



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

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

**TUESDAY, AUGUST 16, 2022 - 6:30 PM**

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

On March 4, 2020, Governor Newsom declared a State of Emergency resulting from the threat of COVID-19. On September 16, 2021, Governor Newsom signed Assembly Bill No. 361 into law. Assembly Bill No. 361 amends Government Code section 54953(e) by adding provisions for remote teleconferencing participation in meetings by members of a legislative body, without the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions. The West Valley Water District adopted a resolution determining, by majority vote, that, as a result of the declared State of Emergency, the District is adopting the State protocol which allows meetings in person and/or via teleconference. Accordingly, it has been determined that all Board and Workshop meetings of the West Valley Water District will be held pursuant to Assembly Bill No. 361, the Brown Act and will be conducted via teleconference and in person. Members of the public may listen and provide public comment via telephone by calling the following number and access code: Dial: (888) 475-4499, Access Code: 840-293-7790 or you may join the meeting using Zoom by clicking this link: <https://us02web.zoom.us/j/8402937790>. Public comment may also be submitted via email to [administration@wvwd.org](mailto:administration@wvwd.org). If you require additional assistance, please contact [administration@wvwd.org](mailto:administration@wvwd.org).

**BOARD OF DIRECTORS**

Director Young, (Chair)  
Director Garcia

- 1. CONVENE MEETING**
- 2. PUBLIC PARTICIPATION**

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

**3. DISCUSSION ITEMS**

- a. Updates to Engineering, Operations and Planning Committee.
- b. Geotechnical Services for the Cactus Avenue Pipeline Project.
- c. Professional Services for the Lord Ranch Facilities Project.
- d. Blanket Purchase Order for Cold Mix Temporary Asphalt for Backfilling.
- e. Bond Counsel for the Oliver P. Roemer Water Filtration Facility Upgrades and Expansion Project.
- f. Reallocation of Task Budget and Activation of Contingency Funds for Carollo Engineers, Inc..
- g. Nearmap License Renewal and Digital Elevation Model Agreement for our Geographic Information System.
- h. Potential Annexation Into San Bernardino Valley Municipal Water District's Service Area.

**4. ADJOURN**

**DECLARATION OF POSTING:**

**I declare under penalty of perjury, that I am employed by the West Valley Water District and posted the foregoing Engineering, Operations and Planning Committee Agenda at the District Offices on August 11, 2022.**



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**Nancy Albitre, Acting Board Secretary**



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

**DATE:** August 16, 2022  
**TO:** Engineering, Operations and Planning Committee  
**FROM:** Van Jew, Acting General Manager  
**SUBJECT:** GEOTECHNICAL SERVICES FOR THE CACTUS AVENUE PIPELINE PROJECT

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**BACKGROUND:**

The West Valley Water District (“District”) requested proposals from professional firms (“Consultant”) to provide geotechnical services for the design of a 12-inch pipeline in Cactus Avenue from James Street to Alru Street Project (“Project”). The 12-inch diameter pipeline is required to increase the hydraulic reliability of the domestic water distribution system for Pressure Zone 3A. The proposed pipeline is approximately 630 linear feet and will connect to an existing 10-inch butterfly valve (BFV) near James Street to a pipeline located on Alru Street within the right-of-way.

**DISCUSSION:**

The District received separate proposals in response to the request from four (4) Consulting firms – John R. Byerly, Incorporated (“Byerly”), Hilltop Geotechnical Incorporated (“Hilltop”), Inland Foundation Engineering, Incorporated (“IFE”), and LOR Geotechnical Group, Incorporated (“LOR”).

<b>Consultant</b>	<b>Services Cost</b>
Byerly	\$21,705.00
Hilltop	\$11,400.00
IFE	\$12,500.00
LOR	\$14,460.00

To determine the best value for the District, staff first ensured that all proposals received met the minimum requirements in the scope of work. All Consultant’s proposals offer services that will benefit the District’s needs; however, Hilltop distinguishes itself by presenting a more focused approach to its proposed service. Hilltop has successfully conducted the scope of work and provided deliverables as stated in the contract on previous projects with the District. Based on the overall review, and costs, the staff concluded that Hilltop provides the best value and interest for the District’s needs. Attached as **Exhibit A** is the District’s Professional Services Agreement, **Exhibit B** is Task Order No. 1 with Hilltop which includes the submitted proposal, and **Exhibit C** is the

project location map.

**FISCAL IMPACT:**

The cost to perform the Project as proposed by Hilltop is \$11,400.00. This item is included in the Fiscal Year 2022/23 Capital Improvement Budget under the W22011 Zone 3A – 10” pipeline in Cactus. Sufficient funds are available in the project budget to cover the cost.

**STAFF RECOMMENDATION:**

Staff recommends that the Committee forward a recommendation to the Board of Directors to authorize entering into a contract with Hilltop in the amount of \$11,400.00 for the geotechnical services for the 12-inch Pipeline in Cactus Avenue Project.

Respectfully Submitted,

*Van Jew*

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Van Jew, Acting General Manager

RMG:ls

**ATTACHMENT(S):**

1. Exhibit A - Professional Services Agreement with Hilltop
2. Exhibit B - Task Order No. 1 with Hilltop
3. Exhibit C - Project Location Map



# EXHIBIT A



# ***West Valley Water District***

***AGREEMENT FOR PROFESSIONAL SERVICES***

***With***

***Hilltop Geotechnical, Inc.***

**TABLE OF CONTENTS**

	<b>Page</b>
Section 1. Term of Agreement .....	1
Section 2. Scope and Performance of Services .....	1
Section 3. Additional Services and Changes in Services .....	3
Section 4. Familiarity with Services and Site .....	3
Section 5. Compensation and Payment .....	4
Section 6. Required Documentation prior to Performance .....	4
Section 7. Project Documents .....	5
Section 8. Consultant’s Books and Records .....	5
Section 9. Status of Consultant .....	6
Section 10. Compliance with Applicable Laws .....	7
Section 11. Conflicts of Interest.....	7
Section 12. Confidential Information; Release of Information.....	7
Section 13. Indemnification .....	8
Section 14. Insurance.....	9
Section 15. Assignment.....	9
Section 16. Termination of Agreement.....	9
Section 17. Notices .....	10
Section 18. General Provisions .....	11
Exhibit “A” Task Order	
Exhibit “B” Key Personnel	
Exhibit “C” Insurance	

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) effective as of this 18<sup>th</sup> day of August, 2022 (“Effective Date”) is by and between West Valley Water District (“District”) and Hilltop Geotechnical, Inc. (“Consultant”). The District and Consultant may be collectively referred to as the “Parties” and individually as a “Party.”

### **RECITALS**

**A.** The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Consultant shall provide certain services to District.

**NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

#### **Section 1. Term of Agreement.**

(a) Subject to subsection (b) below, the term of this Agreement will be for a period of one (1) year commencing on the Effective Date and terminating one (1) year after the Effective Date.

(b) This Agreement shall renew automatically for continuous one (1) year periods for no more than two (2) additional years, unless either Party, prior to the end of the existing one (1) year period, delivers written notice to the other Party, that the Agreement shall not be extended.

#### **Section 2. Scope and Performance of Services.**

**21** (a) District may, from time to time, by written instructions from the general manager or assistant general manager of the District (“Authorized Representative”) issue task orders (“Task Orders”) to the Consultant. The Task Order shall be in such form and content as shall be set forth on Exhibit “A” attached hereto and by this reference incorporated herein. The Task Order shall set forth: (i) the scope of services to be performed by Consultant; (ii) the compensation to be paid to Consultant; and (iii) the time to complete the Task Order. The provisions of this Agreement shall apply to all such Task Orders.

(b) For each Task Order, Consultant shall confer, as requested, with District representatives to review progress of work elements, adherence to work schedule, coordination of work, scheduling of review and resolution of problems which may develop.

**22** Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing,

vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary or proper to perform and complete the services required of Consultant under this Agreement.

- 23** Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit "B" attached hereto and by this reference incorporated herein ("Key Personnel").
- 24** Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Notwithstanding Section 3 below, in the event Consultant utilizes the services of subcontractors or sub-consultants, Consultant assumes sole and complete responsibility for the performance of the subcontractor or sub-consultant to the specifications provided hereunder for Consultant's work, and no adjustment will be made to Consultant's requirements under this Agreement for timely completion of services, complete performance of services, or delivery of products or deliverables in a timely fashion, and no adjustment will be made to performance deadlines, or compensation due to Consultant, due to or arising from issues Consultant may have with any subcontractor or sub-consultant. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

Consultant warrants it will perform its engineering and design under the Task Order, as more particularly described in Exhibit A ("Task Order") in accordance with the current standards of care and diligence normally practiced by recognized engineering and design firms in performing services of a similar nature. Further, Consultant warrants that the engineering and design performed has been performed in accordance with the then current standards of care and diligence normally practiced by recognized engineering and design firms in performing services of a similar nature. If within one (1) year after substantial completion of the engineering and design work it is shown that there is an error in that work as a result of the Consultant's failure to meet those standards and the District has notified the Consultant in writing of any such error within that period, Consultant shall re-perform such engineering and design work within the original scope of such services, as may be necessary to remedy such error. All costs incurred by Consultant in performing such corrective services shall be the sole responsibility of the Consultant and such costs shall not be reimbursable in any way.

**Section 3. Additional Services and Changes in Services**

- 3.1** Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Task Orders, unless such additional services are authorized in advance and in writing by District.
- 3.2** If Consultant believes that additional services are needed to complete a Task Order, Consultant will provide the Authorized Representative with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.
- 3.3** District may order changes to a Task Order, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and District. The cost or credit to District resulting from changes in a Task Order will be determined by the written agreement between the Parties.

**Section 4. Familiarity with Services and Site.**

- 41** By executing this Agreement, Consultant warrants that Consultant shall, prior to undertaking a Task Order:
- (a) investigate and consider the services to be performed;
  - (b) carefully consider how and within what time frame the services should be performed;
  - (c) understand the facilities, difficulties, and restrictions attending performance of the services under a Task Order; and
  - (d) possesses all licenses required under local, state or federal law to perform the services contemplated by a Task Order, and maintain all required licenses during the performance of such TaskOrder.
- 42** If services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and will be fully acquainted with the conditions there existing, before commencing its services under a Task Order. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform District of such fact and will not proceed except at Consultant's own risk until written instructions are received from the District.

**Section 5. Compensation and Payment.**

- 5.1** Subject to any limitations set forth in this Agreement, District agrees to pay Consultant the amounts shown in a Task Order.
- 5.2** Each month during the existence of a Task Order, Consultant shall furnish District with an original invoice for all services performed and expenses incurred during the preceding month in accordance with the fee schedule set forth in the Task Order. The invoice must detail charges by the following categories: labor (by subcategory), reimbursable costs, subcontractor contracts and miscellaneous expenses. The invoice must list, as applicable, the hours worked and hourly rates for each personnel category, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, and the total cost of the services.
- 5.3** District will independently review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid. In the event any charges or expenses are disputed by District, the original invoice will be returned by District to Consultant for correction and resubmission.
- 5.4** Except as to any charges for work performed or expenses incurred by Consultant that are disputed by District, District will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's invoice.
- 5.5** No payment or partial payment to Consultant shall constitute acceptance of any work completed by Consultant or waive any claims by the District for any reason whatsoever.

**Section 6. Required Documentation Prior to Performance.**

- 61** Consultant will not perform any services under this Agreement until:
- (a) Consultant furnishes proof of insurance ("Insurance") as required under Exhibit "C" attached hereto and by this reference incorporated herein; and
  - (b) Consultant provides District with a Taxpayer Identification Number.
- 62** The District will have no obligation to pay for any services rendered by Consultant in advance of receiving written authorization to proceed for each Task Order, and Consultant acknowledges that any such services are at Consultant's own risk.

