



**Contract Number**

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**SAP Number**

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## San Bernardino County Flood Control District

<b>District Contract Representative</b>	Michael Fam, P.E.
<b>Telephone Number</b>	909-387-8120
<b>Contractor</b>	<b>West Valley Water District</b>
<b>Contractor Representative</b>	John Thiel, PE, MBA
<b>Telephone Number</b>	909-820-3706
<b>Contract Term</b>	June 23, 2026 – June 22, 2027
<b>Original Contract Amount</b>	
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	
<b>Cost Center</b>	
<b>Grant Number (if applicable)</b>	Not Applicable

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, West Valley Water District (WVWD) has constructed a Water Treatment Facility as part of WVWD's Groundwater Wellhead Treatment System Project (Project); and

**WHEREAS**, as part of the Project, DISTRICT issued encroachment permit P-22011022, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, to WVWD to construct, operate, and maintain a 24-inch reinforced concrete pipe to spread Treated Water (WATER) into DISTRICT's Cactus Basin No. 2 (BASIN 2); and

**WHEREAS**, Special Provision No. 2 of permit P-22011022 requires that prior to the 24-inch reinforced concrete pipe becoming operational, WVWD and DISTRICT shall enter into a Water Spreading Agreement; and

**WHEREAS**, a Technical Memorandum, dated January 27, 2016, prepared by WVWD and incorporated herein by reference, provides technical data, including groundwater quality, quantity, and duration of planned WATER spreading activities in BASIN 2; and

**WHEREAS**, both the United States Environmental Protection Agency (USEPA) and the Santa Ana Regional Water Quality Control Board (SARWQCB) reviewed the Technical Memorandum and each agency issued a letter dated February 8, 2016, copies of which are attached hereto as Exhibit B and incorporated herein by this reference; and

**WHEREAS**, both USEPA and SARWQCB stated in their respective letters that the WATER spreading activity in BASIN 2 will not adversely affect the movement of the existing contaminated groundwater; and

**WHEREAS**, the DISTRICT and WVWD entered into Water Spreading Agreement No. 16-256 (Agreement No. 16-256) on May 24, 2016, to spread WATER in BASIN 2; and

**WHEREAS**, on June 13, 2017, DISTRICT approved the First Amendment to Agreement No. 16-256, allowing WVWD to spread up to 800 acre feet of WATER per year for the period of June 27, 2017, to May 24, 2021; and

**WHEREAS**, on March 2, 2021, DISTRICT approved the Second Amendment to Agreement No. 16-256, allowing WVWD to continue to spread up to 800 acre feet of WATER per year for the period of June 27, 2021, to May 24, 2026; and

**WHEREAS**, Agreement No. 16-256 expired on May 24, 2026; and

**WHEREAS**, the Parties seek to extend into a new Agreement for a term of one year to allow the Parties to evaluate whether additional amounts of WATER may be spread in BASIN 2 and, if feasible, may seek to amend this Agreement to allow for such additional amounts; and

**WHEREAS**, the Parties also seek to evaluate the amount of payment made to DISTRICT per acre-foot of WATER for the use of Basin 2 by WVWD for WATER spreading, and

**WHEREAS**, such spreading of WATER will benefit DISTRICT, since water conservation and recharge are part of DISTRICT's mission as set forth in the San Bernardino County Flood Control District Act and this activity has been found by DISTRICT to not interfere with DISTRICT's primary statutory objectives and purposes to provide for the control of flood and storm waters; and

**WHEREAS**, DISTRICT and WVWD, in accordance with their respective acts and powers, desire to cooperate in a program to conserve WATER for the purpose of recharging the underground aquifer within BASIN 2.

**NOW, THEREFORE**, the DISTRICT and WVWD mutually agree to the following terms and conditions:

I. DISTRICT SHALL:

A) Permit WVWD to supervise, operate and maintain discharge and spreading facilities and appurtenances into BASIN 2 provided that said use does not conflict with DISTRICT's activities within BASIN 2 and/or DISTRICT's rights as a property owner. Discharge and spreading facilities and appurtenances are defined as including, but not limited to: pipes, head walls, energy dissipaters, splash pads, rip-rap slope protection, outlet structure with side walls, end and/or cutoff-walls, flap gates and debris grates. As of the date of this Agreement, the parties do not envision that WVWD's activities will conflict with DISTRICT's flood control activities.

