



**Contract Number**

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**SAP Number**

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## San Bernardino County Flood Control District

**Department Contract Representative**

Arlene B. Chun, M.S., P.E.

Engineering Manager

Environmental Management Division

(909) 387-8109

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**Consultant**

Dudek

**Consultant Representative**

Michael Sweesy

**Telephone Number**

(760) 942-5147

**Contract Term**

January 27, 2026 – December 31, 2030

**Original Contract Amount**

\$650,000.

**Amendment Amount**

N/A

**Total Contract Amount**

\$650,000.

**Cost Center**

F02258

**Grant Number (if applicable)**

N/A

### IT IS HEREBY AGREED AS FOLLOWS:

**WHEREAS**, on November 17, 1986, President Ronald Reagan signed the Water Resources Development Act of 1986 into law, which provided congressional authorization for U.S. Army Corps of Engineers (USACE) projects across the United States, including the Santa Ana River Mainstem Project (SARMP); and

**WHEREAS**, the Seven Oaks Dam (SOD) is a 550-foot-high earthen dam that was constructed by USACE between 1994 and 1999, a part of the SARMP, to provide flood protection to downstream communities along the Santa Ana River; and

**WHEREAS**, due to federally-listed endangered species and critical habitat occur within the project vicinity of SOD, the USACE prepared biological assessments and engaged consultation with the U.S. Fish and Wildlife Service (USFWS) pursuant to section 7(a)(2) of the Endangered Species Act; and

**WHEREAS**, USACE determined the construction and operation of SOD would result in impacts to several federally listed endangered species including Santa Ana River woolly star (*Eriastrum densifolium* ssp. *Sanctorum*, "woolly star"), slender-horned spineflower (*Dodecahema leptoceras*, "spineflower"), and San Bernardino kangaroo rat (*Dipodomys merriami parvus*, SBKR"); and

**WHEREAS**, in response to USACE's biological assessments, the USFWS issued two Biological Opinions (BOs) on June 22, 1989 (No. 1-6-88-F-6) and December 19, 2002 (No. 1-6-02-F-1000.10), which require compensatory mitigation and additional conservation measures to mitigate for and minimize impacts to woolly star, spineflower, and SBKR, collectively referred to as "Covered Species"; and

**WHEREAS**, the 1989 BO (No. 1-6-88-F-6) addressed compensation, reasonable and prudent measures, and conservation recommendations specific to woolly star including, but not limited to, the acquisition of 760-acres of floodplain along the upper Santa Ana River, which was subsequently named the Woolly Star Preserve Area (WSPA), and the development of a Management Plan to manage the woolly star within WSPA lands; and

**WHEREAS**, the 2002 BO (No. 1-6-02-F-1000.10) identified additional conservation measures to sustain SBKR and spineflower in addition to woolly star on WSPA lands using an adaptive multi-species habitat management plan; and

**WHEREAS**, as a result of the 2002 BO, USACE developed a draft Multi-Species Habitat Management Plan (MSHMP) to guide management of the WSPA lands to sustain all of the Covered Species and it is intended to serve as a programmatic document addressing the overall adaptive management approach, multi-species objectives, and management decision-making process for the Covered Species; and

**WHEREAS**, on December 18, 1989 the San Bernardino County Flood Control District Board of Supervisors approved a Local Cooperation Agreement (LCA), No. 89-1087, between San Bernardino County Flood Control District (District), Orange County Flood Control District (OCFCD), and Riverside County Flood Control and Water Conservation District (RCFC&WCD), collectively referred to as "Local Sponsors", to define their roles and responsibilities as they relate to the SARMP and establishes a Local Sponsor interest and cost sharing, including services referenced in this Contract, of 7.03% for District, 87.7% for OCFCD, and 5.27% for RCFC&WCD, respectively; and

**WHEREAS**, the LCA identifies the Local Sponsors as being responsible for the compensatory mitigation and other conservation measures associated with the construction, operation, and maintenance of SOD, including the implementation of the MSHMP; and