**Section 7. Project Documents.**

- 7.1 All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer programs, files and other documents (collectively, "Project Documents") prepared, developed or discovered by Consultant in the course of providing services under this Agreement will become the sole property of District and may be used, reused or otherwise disposed of by District without the permission of Consultant. Consultant will take such steps as are necessary to perfect or protect the ownership interest of District in such Project Documents. Upon completion, expiration or termination of this Agreement, Consultant shall turn over to District all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents.
- 7.2 Except as necessary for the performance of services under this Agreement, no Project Documents prepared under this Agreement, will be released by Consultant to any other person or entity without District's prior written approval. All press releases, including graphic display information to be published, must be approved and distributed solely by District, unless otherwise agreed to in writing by District.

**Section 8. Consultant's Books and Records.**

- 8.1 Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of services under this Agreement. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to District under this Agreement. Any and all such documents or records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant under this Agreement. Any and all such documents or records must be maintained for three (3) years following the final payment for each Task Order.
- 8.2 Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by District or its designated representatives. Copies of such documents or records must be provided directly to District for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Consultant's address indicated for receipt of notices in this Agreement.



- 83** Where District has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, District may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such documents and records thereafter be maintained by such person or entity at Consultant's expense. Access to such documents and records shall be granted to District, as well as to its successors-in-interest and authorized representatives.

**Section 9. Status of Consultant.**

- 91** Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of District. Consultant has no authority to bind District in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against District, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by District.
- 92** The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither District, nor any elected or appointed boards, officers, officials, employees or agents of District, will have control over the conduct of Consultant or any of Consultant's officers, subcontractors or sub-consultants, employees or agents, except as provided in this Agreement. Consultant warrants that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of District.
- 93** Neither Consultant, nor any of Consultant's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to District's employees. Consultant expressly waives any claim to any such rights or benefits.

**Section 10. Compliance with Applicable Laws.**

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement.

### **Section 11. Conflicts of Interest.**

Consultant covenants that neither Consultant, nor any officer, principal nor employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of District or that would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that neither Consultant, nor any officer, principal or employee of its firm will make, participate in the making, or in any way attempt to use the position of Consultant to influence any decision of the District in which Consultant knows or has reason to know that Consultant, or any officer, principal or employee of Consultant has a financial interest as defined in Government Code section 87103.

### **Section 12. Confidential Information: Release of Information.**

- 121** All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential to the full extent permitted by law, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than District without prior written authorization from an Authorized Representative, except as may be required by law.
- 122** Consultant, its officers, employees, or agents, shall not, without prior written authorization from an Authorized Representative or unless requested by the District counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order will not be considered "voluntary" provided Consultant gives District notice of such court order or subpoena.
- 123** If Consultant, or any officer, employee, or agent of Consultant, provides any information or work product (including Project Documents) in violation of this Agreement, then District shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys' fees related to any unauthorized disclosure by consultant or, caused by or incurred as a result of Consultant's conduct.
- 124** Consultant shall promptly notify District should, Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. District retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with District and to provide District with the opportunity to review any response to discovery requests provided by

Consultant. However, this right to review any such response does not imply or mean the right by District to control, direct, or rewrite such response.

### **Section 13. Indemnification.**

Consultant covenants and agrees that, during the term of this Agreement, any injury suffered as a result of Consultant's services shall be the sole responsibility of Consultant and its successors and assigns and District shall not be liable to Consultant, or any other person or persons whatsoever for any such injury, loss or damage to persons or property unless caused by the negligence or intentional acts of District or its Representatives (as solely defined below). Consultant shall defend, indemnify and hold District, its officers, directors and Representatives ("District Indemnitees") harmless from and against any and all claims, costs, liabilities, debts, demands, suits, actions, causes of action, obligations, proceedings, damages, judgments, liens and expenses of whatever nature, including attorneys' fees and disbursements (collectively, "Claims") which may be made against the District Indemnitees arising out of or in connection with (a) the retention by District of Consultant's services; (b) the performance of or failure to perform, the work covered by this Agreement which is caused or occasioned by any act, action, neglect on the part of Consultant, or its Representatives, in the performance of this Agreement and the work to be done under this Agreement; (c) the death and/or injury to any person or damage to any property (real or personal) and/or economic loss which may be caused or is claimed to have been caused, by the negligence, act or omission of Consultant or its Representatives or its or their property; (d) any violation or alleged violation by Consultant of any law or regulation now or hereafter enacted; and (e) any breach by Consultant of its obligations under this Agreement. The foregoing indemnity shall not apply to the extent any such Claims are ultimately established by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of the District Indemnitees or any of them. District shall make all decisions with respect to its representation in any legal proceeding concerning this section. If Consultant fails to do so, District shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental Claims of such defense, including attorneys' fees and costs, to Consultant and to recover the same from Consultant. The term "Representatives" shall mean employees, representatives, agents, contractors, subcontractors or any other persons directly or indirectly employed by any one of the foregoing or reasonably under the control of any of the foregoing or for whose acts any of the foregoing may be liable.

### **Section 14. Insurance.**

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the Insurance coverages listed in Exhibit "C." All Insurance policies

shall be subject to approval by District as to form and content. These requirements are subject to amendment or waiver if so approved in writing by an Authorized Representative.

### **Section 15. Assignment.**

- 151** The expertise and experience of Consultant are material considerations for this Agreement. District has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of District. The District can withhold its approval/consent in its sole and absolute discretion. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling District to any and all remedies at law or in equity, including summary termination of this Agreement.
- 152** Consultant must obtain District's prior written approval before utilizing any subcontractors to perform any services under this Agreement, which approval may be withheld in District's sole and absolute discretion. This written approval must include the identity of the subcontractor and the terms of compensation. Approval by District does not imply any agreement to or endorsement by the District as to the competency or capability of any proposed subcontractor or sub-consultant, and District reserves any and all rights against both Consultant and such subcontractor or sub-consultant, for any failure to perform or other breach of any of the provisions of this Agreement, or the standards of performance defined herein, and no waiver is intended or to be implied by District's approval of any subcontractor or sub-consultant.

### **Section 16. Termination of Agreement.**

- 161** District may terminate this Agreement, with or without cause, at any time by written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.
- 162** Upon termination of this Agreement, all property belonging exclusively to District which is in Consultant's possession must be returned to District. Consultant shall promptly deliver to District a final invoice for all outstanding services performed and expenses incurred by Consultant as of the date of termination. Compensation for work in progress not based on an hourly rate will be prorated based on the percentage of work completed as of the date of termination.

- 163** Consultant acknowledges District's right to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from District's termination of this Agreement.

**Section 17. Notices.**

- 17.1** All written notices required or permitted to be given under this Agreement will be deemed made when received by the other Party at its respective address as follows:

To District:                West Valley Water District  
                                      855 West Base Line Road  
                                      P. O. Box 920  
                                      Rialto, CA 92377  
                                      Attention: Van M. Jew  
                                      Acting General Manager

(Tel.) 909-875-1804  
 (Fax) 909-875-1849

To Consultant:            Hilltop Geotechnical Inc.  
                                      786 S. Gifford Avenue.  
                                      San Bernardino, CA92408  
                                      Attention: Shaofu M. Chen, Principal Engineer/Geologist

(Tel.) (909) 890-9079 ext. 112

**\*\* Please send all invoices by:**

**Email: [apinvoices@wvwd.org](mailto:apinvoices@wvwd.org)**

*or*

*Mail: West Valley Water District  
 Accounts Payable  
 P.O. Box 190  
 Rialto, CA 92377*

- 17.2** Notice will be deemed effective on the date personally delivered or transmitted by facsimile. If the notice is mailed, notice will be deemed given three (3) days after deposit of the same in the custody of the United States

Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.

- 17.3 Any Party may change its notice information by giving notice to the other Party in compliance with this section.

## Section 18. General Provisions.

- 181 **Authority to Execute.** Each Party represents and warrants that all necessary action has been taken by such Party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder.
- 182 **Binding Effect.** Subject to Section 15, this Agreement is binding upon the heirs, executors, administrators, successors and assigns of the Parties, including any subcontractors or sub-consultants of Consultant.
- 183 **Entire Agreement.** This Agreement, including the attached Exhibits "A" through "C," is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and District prior to the execution of this Agreement.
- 184 **Modification of Agreement.** No amendment to or modification of this Agreement will be valid unless made in writing and approved by Consultant and approved in writing by the Board of Directors of the District, or in writing by the General Manager, if such power has been delegated to General Manager. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.
- 185 **Facsimile Signatures.** Amendments to this Agreement will be considered executed when the signature of a Party is delivered by facsimile transmission. Such facsimile signature will have the same effect as an original signature.
- 186 **Waiver.** Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by District of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.
- 187 **Interpretation.** This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each Party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its

fair meaning, and without resort to rules regarding draftsmanship. It will not be interpreted strictly for or against either Party.

- 188 Severability.** If any provision of this Agreement shall be ruled invalid, illegal or unenforceable, the Parties shall: (a) promptly negotiate a substitute for the provisions which shall to the greatest extent legally permissible, effect the intent of the Parties in the invalid, illegal or unenforceable provision, and (b) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with subsection (a) above to give effect to the intent of the Parties without the invalid, illegal or unenforceable provision. To the extent the Parties are unable to negotiate such changes, substitutions or additions as set forth in the preceding sentence, and the intent of the Parties with respect to the essential terms of the Agreement may be carried out without the invalid, illegal or unenforceable provisions, the balance of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if the invalid, illegal or unenforceable provisions did not exist.
- 189 Venue.** The Parties agree any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal court located in Riverside County, California or state court located in San Bernardino County, California and the Parties hereto consent to the exercise of personal jurisdiction over them by such courts for purposes of any such action or proceeding.
- 1810 Disputes.** If any disputes should arise between the Parties concerning the work to be done under this Agreement, the payments to be made, or the manner of accomplishment of the work, Consultant shall nevertheless proceed to perform the work as directed by District pending settlement of the dispute.
- 1811 Cooperation.** Consultant shall cooperate in the performance of work with District and all other agents.
- 1812 Time of Essence.** Time shall be of the essence as to all dates and times of performance contained in this Agreement.
- 1813 Counterparts.** This Agreement may be signed and delivered in any number of counter parts, each of which, when signed and delivered, shall be an original, but all of which shall together constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed effective as of the day and year first above written.

**DISTRICT:**

**WEST VALLEY WATER DISTRICT,  
a public agency of the State of California**

By \_\_\_\_\_  
Channing Hawkins, President

By \_\_\_\_\_  
Van M. Jew, Acting General Manager

By \_\_\_\_\_  
Board Secretary

**APPROVED AS TO FORM:**

**TAFOYA LAW GROUP, APC**

By \_\_\_\_\_  
Robert Tafoya

**CONSULTANT:**

Hilltop Geotechnical, Inc.

By \_\_\_\_\_

Name \_\_\_\_\_

Its \_\_\_\_\_



**EXHIBIT A**  
**TASK ORDER**

**SAMPLE**

**TASK ORDER NO. 1**

This Task Order ("Task Order") is executed this \_\_\_ day of \_\_\_\_\_, 2022 by and between West Valley Water District, a public agency of the State of California ("District") and \_\_\_\_\_ ("Consultant").

**RECITALS**

- A. On or about \_\_\_\_\_, 2022 District and Consultant executed that certain Agreement for Professional Services ("Agreement").
- B. The Agreement provides that the District will issue Task Orders from time to time, for the provision of certain services by Consultant.
- C. Pursuant to the Agreement, District and Consultant desire to enter into this Task Order for the purpose of setting forth the terms and conditions upon which Consultant shall render certain services to the District.