B) Notify WVWD, in accordance with Section IV, when it is necessary to suspend or terminate WVWD's use of BASIN 2 for the spreading of WATER.

C) Maintain records of labor, equipment, and materials expended by DISTRICT on behalf of WVWD for activities associated with the spreading of WATER pursuant to this Agreement, and make such records available to WVWD (or copies thereof) upon request.

D) Provide WVWD with names and phone numbers of DISTRICT emergency contact personnel to be included in Exhibit C titled "EMERGENCY CONTACT PERSONNEL" attached hereto. DISTRICT shall provide a revised list of emergency contact personnel within thirty (30) days of any such revision to DISTRICT emergency contact personnel.

II. WVWD SHALL:

- A) Procure and maintain all necessary and applicable permits and approvals from other property owners, if any, necessary for the delivery facilities for the proposed WATER spreading operation in BASIN 2 at no cost whatsoever to DISTRICT. WVWD is to be solely responsible for all costs associated with its WATER spreading activities pursuant to this Agreement.
- B) Reserved.
- C) Arrange and deliver discharges for term of this Agreement for an annual amount not to exceed eight hundred (800) acre feet of WATER into BASIN 2.
- D) Subject to the volume limitation in paragraph (C), above, the monthly discharges into BASIN 2 shall not exceed a flow rate of two thousand (2,000) gallons per minute or approximately 4.5 cubic feet per second within a 24 hour period during the term of this Agreement.
- E) Ensure that all WATER discharged into BASIN 2 meets any and all applicable federal and state water quality standards, including, but not limited to, the Porter-Cologne Water Quality Control Act (Cal. Water Code section 13000 et seq.) and any and all permits, plans, policies, waste discharge requirements, National Pollution Discharge Elimination System permits under the federal Clean Water Act (33 U.S.C. section 1251 et seq.; Cal. Water Code sections 13263 and 13377) developed and implemented by the State Water Resources Control Board, the applicable regional water quality control boards, and California Department of Public Health. Copies of such permits and approvals shall be provided to the DISTRICT.
- F) Maintain all necessary operations, control, and surveillance of WVWD's WATER spreading facilities. WVWD is responsible for all maintenance activities related to WVWD's WATER spreading activities, including, but not limited to, controlling any and all vectors and vegetation that may occur either directly or indirectly due to WVWD's WATER spreading operation in BASIN 2, including any impacts to the Rialto Channel downstream.
- G) Regularly patrol and maintain surveillance of all areas directly affected by the spreading of WATER to deter trespass. Records of surveillance shall be kept by WVWD and made available to DISTRICT upon request.
- H) Maintain a detailed weekly record of the amount of WATER discharged into BASIN 2. The detailed weekly report prepared by the WVWD shall be submitted to the DISTRICT on a monthly basis. The DISTRICT may revise the frequency of reporting by providing written notice to WVWD.
- I) Obtain all legally required applicable permits, authorization, or approvals as may be necessary or required by any local, state, or federal agencies for WVWD's handling, spreading, or conserving WATER in BASIN 2 at no cost to DISTRICT.
- J) Be responsible for all regulatory costs associated with WVWD's obligations under Paragraph I of this Section, as well as all other costs associated with the handling, spreading or conserving of WATER in BASIN 2. Such costs may include, but are not limited to, regulatory permitting costs, compliance and enforcement costs, as well as regulatory costs and/or increased operation and maintenance costs incurred by DISTRICT.
- K) Cause repairs to be made as soon as possible to restore to prior condition any DISTRICT facilities, utilities, roads, and/or other improvements damaged by, or as a result of, WVWD's activities under this Agreement, wear and tear included. DISTRICT's facilities include, but are not limited to, Cactus Basins 1 and 2 and Rialto Channel, downstream to its confluence with the Santa Ana River.
- L) Effect such well water level measurements and take water quality samples in BASIN 2 and at other sites designated by the parties in the course of normal operations. Copies of all such well water level measurements and water quality sample results shall be provided to the DISTRICT upon written request.
- M) Reimburse DISTRICT for all expenses incurred for work performed, at WVWD's request, within thirty (30) days of receipt of an invoice therefor, in accordance with all of the provisions under Section J above, and Exhibit D and for all other expenses incurred by the DISTRICT that are directly or indirectly associated with the spreading of WATER by WVWD in BASIN 2. DISTRICT shall be reimbursed for DISTRICT's actual costs, plus overhead.