**WHEREAS**, the District on behalf of the Local Sponsors is seeking to enter into an agreement with a qualified consultant to provide environmental and related project management services, on a time-and-material basis over the course of a five (5) year period, to assist the Local Sponsors achieve their required mitigation obligations; and

**WHEREAS**, the District initiated a competitive procurement process on August 21, 2025, to select a qualified consultant to provide these services; and

**WHEREAS**, the District, in consultation with the other Local Sponsors, identified **Dudek** (Consultant) as qualified to provide environmental and related project management services regarding the implementation of the USACE MSHMP associated with the construction and operation of the SOD component of the SARMP; and

**WHEREAS**, the District desires that such services be provided by Consultant and Consultant agrees to perform these services as set forth below;

**NOW, THEREFORE**, the District and Consultant mutually agree to the following terms and conditions:

## A. DEFINITIONS

- A.1 BO: Biological Opinion. A document that the Fish and Wildlife Service issues to a project applicant whose project will result in impacts to federally listed endangered species and that contains mitigation, avoidance, and minimization measures to offset impacts to the impacted species.
- A.2 CDFW: California Department of Fish and Wildlife
- A.3 CEQA: California Environmental Quality Act
- A.4 Contract: The Contract between the District and the Consultant
- A.5 Consultant: Any individual, company, firm, corporation, partnership or other organization to whom a contract award is made by the District
- A.6 County: San Bernardino County
- A.7 District: San Bernardino County Flood Control District
- A.8 LCA: Local Cooperation Agreement. This refers to the Local Cooperation Agreement that was approved by the San Bernardino County Flood Control District Board of Supervisors on December 18, 1989, and which defines the roles and responsibilities of the Local Sponsors as they relate to the San Ana River Mainstem Project.
- A.9 Local Sponsors: The collective reference to the San Bernardino County Flood Control District, the Orange County Flood Control District, and the Riverside County Flood Control and Water Conservation District, as related to the Santa Ana River Mainstem Project.
- A.10 MSHMP: Refers to the Multi-Species Habitat Management Plan developed by USACE and helps to guide the management of the mitigation requirements for the construction and operation of Seven Oaks Dam.
- A.11 NEPA: National Environmental Policy Act
- A.12 OCFCD: Orange County Flood Control District
- A.13 RCFC&WCD: Riverside County Flood Control and Water Conservation District
- A.14 SARWQCB: Santa Ana Regional Water Quality Control Board
- A.15 SARMP: Santa Ana River Mainstem Project
- A.16 SBKR: San Bernardino Kangaroo Rat
- A.17 Scope of Work: The requested services described in this contract
- A.18 SOD: Seven Oaks Dam
- A.19 Spineflower: Slender-horned spineflower
- A.20 Woolly star: Santa Ana River woolly star
- A.21 WSPA: Woolly Star Preserve Area
- A.22 USACE: United States Army Corps of Engineers
- A.23 USFWS: United States Fish and Wildlife Service

## **B. CONSULTANT RESPONSIBILITIES**

- B.1** Review historic Seven Oaks Dam MSHMP and agreements related to the District's administrative responsibilities, review MSHMP documents, current 2020-2025 Work Plan, GIS data, and other pertinent documents (provided by the District).
- B.2** The District is contracted with Aspen Environmental Group (Aspen) (Task Order No. 24-74-12-104) for MSHMP Species Task Implementation and scheduling and presenting at the Steering Committee meetings for Local Sponsors.

The Consultant's role for this task will be to manage Aspen's Contract for the District, including reviewing deliverables, reviewing and recommending invoices for approval, ensuring project schedules are met, providing any environmental document quality control QA/QC required, any change orders to the existing contract that may be required, provide direction to Aspen as required to ensure program progress in consultation with District staff, and support Aspen with any preparation of Steering Committee meetings and presentations.