**NOW, THEREFORE, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:**

1. Consultant agrees to perform the services set forth on Exhibit "1" attached hereto and by this reference incorporated herein.
2. Subject to any limitations in the Agreement, District shall pay to Consultant the amounts specified in Exhibit "2" attached hereto and by this reference incorporated herein. The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit "2," unless additional compensation is approved in writing by the District.
3. Consultant shall perform the services described in Exhibit "1" in accordance with the schedule set forth in Exhibit "3" attached hereto and by this reference incorporated herein. Consultant shall commence work immediately upon receipt of a notice to proceed from the District. District will have no obligation to pay for any services rendered by Consultant in advance of receipt of the notice to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.
4. The provisions of the Agreement shall apply to this Task Order. As such, the terms and conditions of the Agreement are hereby incorporated herein by this reference.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Task Order to be executed effective as of the day and year first above written.

**DISTRICT:**

**WEST VALLEY WATER DISTRICT,  
a public agency of the State of California**

\_\_\_\_\_  
Van M. Jew, Acting General Manager

\_\_\_\_\_  
Board Secretary

**CONSULTANT:**

**Vendor Name Here** \_\_\_\_\_

By \_\_\_\_\_

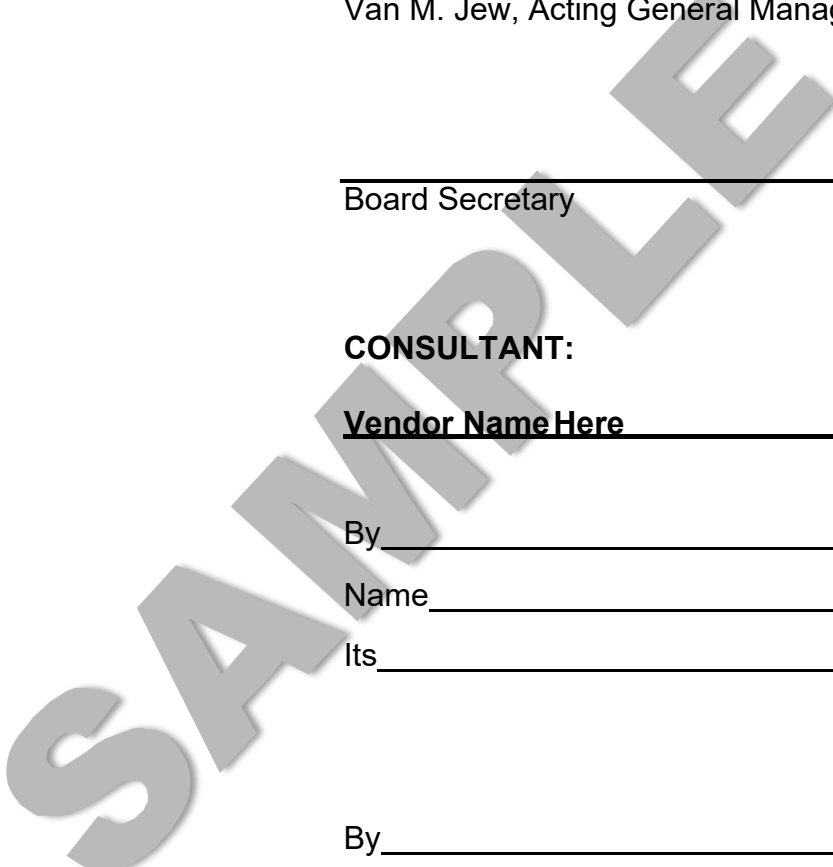
Name \_\_\_\_\_

Its \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Its \_\_\_\_\_



**EXHIBIT "1"**  
**TO**  
**TASK ORDER NO. 1**

**SCOPE OF SERVICES**

**SAMPLE**

EXHIBIT "2"  
TO  
TASK ORDER NO. 1  
COMPENSATION

SAMPLE

**EXHIBIT "3"**  
**TO**  
**TASK ORDER NO. 1**  
**SCHEDULE**

**SAMPLE**

**EXHIBIT B**  
**KEY PERSONNEL**

**KEY PERSONNEL**

1. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are:

Shaofu M. Chen, Principal Engineer/Geologist



**EXHIBIT C**  
**INSURANCE**

### INSURANCE

**A. General Requirements.** Before commencing the performance of services under this Agreement, and at all other times this Agreement is effective, Consultant must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial General Liability:	\$1,000,000
Business Automobile Liability	\$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Requirement

**B. Commercial General Liability Insurance.** The amount of insurance set forth above must be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. The insurance must be on an “occurrence” not a “claims made” basis.

**C. Business Automobile Insurance.** Automobile coverage must be written on forms subject to the written approval of District.

**D. Professional Liability Insurance.** This coverage must be on an “occurrence” basis, including coverage for contractual liability. The Professional Liability Insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement.

**E. Workers Compensation.** Consultant must have a State of California approved policy form providing the statutory benefits required by law with employer’s liability limits of no less than \$1,000,000 per accident for all covered losses, or Consultant must provide evidence of an approved self-insurance program.

**F. Additional Insureds.** Each Commercial General Liability Insurance policy and Business Auto Insurance policy must provide that the District, its officials, officers, employees, agents and volunteers are “additional insureds” under the terms of the policy, and must provide that an act or omission of one the insureds will not reduce or avoid coverage to the other insureds.

**G. Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by District. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by District in its sole discretion. At the option of District, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the District’s additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.

- H. Primary Insurance.** Each of the insurance policies maintained by Consultant under this Agreement must state that such insurance will be deemed “primary” so that any insurance that may be carried by District will be deemed excess to that of Consultant. This endorsement must be reflected on forms as determined by District.
- I. Certificates of Insurance and Endorsements.** Prior to commencing any services under this Agreement, Consultant must file with the District certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or copies of policies as may reasonably be required by District. These certificates of insurance and endorsements must be in a form approved by the Legal Counsel. Consultant must maintain current certificates and endorsements on file with District during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no material change in the policy, or termination thereof, will be effective except upon 30 days’ prior written notice to District by certified mail, return receipt requested. The delivery to District of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the District’s right to require compliance.
- J. Insurance Rating.** All insurance required to be maintained by Consultant under this Agreement must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best’s Key Rating Guide.
- K. Aggregate Limits.** The aggregate limits for each insurance policy required under this Agreement must apply separately and solely to the services performed under this Agreement. If the required policies do not have an endorsement providing that the aggregate limit applies separately to the services being performed, or if defense costs are included in the aggregate limit, then the required aggregate limits must be increased to an amount satisfactory to District.
- L. Waiver of Subrogation Rights.** Consultant and each insurer providing any insurance required by this Agreement must waive all rights of subrogation against District, its officials, officers, employees, agents and volunteers, and each insurer must issue a certificate to the District evidencing this waiver of subrogation rights.
- M. Failure to Maintain Required Insurance.** If Consultant, for any reason, fails to obtain and maintain the insurance required by this Agreement, District may obtain such coverage at Consultant’s expense and deduct the cost of such insurance from payments due to Consultant under this Agreement or may terminate the Agreement.
- N. Effect of Coverage.** The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy or limit Consultant’s indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Any insurance proceeds available to District

in excess of the limits and coverage required by this Agreement, and which is applicable to a given loss, must be made available to District to compensate it for such losses.

# EXHIBIT B

## TASK ORDER NO. 1

### Geotechnical Services for the 12-inch Pipeline in Cactus Avenue

This Task Order (“Task Order”) is executed this 18<sup>th</sup> day of August, 2022, by and between West Valley Water District, a public agency of the State of California (“District”) and Hilltop Geotechnical, Inc. (“Consultant”).

### RECITALS

- A. On or about August 18<sup>th</sup>, 2022, District and Consultant executed that certain Agreement for Professional Services (“Agreement”).
- B. The Agreement provides that the District will issue Task Orders from time to time, for the provision of certain services by Consultant.
- C. Pursuant to the Agreement, District and Consultant desire to enter this Task Order for the purpose of setting forth the terms and conditions upon which Consultant shall render certain services to the District.

### **NOW, THEREFORE, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:**

1. Consultant agrees to perform the services set forth on Exhibit “1” attached hereto and by this reference incorporated herein.
2. Subject to any limitations in the Agreement, District shall pay to Consultant the amounts specified in Exhibit “2” attached hereto and by this reference incorporated herein. The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit “2,” unless additional compensation is approved in writing by the District.
3. Consultant shall perform the services described in Exhibit “1” in accordance with the schedule set forth in Exhibit “3” attached hereto and by this reference incorporated herein. Consultant shall commence work immediately upon receipt of a notice to proceed from the District. The district will have no obligation to pay for any services rendered by Consultant in advance of receipt of the notice to proceed, and Consultant acknowledges that any such services are at Consultant’s own risk.
4. The provisions of the Agreement shall apply to this Task Order. As such, the terms and conditions of the Agreement are hereby incorporated herein by this reference.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have caused this Task Order to be executed effective as of the day and year first above written.

**DISTRICT:**

**WEST VALLEY WATER DISTRICT,  
a public agency of the State of California**

By \_\_\_\_\_  
Van M. Jew, Acting General Manager

By \_\_\_\_\_  
Board Secretary

**CONSULTANT:**

**Hilltop Geotechnical, Inc.**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT "1"**  
**TO**  
**TASK ORDER NO. 1**  
**SCOPE OF SERVICES**

Geotechnical Services per the attached proposal dated July 15, 2022





**HILLTOP GEOTECHNICAL**  
INCORPORATED

786 S. GIFFORD AVENUE • SAN BERNARDINO • CA 92408  
Phone **909-890-9079** • FAX 909-890-9055  
hilltopg@hgeotech.com

July 15, 2022

**West Valley Water District**  
855 W. Base Line Road  
P.O. Box 920  
Rialto, CA 92377

Proposal P22228

Attention: Mr. Rene Gabaldon

**Subject: Proposal for Engineering Services, Preliminary Geotechnical Investigation for the Proposed New DIP in S. Cactus Avenue in the City of Rialto.**

In accordance with your request, we are pleased to submit this proposal and attached 'Professional Service Agreement for Engineering Services' which combined set forth both our responsibilities and the scope of our services for the subject project.

It is our understanding that you intend to construct a new DIP in S. Cactus Avenue in the City of Rialto. Per your request, we are providing this proposal for subsurface soil investigations for the proposed development. In general, the purpose of the proposed geotechnical study will be to provide preliminary site preparation, excavation, pipe bedding and trench backfill, and ground surface repair pavement to assist in project planning and development.

### **SCOPE OF SERVICE**

The scope of our geotechnical investigation will consist of surface reconnaissance, geological mapping, subsurface exploration, obtaining representative soil samples, laboratory testing, geotechnical engineering analysis of field and laboratory data, and review of relevant geological literature. Our geotechnical investigation will be included in the following scope of services:

- 1) Obtain all necessary permits from the City of Rialto to work in the street including traffic control.
- 2) Drill four borings via a drill rig below the proposed ground surface and repave areas.

- 3) Lab test for moisture content, in-place density, sand equivalent, direct shear, and corrosion analysis.
- 4) Evaluate the data and formulate recommendations for the water main.
- 5) Prepare preliminary soil investigation report for the project.

### ESTIMATE OF CHARGES

We estimate that the geotechnical investigation for the subject site will incur a cost of **\$11,400.00**. This estimate is based upon the above-described scope of services. All prices therein are subject to variation, and should the scope or our services materially change, we reserve the right to review and resubmit a new proposal. The above estimated cost will not be exceeded without your prior approval. However, after completion of our work, all meetings with you and/or other consultants, agency contact, responses to agency reviews, additional plan reviews, and consultation beyond the above-described scope of services, will be billed as additional services on a time and cost basis in accordance with our current Schedule of Fees at the time the services are performed.