- N) Immediately suspend WATER spreading operations at the request of DISTRICT in accordance with Sections I and IV of this Agreement and allow DISTRICT to operate BASIN 2 as specified therein.
- O) Maintain measurements and records of flows into BASIN 2 including depth of ponded water. Copies of all such measurements and records of flows shall be provided to the DISTRICT upon written request.
- P) Provide and maintain an automated system to interrupt the WATER spreading to accommodate emergency conditions and DISTRICT's operation and maintenance of BASIN 2.
- Q) On an annual basis, pay twenty dollars (\$20.00) per acre-foot of WATER to DISTRICT for the use of Basin 2 for WATER spreading.
- R) Prior to exercising any of its rights under this Agreement, WVWD shall provide in writing to DISTRICT the names and phone numbers of WVWD emergency contact personnel to be included in Exhibit C, titled "EMERGENCY CONTACT PERSONNEL" attached hereto. WVWD shall provide a revised list of emergency contact personnel within thirty (30) days of any such revision of WVWD emergency contact personnel.
- S) Be responsible for the supply of WATER at the outlet of the turnout structures.
- T) Submit plans for DISTRICT's review and approval where WVWD desires to construct improvements within BASIN 2, which approval shall not be unreasonably withheld, delayed or conditioned. With DISTRICT's written concurrence, which concurrence shall not be unreasonably withheld, delayed or conditioned, WVWD may contract with any other public or private entity or entities to provide said improvements. When other than DISTRICT provides improvements, WVWD shall defend, indemnify and hold the DISTRICT and San Bernardino County ("County") free and harmless from all claims, damages, losses or expenses arising out of the construction of said improvements in accordance with Section II, U of this Agreement. Any and all procurement of labor, equipment, materials, and services necessary to carry out construction of improvements shall be in accordance with the normal bidding and procurement procedures and policies of WVWD and shall comply with all applicable provisions of state law, including but not limited to, the Labor Code.
- U) To the fullest extent permitted by law, WVWD shall indemnify, defend (at WVWD's sole cost and expense and with legal counsel approved by DISTRICT, which approval shall not be unreasonably withheld), protect, and hold harmless DISTRICT, County, and all of their respective authorized representatives, designees, officers, employees, consultants, agents, volunteers, successors and assigns, (collectively, the "Indemnified Parties"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, administrative actions, administrative orders, investigations, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs and DISTRICT's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner related (directly or indirectly) to any work performed or services provided under this Agreement (including, without limitation, defects in workmanship or materials, or a release or threatened release of any hazardous substance or hazardous waste into the environment, land subsidence, liquefaction, seepage to low lying lands, and introduction and/or mobilization of contamination or pollutants in groundwater) or WVWD's presence or activities conducted on the Project (including, without limitation, the negligent and/or willful acts, errors and/or omissions of WVWD, its principals, officers, agents, employees, vendors, suppliers, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them), regardless of any active or passive negligence or strict liability of an Indemnified Party. As used herein, the phrases "contamination", "pollutants", "hazardous substance" and "hazardous waste" shall coincide with the broadest definition thereof contained in any present or future federal or state laws (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., as amended or superseded, and the regulations promulgated thereunder; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended and superseded, and the regulations contained in 40 CFR Parts 260-281; the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; the California Porter-Cologne Water Quality Control Act of 1969, Water