- B.3** Schedule internal Local Sponsor coordination meetings including the preparation of agendas and meeting minutes for any Local Sponsor meetings required, coordinating with Local Sponsors and at times, with specific USACE Planning and Regulatory staff.
- B.4** Project management for CEQA and regulatory permitting. USACE is finalizing its scope of work for the final 100-year MSHMP. The MSHMP is currently in draft form. Once the scope is finalized, which includes species and habitat surveys, enhancement efforts and certain high-flow inundation activities and other actions, USACE will prepare a joint CEQA/NEPA document, and the Consultant will be responsible for managing the CEQA component of that joint document on behalf of the District and Local Sponsors, and manage and State and Federal regulatory permitting efforts that are outside of the USACE's responsibilities, including CDFW Streambed Alteration Agreements, CDFW Endangered Species Act authorizations, 404 USACE permits, and SARWQCB 401 water quality certifications. The Consultant's role will be to ensure that the strategy for success is sound, that the project schedules are met, and provide quality control for any WSPA-related environmental documents prepared.
- B5** Perform other related environmental services as directed and requested by the Local Sponsors through the designated District staff.
- B6** Following the review period for task B.1, and at the direction of the District, Consultant shall submit annual proposals to the Local Sponsors that detail services to be performed and expected related costs for the upcoming year. Consultant shall request, in writing, to amend an annual proposal if it has been determined that services must be modified after the Local Sponsors have already approved it. The Local Sponsors may require updated proposals on a bi-annual or quarterly basis, as necessary.

## **C. GENERAL CONTRACT REQUIREMENTS**

### **C.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

### **C.2 Contract Amendments**

Consultant agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Consultant and District.

### **C.3 Contract Assignability**

Without the prior written consent of the District, the Contract is not assignable by Consultant either in whole or in part.

### **C.4 RESERVED**

**C.5 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**C.6 Background Checks for Consultant Personnel**

Consultant shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the District; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the District and not in violation of applicable law, Consultant shall conduct a background check, at Consultant's sole expense, on all its personnel providing Services. If requested by the District, Consultant shall provide the results of the background check of each to the District. Such background check shall be in the form generally used by Consultant in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Consultant personnel who do not meet the District's hiring criteria, in District's sole discretion, shall not be assigned to work on District property or Services, and District shall have the right, at its sole option, to refuse access to any Contract personnel to any District facility.

**C.7 Change of Address**

Consultant shall notify the District in writing of any change in mailing address within ten (10) business days of the change.

**C.8 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**C. 9 Compliance with District Policy**

In performing the Services and while at any District facilities, Consultant personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the District; and (d) abide by all laws applicable to the District facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "District Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Consultant or Consultant personnel or may be made available to Consultant or Consultant personnel by conspicuous posting at a District facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Consultant shall be responsible for the promulgation and distribution of District Policies to Consultant personnel to the extent necessary and appropriate.

District shall have the right to require Consultant's employees, agents, representatives and subcontractors to exhibit identification credentials issued by District in order to exercise any right of access under this Contract.

**C.10 RESERVED**

**C.11 Primary Point of Contact**

Consultant will designate an individual to serve as the primary point of contact for the Consultant. Consultant or designee must respond to District inquiries within two (2) business days. Consultant shall not change the primary contact without written acknowledgement to the District. Consultant will also designate a back-up point of contact in the event the primary contact is not available.

**C.12 District Representative**

The **Chief Flood Control Engineer** or his/her designee shall represent the District in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services by Consultant. If this contract was initially approved by the San Bernardino County Flood Control District Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract, unless otherwise delegated.

**C.13 Damage to District Property**

Consultant shall repair, or cause to be repaired, at its own cost, all damages to District vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Consultant or its employees or agents. Such repairs shall be made immediately after Consultant becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Consultant fails to make timely repairs, the District may make any necessary repairs. The Consultant, as determined by the District, shall repay all costs incurred by the District for such repairs, by cash payment upon demand, or District may deduct such costs from any amounts due to the Consultant from the District, as determined at the District's sole discretion.

