ArcGIS Online Creators
 10,000 ArcGIS Online Service Credits
 50 ArcGIS Enterprise Creators
 5 ArcGIS Insights in ArcGIS Enterprise
 5 ArcGIS Insights in ArcGIS Online
 10 ArcGIS Location Sharing User Type Extension (Enterprise)
 10 ArcGIS Location Sharing User Type Extension (Online)
 50 ArcGIS Advanced Editing User Type Extensions (Enterprise)
 1 ArcGIS Business Analyst Web App Standard (Online)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	2
Number of Tier 1 Help Desk individuals authorized to call Esri	3
Maximum number of sets of backup media, if requested*	2
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("Ordering Document"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

- b. The following information will be included in each Ordering Document:

- (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
- (2) Order number
- (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.