Code Section 13000 et seq., including all applicable regulations; the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); the California Public Resources Code, Section 40141 (West 1996); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder; radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40). WWWD understands and acknowledges that the indemnification obligation hereunder is intended to constitute a "Type 1" indemnity under California law and extends to and includes Claims arising from the active or passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require WWWD to indemnify the Indemnified Parties from any Claim arising from the gross negligence, intentional acts or willful misconduct of the Indemnified Parties, or any of them with respect to the operation and maintenance of DISTRICT's BASIN 2. This provision shall survive the termination of any other agreement between the WWWD and the DISTRICT. THE FOREGOING INDEMNITY SHALL NOT HAVE ANY DOLLAR LIMITATION. The foregoing indemnity is for the exclusive benefit of the Indemnified Parties and in no event shall such indemnity inure to the benefit of any third party. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to WWWD. Payment to WWWD by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. WWWD's indemnification obligation and duty to defend hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations or statute of repose. WWWD's liability for indemnification hereunder is in addition to any liability WWWD may have to DISTRICT for a breach by WWWD of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit WWWD's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement.

### III. INSURANCE

A) Without in anyway affecting the indemnity herein provided and in addition thereto, the WWWD shall secure and maintain throughout the Agreement the following types of insurance with limits as shown:

1) Commercial/General Liability - WWWD shall carry General Liability Insurance covering all operations performed by or on behalf of WWWD providing coverage for bodily injury and property damage with a combined single limit of five million dollars (\$5,000,000), 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) Pollution liability.

2) Workers' Compensation - A program of Worker's 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 one million dollars (\$1,000,000) limits, covering all persons providing services on behalf of the WWJD and all risks to such persons under this Agreement.

3) Automobile Liability Insurance - This coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned vehicles or symbol 1 (any auto). The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

4) Environmental Impairment Liability - Provide liability insurance for environmental impairment including cleanup costs, and endorsed for "Sudden and Accidental" contamination or pollution. Such coverage shall be in an amount and form to meet all applicable state and federal requirements but in no event less than five million dollars (\$5,000,000) per occurrence, or fifteen million dollars (\$15,000,000) aggregate limit.

B) Additional Named Insured - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the DISTRICT and the County and each of their respective officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of this Agreement. Such additional insured coverage shall be at least as broad as Additional Insured Endorsement Form ISO, CG 2010.11 85 (Form B). The additional insured endorsements shall not limit the scope of coverage for the DISTRICT or the County to vicarious liability but shall allow coverage for the DISTRICT and the County to the full extent provided by the policy.

C) Waiver of Subrogation Rights - WWJD shall require the carriers of the above required coverage's to waive all rights of subrogation against the DISTRICT, the County, and each of their respective officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided SHALL NOT prohibit WWJD and WWJD's employees or agents from waiving the right to subrogation prior to a loss or claim. WWJD hereby waives all rights or subrogation against DISTRICT and County.

D) Policies Primary and Non-Contributory - All policies required above are to be primary and non-contributory with any insurance of self-insurance programs carried or administered by the DISTRICT and/or the County.

E) Severability of Interests - WWJD 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 WWJD and the DISTRICT or between WWJD and the County or between the DISTRICT or the County and any other insured or additional insured under the policy.

F) Proof of Coverage - WWJD shall immediately and prior to exercising any of its rights under this Agreement, furnish certificates of insurance to the DISTRICT evidencing the insurance coverage, including endorsements, required herein, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days prior written notice to the DISTRICT, and WWJD shall maintain such insurance from the time WWJD commences performance of this Agreement until the expiration of any applicable statute of limitations for filing a claim or lawsuit by a third party arising from WWJD's activities pursuant to this Agreement. Within sixty (60) days of the commencement of this Agreement, the WWJD shall furnish certified copies of the policies and all endorsements.

G) Acceptability of Insurance Carrier - Unless otherwise approved in writing by the County's Risk Manager, 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".

H) Deductibles and Self-Insured Retentions - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved in writing by the County's Risk Manager.