To cover our initial expenses, please submit one half or 50% of the estimated cost or **\$5,700.00** as a retainer. The remainder of our charges will be invoiced at time of completion and will become due at that time. It is anticipated that the Geotechnical report will be available approximately four (4) to six (6) weeks from the time of field testing.

If this proposal meets with your approval, please authorize our service by signing that attached Professional Service Agreement and return one (1) copy of the proposal and agreement to this office, along with your payment for retainer.

We appreciate the opportunity of providing the above-described professional services on this project.

Respectfully submitted,  
**Hilltop Geotechnical, Inc.**



Shaofu Chen  
Principal Engineer

Attachment: 'Professional Service Agreement for Engineering Services.'

Distribution: (1) Addressee Via Email  
C/O Mr. Rene Gabaldon  
([rgabaldon@wvwd.org](mailto:rgabaldon@wvwd.org))

HILLTOP GEOTECHNICAL, INC.

## PROFESSIONAL SERVICE AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT is made and entered into in Rialto, California, by and between Hilltop Geotechnical, Inc. hereinafter referred to as "Consultant", and West Valley Water District hereinafter referred to as "Client."

Now, therefore, in consideration of the terms and conditions hereinafter set forth, the parties hereto agree as follows:

### 1) **Cooperation and Project Understanding**

- (a) Consultant will render professional services, as set out herein, and Client will compensate Consultant in accordance with a Letter of Proposal-P22228, dated July 15, 2022, hereto and incorporated into this Agreement.
- (b) Consultant shall serve Client by providing professional technical advice regarding the geotechnical conditions of the Project site. All such advice will be based on information furnished by Client and on data collected by Consultant.
- (c) Client will make available to Consultant all relevant information in its possession regarding existing and proposed conditions of the Project site. This information shall include if applicable, but not be limited to, plot plans, topographic surveys, and previous soil data including borings, field and laboratory tests, and written reports. Client will immediately transmit to Consultant any new and relevant information which becomes available and any relevant change in plans.
- (d) Consultant shall not be responsible for any incorrect advice, judgment, or decision based on any inaccurate information furnished by Client, and Client will indemnify Consultant against all claims, demands, or liability arising out of or contributed to by such information.
- (e) No warranty of any kind whatsoever, expressed, or implied, is made or intended in connection with the Scope of Services to be performed by Consultant or by the proposal for consulting or other services or by the furnishing of oral or written reports or findings made by Consultant, other than as provided in Section 2, herein.

### 2) **Professional Standard**

Client recognizes the inherent risks associated with the construction of improvements to real property. Client further recognizes that subsurface conditions may vary from those encountered at the locations where Consultant's borings, surveys and explorations are made, and that Consultant's data, interpretations, and recommendations are based solely on the information obtained by Consultant.

Consultant's services consist of professional and technical advice and observation only. Consultant will be responsible only for its own data, interpretations, and recommendations, but shall not be responsible for the interpretations by others of the information developed. In the performance of its professional services, Consultant will proceed with work diligently with competent personnel and will comply with that level of care and skill ordinarily exercised by reputable geotechnical engineers and/or engineering geologists and soils engineers currently practicing under similar conditions in the same or similar localities. No warranty of any kind whatsoever, expressed, or implied, is made or intended by Consultant, its employees or agents, in connection with the services provided under this Agreement.

### 3) **Definition of Responsibility**

The presence of Consultant's field personnel at the Project site will be for the sole purpose of obtaining data and providing observation and field testing. Consultant's work specifically does not include supervision or direction of the work of any contractor or its employees or agents, and Client shall so advise all Project contractors, the work of which may in any way relate to or be affected by Consultant's findings or observations. Client shall also inform all such contractors that neither the presence of nor the observation and testing by Consultant's field personnel shall in any way or to any degree excuse them or their employees or agents for defects discovered in their work, either during or after completion of construction. It is further understood that Consultant will not in any way or to any degree be responsible for general safety on the job or for the safety of any equipment or individuals on the Project site.

### 4) **Ownership of Documents**

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimated, and other documents prepared by Consultant, as instruments of service, shall remain the property of Consultant. Client agrees that all reports and other work furnished to Client or his agents, which is not paid for, will be returned upon demand, and will not be used by Client for any purpose whatsoever. Consultant will retain all pertinent records relating to the services performed for a period of five years following submission of the report, during which period the records will be made available to the Client at all reasonable times.

5) **Safety**

Consultant will not be responsible for the general safety on the job or the safety of any equipment or individuals on the Project site other than its own personnel and the equipment under its direction.

6) **Unanticipated Hazardous Materials**

a) **Notification of Hazardous Materials** When hazardous materials are known, assumed, or suspected to exist at a site, Consultant is required to take appropriate precautions to protect the health and safety of his personnel, to comply with applicable laws and regulations, and to follow procedures that Consultant deems prudent to minimize physical risks to employees and the public. Client warrants that he has done his best to inform Consultant of such known or suspected hazardous material's type, quantity, and location.

b) **Discovery of Hazardous Materials** If during the performance of services, Consultant discovers the existence of unanticipated hazardous materials or should any other condition exist which is unsafe in Consultant's sole opinion, Consultant may at its option, and without liability therefor terminate further work on the project and shall notify Client of Consultant's decision and the reason for termination of work.

7) **Delay**

Consultant will be excused for any delay in completion of this Agreement caused by acts of God, acts of Client or Client's employees or agents, inclement weather, labor trouble, acts of public utilities, public bodies or inspectors, extra work, failure of Client to make payments promptly, or other contingencies unforeseen by Consultant and beyond the reasonable control of Consultant.

8) **Termination of Agreement**

In the event either party desires to terminate this Contract prior to completion of the Project, written notification of such intention to terminate must be tendered to the other party. In the event that Client notifies Consultant of such intention to terminate Consultant's services prior to completion, Consultant reserves the right to restore to its original state any dangerous condition created by it and to complete such analysis and records as are necessary to place files in order, to dispose of samples, put equipment in order, and where considered necessary to protect its professional reputation, to complete a report on the work performed to date. If Consultant incurs cost in Client's termination of this Agreement, a termination charge to cover such cost shall be paid by Client.

In the absence of notification of termination, this Agreement shall continue in full force and effect until such time as Consultant has completed its services.

9) **No Third-Party Beneficiaries**

This Agreement is entered into solely for the benefit of Client and Consultant and in no way is intended to benefit or extend any right or interest to any third party. It is the intention of Client and Consultant that they are the sole beneficiaries to the rights and obligations arising here from, and any benefit to be derived by any third party is merely incidental to and unintended by the Agreement.

10) **Merger Clause**

This Agreement, including the attached incorporated proposal, constitutes a final, complete, and total integration of any and all understandings between the parties. Any subsequent change, alteration, addition, or modification must be mutually agreed upon, in writing, and signed by both parties.

11) **Notices**

Any notice required or permitted under this Agreement may be given by ordinary mail at the address contained in this Agreement, but such address may be changed by written notices given by one party to the other from time to time. Notice shall be deemed received in the ordinary course of the mail.

12) **Assignments**

The rights and obligations of either party to this Agreement shall not be assigned nor otherwise transferred without the prior written consent of the other party. Subject to the foregoing, each party to this Agreement, where applicable, binds itself, its partners, successors, executors, administrators, and assigns with respect to all covenants, conditions, and promises of this Agreement.

13) **Individual Responsibility**

If Client is a corporation, the individual or individuals who sign this Agreement on behalf of Client warrant that they are duly authorized agents of the Client.

14) **Invoices**

(a) Consultant will submit progress invoices to Client and a final bill upon completion of services. Invoices will show charges for different personnel and expense classifications.

(b) Payment is due upon presentation of invoice and is past due 30 days from invoice date. Client agrees to pay interest of one and a half percent (1.5%) per month, not to exceed the maximum rate allowed by law, on past due accounts. The amount of interest will be calculated on any unpaid balance commencing thirty (30) days after the date of the original invoice.

15) **Previous Consultant Fees**

Client agrees that any previous Consultant retained to perform professional services that are the same or related to those for which this Agreement has been entered has been or will be promptly paid in full by Client. Client shall obtain full rights to use previous Consultant's work product, if same is to be used by Consultant.

16) **Invalid Provisions**

If any provision, in whole or in part, of this Agreement should be in violation of any law or ordinance, it shall not invalidate this Agreement, and any such provision shall be deemed stricken from this Agreement.

IN WITNESS WHEREOF, the undersigned have executed the Agreement as of \_\_\_\_\_

Date.

BY: \_\_\_\_\_

BY: \_\_\_\_\_ 

PRINTED NAME: \_\_\_\_\_

PRINTED NAME: Shaofu Chen

TITLE: \_\_\_\_\_

TITLE: Principal Engineer

**EXHIBIT "2" TO  
TASK ORDER NO. 1  
COMPENSATION**

The fee estimated for Geotechnical Services for the 12" Pipeline in Cactus Avenue is **\$11,400.00.**

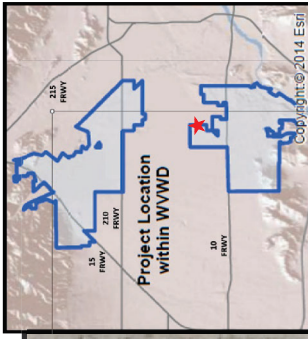
<b>TASK</b>	<b>DESCRIPTION</b>	<b>COST</b>
Task 1 – Permits	Obtain all necessary permits from the City of Rialto to work in the street, including traffic control	
Task 2 – Boring	Drill four borings via a drill rig below the proposed ground surface and repave areas	
Task 3 – Lab Test	The lab will test for moisture content, in-place density, sand equivalent, direct shear, and corrosion analysis	
Task 4 – Report	Prepare soil investigation report. Evaluate the data from the lab results and formulate recommendations for the water main	
	<b>Total Cost</b>	<b>\$11,400.00</b>

**EXHIBIT "3"**  
**TO**  
**TASK ORDER NO. 1**  
**SCHEDULE**

Schedule to be determined by District Staff.

# EXHIBIT C

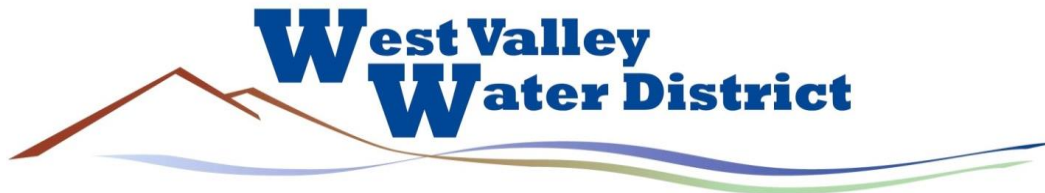




**EXHIBIT C**  
**12" CACTUS AVENUE PIPELINE PROJECT**



3.b.c



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

**DATE:** August 16, 2022  
**TO:** Engineering, Operations and Planning Committee  
**FROM:** Van Jew, Acting General Manager  
**SUBJECT:** PROFESSIONAL SERVICES FOR THE LORD RANCH FACILITIES PROJECT

---

**BACKGROUND:**

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

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

**DISCUSSION:**

The District previously awarded an agreement with Engineering Resources of Southern California, Inc. (“ERSC”) for the Design of R3-5, PS4-3, and Site Improvements. As an amendment to the original scope of work, ERSC submitted a proposal for additional services for the Lord Ranch Facilities bidding phase. The additional services include assisting Staff in answering/addressing questions by bidders, responding to RFIs, miscellaneous coordination, and preparing addendums which may require modifications to the current drawings, and specifications. Attached as **Exhibit A** is a copy of Task Order No. 2 which includes the proposal received by ERSC to cover the cost for the additional work.