**C. 14 Debarment and Suspension**

Consultant certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Consultant further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**C.15 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Consultant agrees that the Consultant and the Consultant's employees, while performing services for the District, on District property, or while using County equipment:

- C.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Consultant or Consultant's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Consultant shall inform all employees that are performing services for the District, on District property, or using District equipment, of the District's objective of a safe, healthful and productive workplace and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The District may terminate for default or breach of this Contract and any other Contract the Consultant has with the District, if the Consultant or Consultant's employees are determined by the District not to be in compliance with above.

**C.16 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**C.17 Employment Discrimination**

During the term of the Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Consultant shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**C.18 Environmental Requirements**

In accordance with County Policy 11-08, the District prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Consultant to use recycled paper for any printed or photocopied material created as a result of this Contract. Consultant is also required to use both sides of paper sheets for reports submitted to the District whenever practicable.

To assist the District in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Consultant must be able to annually report the County's environmentally preferable purchases. Consultant must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

**C.19 Improper Influence**

Consultant shall make all reasonable efforts to ensure that no County officer or employee whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Consultant or officer or employee of the Consultant.

**C.20 Improper Consideration**

Consultant shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The District, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Consultant shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Consultant. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the District is entitled to pursue any available legal remedies.

**C.21 Informal Dispute Resolution**

In the event the District determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**C.22 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**C.23 Licenses, Permits and/or Certifications**

Consultant shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Consultant shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Consultant will notify District immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

**C.24 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the District determines that Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the District, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the District is entitled to pursue any available legal remedies.

**C.25 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**C.26 Nondisclosure**

Consultant shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the District to Consultant or an agent of Consultant or otherwise made available to Consultant or Consultant's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Consultant or an agent of Consultant in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialized and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**C.27 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**C.28 Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Consultant pursuant to the Contract shall be considered property of the District upon payment for services (and product, if applicable). All such items shall be delivered to District at the completion of work

under the Contract. Unless otherwise directed by District, Consultant may retain copies of such items.

**C.29 RESERVED**

**C.30 Air, Water Pollution Control, Safety and Health**

Consultant shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**C.31 Records**

Consultant shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Consultant's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

**C.32 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**C.33 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Consultant's relationship with District may be made or used without prior written approval of the District.

**C.34 Representation of the District**

In the performance of this Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the District.

**C.35 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**C.36 Subcontracting**

Consultant shall obtain District's written consent, which District may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to District. At District's request, Consultant shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the District, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to District for its subcontractors and shall indemnify District for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

- 36.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 36.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 36.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Consultant Responsibilities, C. General Contract Requirements and G. Insurance and Indemnification.

Upon expiration or termination of this Contract for any reason, District will have the right to enter into direct Contracts with any of the Subcontractors. Consultant agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with District.

**C. 37 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Consultant or District, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Consultant and District further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Consultant for District.

**C.38 Termination for Convenience**

The District reserves the right to terminate the Contract, for its convenience, with or without cause, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Consultant for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Consultant shall promptly discontinue services unless the notice directs otherwise. Consultant shall deliver promptly to District and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**C.39 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**C.40 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

**C.41 Conflict of Interest**

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Consultant shall make a reasonable effort to prevent employees, Consultant, or members of governing bodies from using their positions for purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the District determines a conflict-of-interest situation exists, any increase in costs, associated with the conflict of interest situation,

may be disallowed by the District and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

**C.42 Former County Administrative Officials**

Consultant agrees to provide, or has already provided, information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Consultant. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Consultant. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**C.43 Disclosure of Criminal and Civil Procedures**

The District reserves the right to request the information described herein from the Consultant. Failure to provide the information may result in a termination of the Contract. The District also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Consultant also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the District. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**C.44 Copyright**

District shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the District as the funding agency and Consultant as the creator of the publication. No such materials, or properties produced in whole

or in part under this Contract shall be subject to private use, copyright or patent right by Consultant in the United States or in any other country without the express written consent of District. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the District prior to publication. To the extent this Contract is federally funded, Consultant shall provide any information necessary to the District in order to comply with Federal Acquisition Regulation 52.227-15. To the extent applicable, the provisions of Federal Acquisition Regulation 52.227-14 Rights in Data - General shall apply.