I) Subcontractor Insurance Requirements - WWJD agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Agreement to provide insurance covering the contracted operations with the same coverage and subject to the same insurance specifications set forth herein (including waiver of subrogation rights), and naming the DISTRICT and County as an additional insured. WWJD agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required by this Section.

J) Insurance Review - The above insurance requirements are subject to periodic review by the DISTRICT and the County. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT and the County. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager 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 DISTRICT and the County, inflation, or any other item reasonably related to the DISTRICT and the County's risk. Any such reduction or waiver for the entire term of this Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. WVWD agrees to execute any such amendment within thirty (30) days of receipt.

#### IV. IT IS FURTHER UNDERSTOOD AND AGREED:

A) 1) WVWD's use of DISTRICT's BASIN 2 for WATER spreading activities shall at all times be subordinate to the basic flood control and water conservation purposes of BASIN 2. If DISTRICT determines, in its sole discretion at any time, that WVWD's use of BASIN 2 pursuant to this Agreement conflicts with these purposes, DISTRICT expressly reserves the right hereunder to suspend WVWD's WATER spreading activities, effective immediately upon DISTRICT providing said notice of suspension to WVWD. Upon WVWD's receipt of such notice, WVWD shall immediately stop the discharge of any further WATER into BASIN 2 and take any further action as required in the DISTRICT's sole discretion. DISTRICT also expressly reserves the right to terminate this Agreement should the DISTRICT determine in its sole discretion that WVWD's WATER spreading activities conflict with BASIN 2's flood control and water conservation functions. WVWD agrees to permanently terminate any WATER spreading activities thirty (30) days after the date of written notification provided by DISTRICT to WVWD, unless DISTRICT determines, in its sole discretion, that WVWD has cured any such conflict prior to the expiration of the thirty (30) day period. If WVWD's use of BASIN 2 is terminated pursuant to this provision, WVWD shall, as soon as reasonably practicable, remove any physical WATER spreading or related facilities from the area in question at its sole cost and expense. BASIN 2 shall be left in a reasonably neat and graded manner. WVWD agrees to provide any work, at its sole cost and expense, necessary to restore BASIN 2 to a condition acceptable to DISTRICT.

2) Should WVWD default in making timely payment of the fee provided herein at Section II Q above, DISTRICT reserves its right to provide WVWD written notice of such default. WVWD shall have ten (10) days after receipt of such written notice to cure the default prior to DISTRICT exercising its right to terminate this Agreement.

3) If WVWD should fail to perform, keep, or observe any of the other terms, conditions, or covenants as set forth in this Agreement, DISTRICT reserves its right to give WVWD written notice to correct such condition or cure such default. DISTRICT reserves the right to terminate this Agreement should it determine in its sole discretion that WVWD has failed to cure any such default thirty (30) days after providing WVWD with such written notice. Such election to terminate shall not be construed as a waiver of any claim the DISTRICT may have against WVWD. If, however, the DISTRICT determines in its sole discretion that WVWD's activities pursuant this agreement constitutes a hazard, threat to public safety, or emergency, WVWD shall perform its obligations to correct such problems immediately. If WVWD fails to perform its obligations immediately, DISTRICT may perform the obligations and be reimbursed by WVWD for all costs expended to remedy said situation, including but not limited to charges for DISTRICT's equipment and personnel.

4) Upon any termination of this Agreement, WVWD covenants and agrees to surrender and to forfeit this Agreement, and restore BASIN 2 to the condition specified in Section IV A 1 above immediately upon any such termination. If WVWD shall remain in possession of said premises after any termination of this Agreement, WVWD shall be deemed guilty of an unlawful detention of BASIN 2 and shall be subject to eviction and removal, forcibly or otherwise, at any time thereafter, with or without process of law. In the event of the failure of WVWD to remove personal property, machinery or fixtures, if any, belonging to it from BASIN 2 within thirty (30) days after termination of this Agreement, DISTRICT may remove such personal property and place the same in storage at the expense of WVWD and without liability to DISTRICT for loss thereof. WVWD agrees to pay DISTRICT on demand all expenses incurred in such removal, including court costs and attorney's fees and storage charges and/or without notice sell all or any part of said personal property at public or private sale for such prices as DISTRICT may obtain, and apply the proceeds of such sale upon any amounts due under this Agreement from WVWD and to any expense incidental to the removal and sale of said personal property, with the surplus, if any, being refunded to WVWD.