**FISCAL IMPACT:**

The cost to perform the additional professional services for the Site as proposed by ERSC in a not to exceed amount is \$15,300.00. This item is included in the Fiscal Year 2022/23 Capital Improvement Budget under the W15006 Lord Ranch Facilities Grading and Site Work Project.

Sufficient funds are available in the project budget to cover the cost of Task Order No. 2.

**STAFF RECOMMENDATION:**

Staff recommends that the Committee forward a recommendation to the Board of Directors to authorize entering into a contract with ERSC in the amount of \$15,300.00 for the Lord Ranch Facilities Project.

Respectfully Submitted,

*Van Jew*

---

Van Jew, Acting General Manager

RMG:ls

**ATTACHMENT(S):**

1. Exhibit A - Task Order No. 2 for Lord Ranch Facilities with ERSC

# EXHIBIT A

## TASK ORDER NO. 2

### Professional Services for Lord Ranch Facilities Bidding Phase

This Task Order ("Task Order") is executed this 18<sup>th</sup> day of August, 2022, by and between West Valley Water District, a public agency of the State of California ("District") and Engineering Resources of Southern California, Inc. ("Consultant").

### RECITALS

- A. On or about June 16<sup>th</sup>, 2022, District and Consultant executed that certain Agreement for Professional Services ("Agreement").
- B. The Agreement provides that the District will issue Task Orders from time to time, for the provision of certain services by Consultant.
- C. Pursuant to the Agreement, District and Consultant desire to enter into this Task Order for the purpose of setting forth the terms and conditions upon which Consultant shall render certain services to the District.

### **NOW, THEREFORE, THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:**

1. Consultant agrees to perform the services set forth on Exhibit "1" attached hereto and by this reference incorporated herein.
2. Subject to any limitations in the Agreement, District shall pay to Consultant the amounts specified in Exhibit "2" attached hereto and by this reference incorporated herein. The total compensation, including reimbursement for actual expenses, may not exceed the amount set forth in Exhibit "2," unless additional compensation is approved in writing by the District.
3. Consultant shall perform the services described in Exhibit "1" in accordance with the schedule set forth in Exhibit "3" attached hereto and by this reference incorporated herein. Consultant shall commence work immediately upon receipt of a notice to proceed from the District. District will have no obligation to pay for any services rendered by Consultant in advance of receipt of the notice to proceed, and Consultant acknowledges that any such services are at Consultant's own risk.
4. The provisions of the Agreement shall apply to this Task Order. As such, the terms and conditions of the Agreement are hereby incorporated herein by this reference.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have caused this Task Order to be executed effective as of the day and year first above written.

**DISTRICT:**

**WEST VALLEY WATER DISTRICT,  
a public agency of the State of California**

By \_\_\_\_\_  
Van M. Jew, Acting General Manager

By \_\_\_\_\_  
Board Secretary

**CONSULTANT:**

**ENGINEERING RESOURCES OF  
SOUTHERN CALIFORNIA, INC.**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT "1"**  
**TO**  
**TASK ORDER NO. 2**  
**SCOPE OF SERVICES**

Professional Services for Lord Ranch Facilities Bidding Phase per the attached proposal dated August 3, 2022.





62026.193

August 3, 2022

Rosa Gutierrez, PE - Senior Engineer  
Via Email Only: [RGutierrez@wvwd.org](mailto:RGutierrez@wvwd.org)

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

**SUBJECT: PROPOSAL TO PROVIDE BIDDING PHASE SERVICES  
FOR THE LORD RANCH WATER FACILITIES PROJECT**

Dear Rosa,

**Engineering Resources of Southern California (ERSC)** is pleased to submit our proposal to West Valley Water District (District) for Subject services. Citing **ERSC's** extensive planning and design phase involvement (since November 2014) together with past experience with the projects of a similar complex nature, we propose to provide certain bidding phase services. Requested services include assisting WVWD Staff in answering/addressing questions by bidders, responding to RFIs, misc. coordination, and preparing addendums. (anticipated effort over a 30-day bidding process):

- |   |  |          |
|---|--|----------|
| 1. Sr. Principal Engineer:                        | 18 hours @ \$220/hr =                        | \$3,960  |
| 2. Engineer III:                                  | 24 hours @ \$150/hr =                        | \$3,600  |
| 3. Senior Designer:                               | 24 hours @ \$125/hr =                        | \$3,000  |
| 4. Mark Balan & Associates (Electrical Engineer): | <u>\$3,600</u> ( <i>Lump Sum Allowance</i> ) |          |
|   | Subtotal:                                    | \$14,160 |
| 5. Contingency:                                   | (@ 8±% of Subtotal) =                        | \$1,140  |

Based on the above, we estimate a total fee of **\$15,300**, and look forward to the continued opportunity of working with District on this matter, and appreciate our continued relationship. If you have any questions or require additional information, please call me at 909.890.1255 (Ext. 126). Thank you.

Sincerely,

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



**EXHIBIT "2"**  
**TO**  
**TASK ORDER NO. 2**  
**COMPENSATION**

The fee estimated for Professional Services for the Lord Ranch Facilities Bidding Phase is **\$15,300.00**.

<b>TASK</b>	<b>DESCRIPTION</b>	<b>COST</b>
1	Sr. Principal Engineer	\$3,960.00
2	Engineer III	\$3,600.00
3	Senor Designer	\$3,000.00
4	Electrical Engineer (Mark Balan & Associates)	\$3,600.00
	Subtotal	\$14,160.00
5	Contingency (@8% of Subtotal)	\$1,140.00
	<b>Total Cost</b>	<b>\$15,300.00</b>

**EXHIBIT "3"**  
**TO**  
**TASK ORDER NO. 2**  
  
**SCHEDULE**

Schedule to be determined by District Staff.



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

**DATE:** August 16, 2022  
**TO:** Engineering, Operations and Planning Committee  
**FROM:** Van Jew, Acting General Manager  
**SUBJECT:** BLANKET PURCHASE ORDER FOR COLD MIX TEMPORARY ASPHALT FOR BACKFILLING

---

**BACKGROUND:**

The West Valley Water District (District) serves approximately 90,000 customers and growing in the communities of Bloomington, Colton, Fontana, Rialto, parts of unincorporated areas in San Bernardino, and Jurupa Valley in Riverside County. Currently the District has approximately 402 miles of distribution piping, 3,518 fire hydrants, 10,419 system valves and 22, 919 active service connections.

District staff is involved in daily maintenance of the water distribution system, as well as all underground water infrastructure for the District. When excavation work is required to repair a leak, the excavated area or trench is then backfilled, soil compaction tested, covered with cold mix blacktop as a temporary patch and finally restored with permanent pavement by a paving contractor in conformance with the local Cities' and Counties' standards for trench work. District staff has identified a need to have a blanket purchase order for the supply of cold mix to keep the Distribution Department operating efficiently and effectively.

**DISCUSSION:**

District staff reached out to Vulcan Materials Company, Holliday Rock, Ramco Materials, and Match Corporation. Vulcan Materials Company is the only company within the District's vicinity to supply large quantities of temporary cold mix asphalt. Vulcan Materials is located at 2400 W. Highland Avenue in San Bernardino very close to District material yard. Holliday Rock's closest yard that sales cold mix is located in the City of Upland. Match only sales final pave hot mix asphalt locally.

Vendor	Quoted Price for Cold Mix*
Holliday Rock	\$95.50 per load plus \$10 environmental fee; 4 miles from WVWD's Materials Yard
Match	temporary cold mix not available

Ramco Materials	temporary cold mix not available
Vulcan	\$95.00 per load; 19 miles from WVWD's Materials Yard

\*- price based on staff picking up material from vendor's place of business

After factoring the cost of staff time to pickup the cold mix material, Holliday Rock is the most cost-efficient supplier and effecting a blanket purchase order with them is practical means to meet the District's on-going need for cold mix material. Staff typically needs at least two loads of material monthly.

**FISCAL IMPACT:**

This item is included in the Fiscal Year 2022/2023 Operating Budget with a budget of \$31,250.

**STAFF RECOMMENDATION:**

Staff recommends that the Committee forwards a recommendation to the Board of Directors to approve a blanket purchase order in the amount of \$15,000.00 to Vulcan Materials for Cold Mix Temporary asphalt.

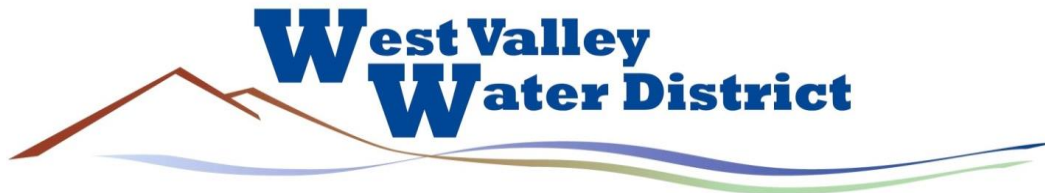
Respectfully Submitted,

*Van Jew*

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Van Jew, Acting General Manager

VJ:jc



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

**DATE:** August 16, 2022  
**TO:** Engineering, Operations and Planning Committee  
**FROM:** Van Jew, Acting General Manager  
**SUBJECT:** BOND COUNSEL FOR THE OLIVER P. ROEMER WATER  
 FILTRATION FACILITY UPGRADES AND EXPANSION PROJECT

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**DISCUSSION:**

In order to acquire the Drinking Water State Revolving Fund (SRF) loan for 76.5% of the estimated cost of the Oliver P. Roemer Water Filtration Facility Upgrade and Expansion (Roemer WFF) Project, the California State Water Resources Control Board has several requirements that need to be met. One of those requirements is an opinion from our bond counsel attesting that entering into an agreement with the State Water Board “will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness, or any material contract, agreement or lease to which the District is a party or by which it or its properties are otherwise subject or bound”.

Our legal counsel for the Roemer WFF Project, Hunt Ortmann Palffy Nieves Darling & Mah, Inc. (Hunt Ortmann) does not provide this service, but recommends a firm that does. This firm, Sheppard, Mullin, Richter & Hampton (Sheppard Mullin) and more specifically Mr. Tim Reimers has extensive public finance experience and can provide an opinion which is required to receive the SRF loan for the Roemer WFF Project. Mr. Reimers firm can function as a sub-consultant to Hunt Ortmann and invoice through them. This would allow us to engage their services immediately.

**FISCAL IMPACT:**

Sheppard Mullin would work within the previously approved budget for Hunt Ortmann. No fiscal impact at this time.

**STAFF RECOMMENDATION:**

Staff recommends that the Committee forward a recommendation to the Board of Directors to approve utilizing Sheppard Mullin for Bond Counsel as a sub-consultant to Hunt Ortmann.

Respectfully Submitted,

*Van Jew*

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Van Jew, Acting General Manager

LJ:ls



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

**DATE:** August 16, 2022  
**TO:** Engineering, Operations and Planning Committee  
**FROM:** Van Jew, Acting General Manager  
**SUBJECT:** REALLOCATION OF TASK BUDGET AND ACTIVATION OF CONTINGENCY FUNDS FOR CAROLLO ENGINEERS, INC.