**C.45 Artwork, Proofs and Negatives**

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

**C.46 RESERVED**

**C.47 RESERVED**

**C.48 RESERVED**

**C. 49 Executive Order N-6-22 Russia Sanctions**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Contract. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

**C.50 RESERVED**

**C.51 RESERVED**

**C.52 RESERVED**

**C.53 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation (FAR 52.203-18).**

In compliance with Federal Acquisition Regulation 52.203-18, Consultant shall not require employees or subcontractors of Consultant seeking to report waste, fraud, or abuse, to sign internal confidentiality agreements or statement prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. To the extent Consultant has required employees or subcontractors to sign internal confidentiality agreements or statements in the past, Consultant shall notify current employees and subcontractors that those prohibitions and restrictions are no longer in effect. Consultant shall include this clause in all subcontracts.

**C.54 Use of Biobased Products (FAR 52.223-1)**

Consultant certifies that to the extent biobased products are purchased using Contract funds, Consultant shall comply with Federal Acquisition Regulation 52.223-1.

**C.55 Service Contract Labor Standards (FAR 52.222-52, 52.22-53, 22.1003-4)**

To the extent applicable, Consultant agrees to comply with and to provide any information necessary for the District to comply with Federal Acquisition Regulations 52.222-52, 52.222-53, and 22.1003-4.

**D. TERM OF CONTRACT**

This Contract is effective as of January 27, 2026, and expires December 31, 2030, but may be terminated earlier in accordance with the provisions of this Contract.

**E. DISTRICT RESPONSIBILITIES**

- E.1** Provide all necessary WSPA historic documents, agreements, the draft MSHMP, work plans, notes, GIS data, and/ or other pertinent documents to Consultant for review
- E.2** Provide high level project oversight and direction, as needed, as well as provide support and guidance to Consultant, as needed.
- E.3** Approve Consultant annual proposals for specific services as described in Section B. CONSULTANT RESPONSIBILITIES.

**F. FISCAL PROVISIONS**

- F.1** The maximum amount of reimbursement under this Contract shall not exceed \$650,000, of which \$0 may be federally funded and shall be subject to availability of other funds to the District. The consideration to be paid to Consultant, as provided herein, shall be in full payment for all Consultant's services and expenses incurred in the performance hereof, including travel and per diem.
- F.2** Invoices shall be issued with a net sixty (60) day payment term with the corresponding Purchase Order number stated on the invoice.

The Consultant's "Cost Proposal", attached as Exhibit 1, sets forth the Consultant's estimated costs (including wages) for completing the Scope of Work. The District used the Cost Proposal to evaluate the reasonableness of the cost of Consultant's proposed costs and will also use it as the basis for reimbursement to Consultant and for any payment due if the contract is terminated before all work is completed. The Consultant is not entitled to any additional compensation for costs, including wages, or for delays that exceed the amounts set forth in the Cost Proposal. Payments will be made based on the percentage of each task completed to the District's satisfaction, in accordance with Exhibit A.

Invoices shall include a Project Status Memorandum detailing a description of work completed during the invoice period. Invoices shall be emailed to:

[DPWBillpay@dpw.sbccounty.gov](mailto:DPWBillpay@dpw.sbccounty.gov)

or mailed to District's Contract Representative at the address shown in Section E. of this Contract.

- F.3** Contractor shall accept all payments from District via electronic funds transfer (EFT) directly deposited into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by District required to process EFT payments.

**F.4** District is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The District shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the District pursuant to the Contract.

**F.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by District. Consultant shall not use current year funds to pay prior or future year obligations.