5) The receipt by the DISTRICT of any fees or of any other sum of money paid by WVWD after any default, the termination and forfeiture of this Agreement for any reason, or after the giving by DISTRICT of any notice to effect such termination, shall not waive the default, reinstate, continue or extend the term of this Agreement, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by DISTRICT to WVWD prior to the receipt of any such sum of money or other consideration, unless so agreed to be in writing and signed by DISTRICT. Any act of the DISTRICT or its agents or employees during the term of this Agreement shall not be deemed to be an acceptance or a surrender of said BASIN 2, excepting an agreement in writing signed by the DISTRICT agreeing to accept such surrender.

B) DISTRICT, at its sole discretion, may perform any maintenance work requested by WVWD resulting from WVWD's WATER spreading activities in BASIN 2, provided such maintenance work is to be performed on property either owned in fee by DISTRICT or subject to DISTRICT's easement interest and in accordance with all state and federal permits acquired by WVWD per Section IIA. WVWD shall be responsible for reimbursing DISTRICT for all expenses incurred in the performance of said maintenance work.

C) The schedule of DISTRICT costs and WVWD payments is attached as Exhibit D to this Agreement and is expressly incorporated herein by reference.

D) Unless terminated earlier as provided herein, this Agreement shall terminate on June 8, 2027.

E) That this Agreement can be terminated on ninety (90) days written notice by either party without cause.

F) Except as otherwise may be provided for under this Agreement, all WATER conveyance, discharge and spreading facilities constructed under this Agreement by WVWD shall be removed from BASIN 2 and/or property owned in fee or easement by DISTRICT at WVWD's costs within thirty (30) days after the termination of this Agreement.

G) That this Agreement can be modified and/or extended at any time upon written approval by the governing body of both parties hereto.

H) County is an express and intended third party beneficiary of any all provisions of this Agreement that refer or relate to indemnity, defense, and insurance.

## V. MISCELLANEOUS

A) Entire Agreement - This Agreement contains the entire understanding between the parties relating to the rights created herein. All prior or contemporaneous agreements, understandings, representations, statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Only a writing signed by the parties may amend this Agreement. The Effective Date of this Agreement shall be deemed the later of the dates it is approved and signed by authorized representatives of both DISTRICT and WVWD.

B) Headings - The Article and Section Headings and Section Indexes contained in this Agreement are for reference purposes only and are not intended to govern, limit or aid the interpretation of this Agreement and shall not in any way affect the meaning of this Agreement.

C) Interpretation - Whenever the context so requires, the singular and the plural shall each be deemed to include the other, and each of the masculine, the feminine and the neuter shall be deemed to include the others.

D) Notices - Any notice, consent, approval or other communication required or permitted relative to this Agreement shall be in writing and may be personally served, in one of the following manners: delivered by over-night courier or deposited in the United States mail, first-class, certified or registered, postage prepaid, return receipt requested, addressed to such party, or electronic transmission as available, at its address shown below. Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

<b>DISTRICT:</b> San Bernardino County Flood Control District 825 East Third Street San Bernardino, CA 92415-0835	<b>WVWD:</b> West Valley Water District 855 West Baseline Road PO Box 920 Rialto, CA 92377-0920
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Any such notice, consent, approval or other communication shall be deemed received, in the case of a facsimile, on the date of sending if transmitted prior to 5:00 P.M. PST or PDT, whichever is applicable on the date of transmission; in the case of overnight mail, the next business day following the date of mailing; and, in the case of regular mail, three (3) business days after the date of deposit into the United States mail.

E) Governing Law - This Agreement shall be construed under and governed by the laws of the State of California without reference to conflicts of law.

F) Waiver - No waiver by either party of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or of any subsequent breach by the other party of the same provision.

G) Time of Essence - Time is of the essence of this Agreement and of each and every provision of the same.