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**DISCUSSION:**

In January, 2021 West Valley Water District's (District) Board of Directors approved an Agreement for Professional Services with Carollo Engineers, Inc. (Carollo) to assist the District with a letter of interest for an Environmental Protection Agency (EPA) Water Infrastructure Finance and Innovation Act (WIFIA) and State Revolving Fund (SRF) loan application for funding to finance the Oliver P. Roemer Water Filtration Facility Upgrades and Expansion Project. Carollo has, however, reached the authorized budget limit for Task 6.0 (SRF Application) as several factors have extended/expanded the scope including longer than anticipated State Water Resources Control Board SRF review process, delayed SWRCB Division of Financial Assistance staff responses and reviews, additional engagement efforts with SWRCB DFA staff, and completion of additional work items.

These efforts have reduced the available task budget to complete the remaining scoped tasks. We do, however, believe that there is sufficient budget remaining in the overall project budget to complete the scope. As such, we request that the budgets from the following tasks be reallocated: \$22,618.02 from Task 3.0 - WIFIA Application Package Assistance and \$6,808.00 from Contingency Task 4.1 - WIFIA Agreement Develop Support be reallocated to Task 6.0 - SRF Application and Task 2.0 - Prepare WIFIA Letter of Intent. This reallocation would increase the budget for Task 6.0 - SRF Funding Application by \$29,238.27, for a total task budget of \$78,390.27 and increase Task 2.0 by \$187.75 for a total budget of \$36,683.75. We are also requesting to utilize the approved contingency of \$18,324.00 for the development of a Project Purpose and Cost Allocation Justification Memorandum, update of the Project Report, identifying federal compliance requirements including BABA, AIS, Davis Bacon, DBE and other required tasks.

The reallocation of task budgets will not increase the total authorized amount for this agreement. The table below outlines the requested budget reallocations.

Task	Task Description	Budget	Budget Change	Proposed Reallocated Budget
<b>WIFIA Funding</b>				
1.0	Project Information Collection & Review/Confirmation of Project Packaging	\$ 8,794.00	\$0	\$ 8,794.00
2.0	Prepare WIFIA Letter of Interest	\$ 36,496.00	\$187.75	\$ 36,683.75
3.0	WIFIA Application Package Assistance	\$ 42,368.00	\$ (22,618.02)	\$ 19,749.98
4.0	WIFIA Agreement Development Support	\$ -		\$ -
5.0	WIFIA Compliance Requirements (To be scoped)	\$ -		\$ -
<b>SRF Funding</b>				
6.0	SRF Application	\$ 49,152.00	\$ 29,238.27	\$ 78,390.27
7.0	Project Management	\$ 33,752.00	\$ -	\$ 33,752.00
<b>Project Total (without contingent tasks) =</b>		<b>\$ 170,562.00</b>	<b>\$ 6,808.00</b>	<b>\$ 177,370.00</b>
8.0	Contingency - Pending LOI Response and Client Direction			
3.2	EPA Coordination/Application Review	\$ 18,324.00	\$ -	\$ 18,324.00
4.1	WIFIA Agreement Development Support	\$ 6,808.00	\$ (6,808.00)	\$ -
<b>Project Total (with contingent tasks) =</b>		<b>\$ 195,694.00</b>	<b>\$0</b>	<b>\$ 195,694.00</b>

**FISCAL IMPACT:**

No fiscal impact to the District.

**STAFF RECOMMENDATION:**

Staff recommends that the Committee forward a recommendation to the Board of Directors to reallocate existing funds to other line items within the same contract and authorize the use of the contract’s contingency funds.

Respectfully Submitted,

*Van Jew*

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Van Jew, Acting General Manager

LJ:ls





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

**DATE:** August 16, 2022  
**TO:** Engineering, Operations and Planning Committee  
**FROM:** Van Jew, Acting General Manager  
**SUBJECT:** NEARMAP LICENSE RENEWAL AND DIGITAL ELEVATION MODEL AGREEMENT FOR OUR GEOGRAPHIC INFORMATION SYSTEM

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**DISCUSSION:**

Geographic Information System (“GIS”) technology combines mapping software with database management tools to collect, organize, and share many types of information. Data is stored as layers in a geodatabase that can be accessed and shared from the field and across multiple departments. In September of 2021, the District entered into a licensing renewal agreement with Nearmap US, Inc. (“Nearmap”) for the needed aerial imagery in GIS. The term of this agreement is nearing completion and needs to be renewed.

The new aerial imagery, Nearmap, covers the District’s service area boundaries and is integrated with ArcGIS Online. The yearly agreement allows the District to receive newer high-resolution aerial imagery updates three times per year. Renewing this license agreement will allow District office and field staff to overlay our utilities with the new aerial imagery, which allows staff to see the latest aerial views of development in our service area. Nearmap also provides Digital Elevation Model (“DEM”) services that is an essential dataset for hydraulic modeling. DEM will allow staff to calculate head pressure, fire flow testing, and identifying location for future District facilities by using the high-resolution elevation information. Attached as **Exhibit A** is the License Renewal and **Exhibit B** is the DEM Agreement with Nearmap.

**FISCAL IMPACT:**

The cost associated with the license renewal and high resolution elevation data as proposed by Nearmap is \$17,500.00. These items are included in the fiscal year 2022/23 GIS budget under GL# 100-5645-530-5410. Sufficient funds are available in the budget to cover the cost.

**STAFF RECOMMENDATION:**

Staff recommends that the Committee forward a recommendation to the Board of Directors to authorize entering into a contract with Nearmap US, Inc. to:

1. Renew the annual license for areal imagery in the amount of \$11,000.00; and

2. Provide high resolution Digital Elevation Model data in the amount of \$6,500.00.

Respectfully Submitted,

*Van Jew*

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Van Jew, Acting General Manager

RMG:ls

**ATTACHMENT(S):**

1. Exhibit A - Nearmap License Renewal
2. Exhibit B - Nearmap DEM Agreement

# EXHIBIT A

**Nearmap US, Inc.**  
 10897 South River Front Parkway, Suite 150  
 South Jordan, UT 84095 USA  
**Phone:** +1 (801) 609 7250

<b>Customer Name</b>	West Valley Water District	<b>Quote Number</b>	Q080581
<b>Contract Commencement</b>	Contract commences upon signing of quote.	<b>Quote Expiry</b>	09/30/2022
<b>Subscription Term</b>	12 Month	<b>Account Rep</b>	Carrie Wiley carrie.wiley@nearmap.com
<b>Subscription Start Date</b>	09/30/2022	<b>Payment Term</b>	Net 30
		<b>Payment Method</b>	Invoice
<b>Bill To</b>	West Valley Water District Telat Yalcin 855 W. Baseline, Rialto, California, 92377 (909) 875-1804 tyalcin@wwwd.org	<b>Ship To</b>	West Valley Water District Telat Yalcin 855 W. Baseline, Rialto, California, 92377 (909) 875-1804 tyalcin@wwwd.org

PRODUCT	ALLOWANCE	COVERAGE	SEATS
Nearmap Vertical Offline Copy - Subscription	NA	Nationwide	NA
ArcGIS Integration	NA	NA	NA
Nearmap Vertical for Government	NA	Nationwide	Unlimited
<b>Subtotal</b>			\$11,000.00
<b>Estimated Tax</b>			\$0.00
<b>Total</b>			<b>USD \$11,000.00</b>

**ACCEPTANCE OF Q080581 will constitute an Agreement with Nearmap**

By selecting "Yes" or **signing below**, you acknowledge that (a)(i) the attached terms and conditions will continue to form part of the Agreement with the Licensee, (ii) the Additional Terms and Conditions in the latest signed Quote between the Licensee and Nearmap applies to this Renewal Quote, unless otherwise specified in Schedule 1 of this Renewal Quote, and (iii) the Product-Specific Terms set out in <https://www.nearmap.com/us/en/legal/product-agreements> applies to this Renewal Quote, (b) you have the authority to agree to this Renewal Quote, (c) you agree to pay the fees set forth herein. You acknowledge that the Coverage Area by Nearmap is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.

Note: The terms of your Agreement remain the same unless varied by this Renewal Quote. The totals in this Renewal Quote is only an estimate of your next invoice. Final credits and amendments to the subscription is dependent upon the date this Renewal Quote is accepted.

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Signature / Digital Acceptance:	Date:
Full Name:	Position:
PO Number (if required):	

If printed, please sign, scan and email to: [orders.us@nearmap.com](mailto:orders.us@nearmap.com)

**Additional Terms and Conditions**



PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT BY EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.

## PRODUCTS AGREEMENT

### Recitals

- A. Nearmap is a provider of aerial imagery and location data and associated products and services.
- B. Nearmap agrees to supply the Licensee with the Products described in the Quote, subject to the terms of this agreement, the Additional Terms and Conditions, Product-Specific Terms, any Schedules and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the "Agreement").

Definitions of capitalized words are set out in section 18 of the Agreement.

### 1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fees, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products for and to the extent of the Permitted Purpose (the "License").
- 1.2 **Authorized Users** The Products available under this License are only to be used by the total number of Authorized Users. The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Authorized Users. If the number of users exceeds the total number of Authorized Users, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Upon the expiration of the initial Term, this Agreement, subject to any amendments to this Agreement required by Nearmap, shall be renewed automatically for successive renewal terms of twelve (12) months each (each a "Renewal Term") unless terminated by either party by providing at least thirty (30) days written notice of its intention not to renew this Agreement prior to the expiry of the initial Term or any current Renewal Term.
- 1.4 **Replacement Product** Nearmap may from time to time supply the Licensee with a replacement Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the replacement Product from the date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by displaying the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee uses, copies, modifies, or distributes. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Data Use for Government Products** Nearmap measures data usage by the Licensee under this License for Government Products. When using Government Products, Nearmap's Fair Use Policy regulates the Licensee's consumption of data during the Term (or Renewal Term). The following conditions also apply to the Licensee's use of Government Products:
- (a) the amount of data used by the Licensee on the Government Products will be monitored and then calculated at the end of every Term or Renewal Term based on the total data of all users who access and use the Licensee's Nearmap account during that Period; and
- (b) if the Licensee elects to download and/or export Government Products available to the Licensee on the Website, this will be applied to the calculation of the Licensee's use of the Government Products.
- 1.7 **Allowance for Non-Government Products** Non-Government Products licensed to the Licensee may be subject to additional Allowance, Periodic Allowance, or Periodic Data Allowance terms that are published in the Product-Specific Terms, and if applicable, the Periodic Allowance Section.
- 1.8 **Unavailability** Subject to section 12, if a Product is not available for a period of three (3) consecutive days, the Term will be extended by the period of such unavailability.

### 2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **Permitted Purpose** The Products must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense** This License is granted only to the Licensee. The Licensee must not distribute, transfer, resell, assign, rent, lease, or sublicense any Product or any of the Licensee's rights under this License without Nearmap's prior written consent.
- 2.3 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Product available in any medium or manner to any third party (including but not limited to the Licensee's subsidiaries, affiliates, any lower or higher tiered governments and any neighbouring local government).
- 2.4 **Employees** The Licensee may make Products available to any employee of the Licensee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. Such employees are deemed to be Authorized Users. The Licensee is responsible and liable for any person who uses the Licensee's account access details or uses Products made available to the Licensee in breach of this Agreement, including, without limitation, for any additional fees that become payable if the Licensee exceeds the number of Authorized Users.