**F.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Consultant shall not claim reimbursement or payment from District for, or apply sums received from District with respect to that portion of its obligations that have been paid by another source of revenue. Consultant agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the District.

**F.7** Consultant shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the District. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

**G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**For the purpose of this Section B, "District" or "County" shall be deemed to refer to both the San Bernardino County Flood Control District and San Bernardino County.**

**G.1 Indemnification**

The Consultant agrees to indemnify, defend (with counsel reasonably approved by District) and hold harmless the District, County and their authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Consultant indemnification obligation applies to the Indemnitees' "active" as well as "passive" negligence but does not apply to the Indemnitees' "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

**G.2 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**G.3 Waiver of Subrogation Rights**

The Consultant shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Consultant and Consultant's employees or agents from waiving the right of subrogation prior to a loss or claim. The Consultant hereby waives all rights of subrogation against the County.

**G.4 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**G.5 Severability of Interests**

The Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the Consultant and the County or between the County and any other insured or additional insured under the policy.

**G.6 Proof of Coverage**

The Consultant shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**G.7 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

**G.8 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**G.9 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Consultant or County payments to the Consultant will be reduced to pay for County purchased insurance.

**G.10 Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Consultant agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

**G.11** The Consultant agrees to provide insurance set forth in accordance with the requirements herein. If the Consultant uses existing coverage to comply with these requirements and that coverage

does not meet the specified requirements, the Consultant agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Consultant shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**G.11.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Consultant and all risks to such persons under this contract.

If Consultant has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**G.11.2** Commercial/General Liability Insurance – The Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of the Consultant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**G.11.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage per occurrence.

If the Consultant is transporting one or more non-employee passengers in performance of Contract Services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**G.11.4** Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**G.11.5** Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits  
**or**

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

## **H. RIGHT TO MONITOR AND AUDIT**

**H.1** The District, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services provided under this Contract. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the District in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the District.

**H.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by District representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

## **I. CORRECTION OF PERFORMANCE DEFICIENCIES**

**I.1** Failure by Consultant to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

**I.2** In the event of a non-cured breach, District may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Consultant thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of District; and/or
- b. Discontinue reimbursement to Consultant for and during the period in which Consultant is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Consultant but yet unpaid by District those monies disallowed pursuant to Item “b” of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, the District may proceed with the work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due to the Consultant under this Contract and the balance, if any, shall be paid by the Consultant upon demand.

## **J. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County Flood Control District  
Environmental Management Division  
825 E. Third Street Room 123  
San Bernardino, CA 92415-0835

Dudek  
687 S. Coast Highway 101  
Suite 110  
Encinitas, CA 92024

Notice shall be deemed communicated two (2) District working days from the time of mailing if mailed as provided in this paragraph.

**K. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

**L. ELECTRONIC SIGNATURES**

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

**IN WITNESS WHEREOF**, the San Bernardino County Flood Control District and the Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY FLOOD CONTROL  
DISTRICT

►  
Dawn Rowe, Chair

Dated: \_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Lynna Monell  
Clerk of the Board

By \_\_\_\_\_  
Deputy

**DUDEK**

*(Print or type name of corporation, company, contractor, etc.)*

By ►

*(Authorized signature - sign in blue ink)*

Name **Joseph Monaco**

*(Print or type name of person signing contract)*

Title **President/ CEO**

*(Print or Type)*

Dated: \_\_\_\_\_

Address 687 S. Coast Highway 101, Suite 110

Encinitas, CA 92024

**FOR COUNTY USE ONLY**

Approved as to Legal Form

►

Aaron Gest, Deputy County Counsel

Date \_\_\_\_\_

Reviewed for Contract Compliance

►

Andy Silao, P.E. Engineering Manager

Date \_\_\_\_\_

Reviewed/Approved by District

►

Noel Castillo, Chief Flood Control Engineer

Date \_\_\_\_\_

**Exhibit 1**  
**Cost Rate Sheet**