H) Reference to Days - Each reference in this Agreement to days shall be deemed a reference to calendar days.

I) Other Documents - Each party agrees to sign any other and further documents and instruments as may be reasonably necessary in order to accomplish the intent of this Agreement.

J) Venue - Any action arising under, growing out of, or in any way related to this Agreement, shall be brought only in the Superior Court of the State of California, San Bernardino County, Central District, and each party hereto expressly waives its rights (whether arising by statute or otherwise) to cause any such action or proceeding to be brought elsewhere.

K) Counterparts - This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

L) Severability - If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

M) Attorney Fees and Costs - If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and reasonable attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Section II, U relating to indemnification.

N) Successors and Assigns- This Agreement shall inure to the benefit of and be binding upon the successors and assigns of both parties.

O) Electronic Signatures - This Agreement 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 Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (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 Agreement upon request.

**IN WITNESS WHEREOF**, the DISTRICT and WVWD have each caused this Agreement 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

**WEST VALLEY WATER DISTRICT**

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

By ► \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Name John Thiel  
*(Print or type name of person signing contract)*

Title General Manager  
*(Print or Type)*

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

Address 855 W. Base Line  
Rialto, CA 92376

**FOR COUNTY USE ONLY**

Approved as to Legal Form  ► _____ Sophie Curtis, Deputy County Counsel  Date _____	Reviewed for Contract Compliance  ► _____ Andy Silao, P.E., Engineering Manager  Date _____	Reviewed/Approved by District  ► _____ Noel Castillo, P.E., Chief Flood Control Engineer  Date _____
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**EXHIBIT A**

**PERMIT P-22011022**

***Attached behind this cover page***

**EXHIBIT B**

**AGENCY LETTERS**

*Attached behind this cover page*

## EXHIBIT C

### EMERGENCY CONTACT PERSONNEL

FIRST NAME	LAST NAME	TITLE	WORK NUMBER (909)	CELL NUMBER (909)	EMAIL
John	Thiel	General Manager	820-3706	(530) 545-3521	<a href="mailto:jthiel@wwwd.org">jthiel@wwwd.org</a>
Linda	Jadeski	Assistant General Manager	820-3713	644-0570	<a href="mailto:ljadeski@wwwd.org">ljadeski@wwwd.org</a>
Joanne	Chan	Operations Manager	875-1804	644-0011	<a href="mailto:jchan@wwwd.org">jchan@wwwd.org</a>
Sergio	Granda	Chief Water Systems Operator	875-1804	644-1445	<a href="mailto:sgranda@wwwd.org">sgranda@wwwd.org</a>
Lance	Drake	Lead Water Systems Operator	875-3975	543-8570	<a href="mailto:ldrake@wwwd.org">ldrake@wwwd.org</a>
Brian	Grubert	Lead Water Systems Operator	875-3975	685-8630	<a href="mailto:bgrubert@wwwd.org">bgrubert@wwwd.org</a>

## **EXHIBIT D**

### **COSTS AND BILLINGS**

- 1) Direct labor costs and labor-related costs to DISTRICT due to the spreading of WATER.**
- 2) Labor cost is determined by the salary listed in the Consolidated Memorandum of Understanding (MOU) between the County and the Teamsters Local 1932 (Teamsters).**
- 3) Actual cost (if any) to DISTRICT for materials incorporated or used in the work to spread WATER.**
- 4) Actual cost (if any) to DISTRICT for use of DISTRICT equipment, County owned equipment, and other related equipment used in additional work attributable to the spreading of WATER.**
- 5) Prevailing General and administrative overhead costs will be added to Item 1 above. DISTRICT may perform additional work related to the spreading of WATER operations activities upon receipt of written authorization at cost in accordance with this EXHIBIT D.**
- 6) Conditions of payment by WVWD to DISTRICT for these costs are as follows:**
  - i. DISTRICT shall provide monthly or quarterly invoices of monies due to the DISTRICT.**
  - ii. WVWD shall make payment to the DISTRICT within thirty (30) days after receipt of said invoice.**