- 2.5 **No machine learning** The Licensee must not conduct machine learning work in connection with this Agreement or any Products, which includes but is not limited to any:
- (a) machine learning models (including the model form and model parameters);
- (b) outputs of machine learning models;
- (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
- (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.6 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
- (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sublicense, or other commercial purposes and mass downloads or bulk feeds of any imagery; and
- (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.7 **Restriction on integration methods** The Licensee is only permitted to use API integration methods, or other integration methods, as authorised by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software.
- 2.8 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
- (a) provide a link to another URL;
- (b) upload content or other information to the Website (except as necessary to use the Products);
- (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
- (d) use the Website in any way to send any unsolicited email (commercial or otherwise) or any other material for marketing or publicity purposes;
- (e) publish, post, distribute, disseminate, or otherwise transmit, defamatory, offensive, infringing, obscene, indecent, or other unlawful or objectionable confidential material or information;
- (f) make available, upload, or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms", or any other harmful software;
- (g) remove any content or information from the Website, other than that permitted under the terms of this License;
- (h) falsify the true ownership of a Product or other material or information made available via the Website;
- (i) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
- (j) use the Website other than in accordance with this Agreement;
- (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
- (l) provide or allow access to the Website which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.9 **Breach** If the Licensee breaches any of sections 2.1 to 2.8 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products, and take any other steps available to it at law.

### 3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES

- 3.1 **Authorized Users** Any password/ID issued by Nearmap to an Authorized User is personal and confidential to that Authorized User. If Nearmap suspects that any password/ID is being used by an unauthorized person, by a different Authorized User to the person to whom it was issued, or the number of Authorized Users has been exceeded, Nearmap may:
- (a) cancel that password/ID;
- (b) restrict the Licensee's access to the Product to low resolution imagery, or apply any other restrictions on access that Nearmap determines in its absolute discretion;
- (c) immediately cease the Licensee's access to the Product;
- (d) require the Licensee to pay for any additional fees due based on the standard Nearmap Fees for the applicable Product, in respect of any such unauthorized use; and/or

- (e) exercise any other right available to Nearmap under the terms of this Agreement or at law.
- 3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website remains available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. The Licensee may elect to subscribe to the Nearmap status page at <https://status.nearmap.com/> to receive notifications and updates relating to planned maintenance and uptime/downtime of the Website and APIs. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:
- (a) allocate such resources as may be necessary to remedy the Fault; and
- (b) otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated, in accordance with section 6.2, if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation, protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products, or breach of its security, and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.
- 3.5 **Audit** During the Term of this Agreement, and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion:
- (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant;
- (b) recover the reasonable cost of the audit if additional Fees exceed 5% of the Fees paid during the audit period; and
- (c) terminate this Agreement in accordance with section 6.3. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.
4. **FEES**
- 4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date, as set out in the Quote, at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable, except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "**Taxes**"). Licensee is responsible for paying all Taxes, except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if invoiced.
- 4.6 **Late Payment** If a scheduled Fee payment is still overdue after seven (7) days notice from Nearmap, to remedy the payment default, the Licensee agrees that Nearmap may charge the Licensee a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Fees of the relevant Product may only be increased at the end of the Term (including any Renewal Term) subject to Nearmap and the Licensee agreeing in writing.
5. **THE LICENSEE'S WARRANTIES**
- 5.1 **Warranty** The Licensee warrants that:
- (a) any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
- (b) the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
- (c) the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
- (d) the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
- (i) License;
- (ii) Products; and
- (iii) Website.
6. **TERMINATION AND EXPIRY**
- 6.1 **Initial Term** This Agreement commences on the Commencement Date and

continues until expiry of the Term unless terminated earlier in accordance with the terms of this Agreement or renewed under section 1.3.

- 6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- (a) the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
- (b) the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
- (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints, or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, or admits in writing its inability to pay its debt generally as they become due.
- 6.3 **Termination by Nearmap** Notwithstanding anything else in the Agreement, but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee ten (10) Business Days' notice, to terminate the Agreement and the License.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- (a) the License immediately terminates and the Products will no longer be available to the Licensee;
- (b) the Licensee must immediately destroy, delete, or return to Nearmap all Products; and
- (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement, or a License, sections 1.5, 2, 4, 6.5, 7, 8, 9, 10, 13, 14, 15, and 17 will still be binding on the Licensee in relation to Products licensed or obtained during the Term.
7. **INTELLECTUAL PROPERTY**
- 7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information, and software are owned by Nearmap and are protected by copyright, moral rights, trademark, and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, any Product, or Content will pass or be licensed to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited, non-exclusive, non-transferrable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under the Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.
8. **THIRD PARTY PROVIDERS**
- 8.1 Nearmap engages Third Party Providers in order to provide the Products and comply with its obligations under this Agreement and for the Licensee to receive the intended benefit of this Agreement. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on the Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap's liability is reduced to the extent that loss or damage of any kind is caused or contributed to, by Third Party Providers. For the Licensee's convenience, Nearmap has set out in this section 8 links to the terms and conditions of these Third Party Providers with which the Licensee is required to comply. The Licensee further acknowledges that by entering into the Agreement, the Licensee is deemed to accept the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
- (a) **Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee.  
[https://www.google.com/enterprise/earthmaps/legal/us/maps\\_purchase\\_agreement\\_apac.html](https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html);



- (b) **Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (the "**AWS Services**") which enables delivery of the Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:
- (i) [\(http://aws.amazon.com/privacy/\)](http://aws.amazon.com/privacy/) Privacy Policy
  - (ii) [\(http://aws.amazon.com/aup/\)](http://aws.amazon.com/aup/) Acceptable Use Policy
  - (iii) [\(http://aws.amazon.com/terms/\)](http://aws.amazon.com/terms/) Terms of Use
  - (iv) [\(http://aws.amazon.com/serviceterms/\)](http://aws.amazon.com/serviceterms/) Service Terms
  - (v) [\(http://aws.amazon.com/trademark-guidelines/\)](http://aws.amazon.com/trademark-guidelines/) Trademark Guidelines
- (c) **NASA/NCAS** By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/us/en/legal/copyright>).
- 9. WARRANTY AND LIABILITY**
- 9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.
- 9.2 **DISCLAIMER OF WARRANTIES** OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.
- 9.3 **NO REPRESENTATIONS** WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE CONTENT, THE PRODUCTS, AND THE WEBSITE, NEARMAP MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS, OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE. THE PRODUCTS AND THE WEBSITE ARE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES, AND DISTORTIONS, AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS OR THE WEBSITE.
- 9.4 **LIMIT OF LIABILITY** NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A REPRESENTATION, WARRANTY, CONDITION, OR GUARANTEE WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSEE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.
- 9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR, OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.
- 9.6 **AGGREGATE LIMIT** IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), EXTRACONTRACTUAL LIABILITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS, THE CONTENT, OR THE WEBSITE EXCEED ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE TWELVE (12) MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH, OR EVENT GIVING RISE TO THE LIABILITY.
- 9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the Products and related services. Without limiting any of the above, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider.
- 9.8 **Indemnity** To the extent permitted by law, the Licensee agrees to indemnify Nearmap and its directors, officers, employees, agents, mandataries, and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses, and costs (including reasonable attorney's fees and

costs) arising from or out of:

- (a) the Licensee's actual or alleged breach of any provisions of this Agreement;
  - (b) the Licensee's use of the Product for any purpose; and
  - (c) the Licensee's use of, or any third party's use of, or inability to use, any Derivative Works, including without limitation, any output from the Derivative Works.
- 9.9 **Notice of claim** Nearmap will provide the Licensee with notice of any claim or allegation, under section 9.8, and Nearmap has the right to participate in the defense of any such claim at its expense.
- 10. COPYRIGHT COMPLAINTS**
- 10.1 Subject to section 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products, in accordance with this License, infringes their copyright ("**Infringement Claim**"), Nearmap will defend the Licensee against the Claim and pay any settlement to which Nearmap consents or final court-awarded damages for which the Licensee is liable.
- 10.2 The Licensee must:
- (a) promptly notify Nearmap of any such Infringement Claim;
  - (b) not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
  - (c) permit Nearmap to conduct the defense of the Infringement Claim including all negotiations for settlement; and
  - (d) provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Infringement Claim.
- 10.3 Nearmap will have no liability for any Infringement Claim:
- (a) that arises from any:
    - (i) use of the Product in violation of this Agreement;
    - (ii) modification of the Product by anyone other than Nearmap, or a party authorized by Nearmap, in writing to modify the portion of the Product applicable to the Infringement Claim; or
    - (iii) third-party products, services, hardware, software, or other materials, or a combination of these with the Products, which would not be infringing without this combination; or
  - (b) if the Licensee fails to comply with section 10.2.
- 10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Infringement Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.
- 11. PRIVACY POLICY**
- 11.1 Nearmap will collect, use, and disclose any personal information supplied by the Licensee as set out in Nearmap's Privacy Policy, as amended from time to time, and currently available at <https://www.nearmap.com/us/en/legal/privacy-policy>. The Licensee hereby consents to those collections, uses, and disclosures.
- 11.2 To the maximum extent permitted by law, by entering into this Agreement, the Licensee expressly consents to receiving general emails relating to product updates, new products, or anything related to the usage of the product from Nearmap, but prior written consent is required to receive by email direct marketing communications from Nearmap.
- 11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products. Nearmap will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products.
- 12. FORCE MAJEURE**
- 12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, strike or other labor dispute, riot or other act of civil disorder, embargo, or other cause beyond the performing party's reasonable control ("**Force Majeure Event**"):
  - (a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
  - (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party, as a result of, and to the extent that, the affected party is unable to perform, or is delayed in performing, its obligations under this Agreement because of the Force Majeure Event.
- 12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:
  - (a) Promptly (when reasonably possible to do so) give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
  - (b) take all reasonable steps to overcome the effects of the Force Majeure Event; and
  - (c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.
- 13. CONFIDENTIALITY**
- 13.1 The Licensee must not use any Confidential Information for any purpose not expressly permitted hereunder. The Licensee will disclose Confidential Information only to its employees who have a need to know, for purposes of this Agreement, and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Licensee will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect its own confidential or proprietary information of similar nature and with no less than reasonable care.

**14. NOTICES**

- 14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally recognized private courier (with signature required and all fees prepaid); or (d) sent by email with confirmation of transmission. Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150, South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

**15. TECHNOLOGY EXPORT**

- 15.1 The Licensee shall not: (a) permit any third party to access or use the Product in violation of any U.S. or Canadian law or regulation; or (b) export any software provided by Nearmap, or otherwise remove it from the United States or Canada, except in compliance with all applicable U.S. and Canadian laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Product in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria) or a Canadian embargo.

**16. NEARMAP NOW**

- 16.1 **Survey** During the Term, the Licensee may request a survey of an area which is not covered (in its entirety or in part) by the Coverage Area ("Survey"). The Licensee must provide a detailed description of the area that is to be covered by the Survey and which is to be included in the Survey Specification. Upon receipt of such a request in writing, Nearmap may, in its absolute discretion, agree to provide the Survey to the Licensee for a Survey Fee.
- 16.2 **Delivery of Survey** Subject to sections 12 and 16.1, Nearmap will deliver the Survey to the Licensee by uploading the Survey to the Website within six (6) months of the date on which Nearmap receives payment of the Survey Fee in full from the Licensee. Nearmap will notify the Licensee in writing once the Survey has been uploaded to the Website.
- 16.3 **Availability to other Nearmap customers** Nearmap may, at its absolute discretion, allow other customers of Nearmap to access the Survey on the Website.
- 16.4 **Refund of Survey Fee** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3 prior to delivery of the Survey, Nearmap will refund the Survey Fee to the Licensee.
- 16.5 **Other Products** This Section 16 will not be applicable to the Licensee if the Licensee has not purchased a Survey.

**17. MISCELLANEOUS TERMS**

- 17.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with our existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to us from time to time.
- 17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.
- 17.3 **Precedence of Documents** This Agreement is comprised of:  
 (a) the Additional Terms and Conditions;  
 (b) the Quote;  
 (c) any Product-Specific Terms; and  
 (d) this products agreement.  
 If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence. This Agreement between Nearmap and the Licensee supersedes all terms and conditions attached to the Licensee's purchase order.
- 17.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.
- 17.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.
- 17.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 17.7 **Severability** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.
- 17.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.
- 17.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.
- 17.10 **Entire Agreement** This Agreement:

- (a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 17.11 **Counterparts** This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, Nearmap and the Licensee.
- 17.12 **Language** The parties have expressly agreed that this Agreement, and all ancillary agreements, documents, or notices relating to the Agreement, be drafted solely in the English language. Les parties aux présentes ont expressément convenu que cet accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.
- 17.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee is carrying on business (without giving effect to the conflicts of laws provisions thereof).

**18. DEFINITIONS**

In this Agreement:

**Additional Terms and Conditions** means the additional terms and conditions (if any) set out in the Quote.

**Affiliate** means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least 50% of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

**Allowance** means any usage allowance the Licensee is permitted to use and/or drawn down against for any Licensed Non-Government Products as specified in the Quote.

**API** means application programming interface.

**Authorized User** means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement, and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product.

**Business Days** means any day other than a Saturday, a Sunday or a recognized public holiday in Utah, USA.

**Claim** means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding, or judgment of any kind, however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

**Commencement Date** means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.

**Commercial Purpose** means to distribute, transfer, sell, sublicense, or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.

**Confidential Information** means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of Nearmap or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:

- (a) is or becomes part of the public domain otherwise than as a consequence of a breach of the Agreement;  
 (b) the Licensee has obtained from a source other than Nearmap which source is entitled to disclose it; or  
 (c) the Licensee has developed or acquired independently before the date of the Agreement, and can provide reasonable proof.

**Content** means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.

**Coverage Area** means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.

**Derivative Work** means any new work created by or for the Licensee that incorporates, embeds, or includes all or part of a Nearmap Product or Content.

**Fair Use Policy** means the policy as attached to the Quote.

**Fault** means any fault, failure, error, or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees, agents, or mandataries.

**Fees** means the fees specified in the Quote, payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee.

**Government Products** means any Products specified in the Quote that are described as "Nearmap Vertical for Government" and "Nearmap Oblique for Government" and includes any other Products offered by Nearmap for government customers only where use of its License is connected to the Fair Use policy.

**Intellectual Property Rights** includes all industrial and intellectual property rights throughout the world, including copyright, moral rights, trademarks, patents, rights to protect confidential information, and any other similar rights.

**Late Payment Fee** means a fee, as notified by Nearmap to the Licensee, corresponding to the costs incurred by Nearmap (including, without limitation, administrative and other costs) in recovering any payment not made by the Licensee on the due or scheduled date for payment. Late fees incur interest at the rate of 1.5%

per month (being 18% per year).

**License** means the license granted in section 1.1.

**Licensee** means the person or entity specified in the "Customer Name" section of the Quote.

**Nearmap** means Nearmap US, Inc.

**Non-Government Products** means all Products specified in the Quote that do not fall under the definition of Government Products.

**Operational Hours** means 9am to 5pm PT.

**Periodic Allowance** or **Periodic Data Allowance** means the data allowance specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

**Periodic Allowance Section** means section 1.6 (or its equivalent) in the most current version of the products agreement currently located at [here](#).

**Permitted Purpose** means the use of Products by the Licensee for internal purposes in the Licensee's ordinary business, and at all times excludes any:

- (a) Commercial Purpose;
- (b) Unlawful Purpose;
- (c) Integration, or attempt to integrate, the Product in an internal system of the Licensee or of a third party; and
- (d) Redistribution or copying of files, images, or photographs, or making such files, images, or photographs available in any medium or manner that is contained in the Products to any third party (except as expressly permitted under this Agreement).

**Products** means any Nearmap products specified in the Quote (and further described on the Website) and, if applicable, the Survey. For the avoidance of doubt, Products include Content.

**Product-Specific Terms** means additional terms and conditions that apply to certain Products, currently located [here](#).

**Quote** the document produced after the Licensee places an initial order for the Product(s), requests any changes to its License, or renews its License, which may be titled "New Subscription Quote", "Renewal Quote" or "Amendment Quote".

**Schedule** means a schedule to this Agreement, where such schedule has been incorporated by reference to form part of this Agreement.

**Subscription Period** means the period stated in the "Subscription Period" column of the Quote.

**Subscription Start Date** means the date specified in the "Subscription Start Date" section of the Quote.

**Survey** has the meaning (if any) given to that section 16.1.

**Survey Fee** means the fee for the Survey as agreed in writing between Nearmap and the Licensee.

**Survey Specification** means the survey specification referred to in the Quote.

**Term** means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

**Third Party Providers** means third party providers of products and services to Nearmap.

**Unlawful Purpose** means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

**Website** means all pages and sub-sites available within the nearmap.com domain.

**General**

1. It is important to Nearmap that all customers are able to access the Products and Services. Accordingly, we have devised a Fair Use Policy that applies to the data usage of the Products and Services.
2. In this Fair Use Policy:
  - a. **Excessive Use** has the meaning given to that term in section 7 of this Fair Use Policy;
  - b. **Fair Use Policy** means this policy;
  - c. **Nearmap, we, us** or **our** means Nearmap US, Inc.;
  - d. **Products** has the meaning given to that term in Your Nearmap Agreement;
  - e. **Services** has the meaning given to that term in Your Nearmap Agreement;
  - f. **You** or **Your** means any customer of Nearmap;
  - g. **Your Nearmap Agreement** means the agreement pursuant to which Nearmap provides You with various products and services; and
  - h. **Unreasonable Use** has the meaning given to that term in section 5 of this Fair Use Policy.
3. We reserve the right to vary the terms of this Fair Use Policy from time to time.
4. This Fair Use Policy is in addition to Your Nearmap Agreement and in the event of any inconsistency between the terms of this Fair Use Policy and the terms and conditions of Your Nearmap Agreement, Your Nearmap Agreement prevails.

**Unreasonable Use**

5. We consider Your use of the Products and Services unreasonable where You use it in a manner which is reasonably considered by Nearmap to be fraudulent use, to be contrary to Your Nearmap Agreement or to adversely affect other Nearmap customers' use of or access to the Products and Services.
6. Among other things, "fraudulent use" includes resupply of the Products and Services without Nearmap's consent so that someone else may access or use the Products and Services or take advantage of the Products and Services.

**Excessive Use**

7. Excessive Use is a continuing and unreasonably disproportionate use of the Products and Services when compared to other average individual named users.

**Nearmap's Rights**

8. Where Your use of the Products and Services constitutes Unreasonable Use and/or Excessive Use, Nearmap may contact You to discuss changing Your usage pattern so that it conforms with this Fair Use Policy, or to upgrade to a more suitable Product or Service (if applicable).
9. If, after Nearmap has contacted You, Your Unreasonable Use and/or Excessive Use continues, Nearmap may, without further notice to You:
  - a. restrict Your access to low resolution imagery for the remainder of the month; and/or
  - b. restrict Your access to low resolution imagery for the remainder of the month until Your data allowance is reset at the beginning of the next month (if applicable); and/or
  - c. restrict Your access for the remainder of the month; and/or
  - d. restrict Your access to Nearmap until Your data allowance is reset at the beginning of the next month (if applicable); and/or
  - e. immediately cease Your access to Nearmap; and/or
  - f. exercise any other right available to Nearmap under the terms of Your Nearmap Agreement.

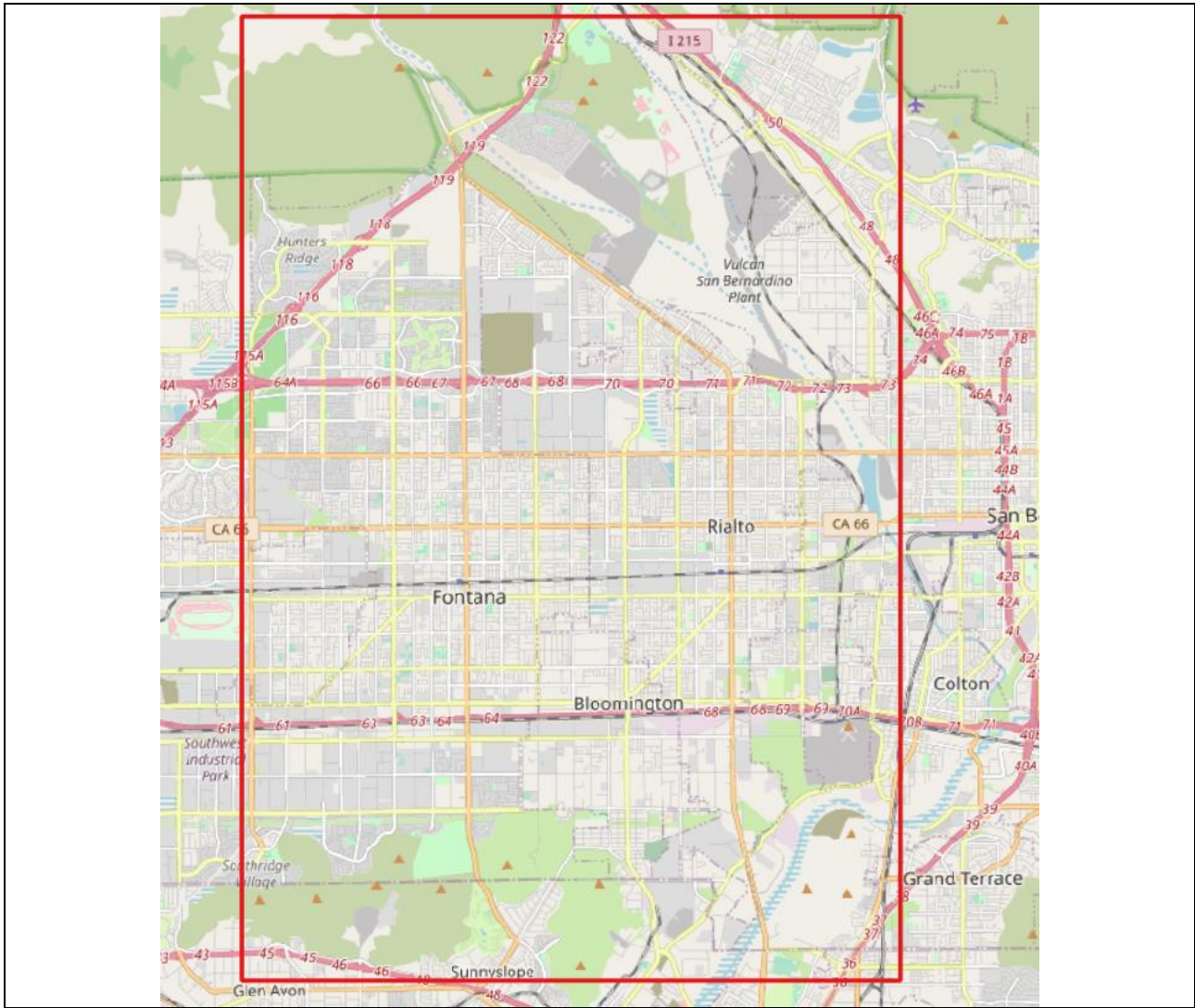
**2D OFFLINE  
DELIVERY**

**ORDER SUMMARY -  
SPECIFICATION.**

NEARMAP LOCATION CONTENT FOR:  
*West Valley Water District*



# 2D OFFLINE DELIVERY - ORDER SUMMARY.



  Proposed Delivery Area    
   Customer Requested AOI    
   Nearmap Coverage

**Delivery Specification:**

Customer: West Valley Water District  
 Description: West Valley Water District - Fall 2022  
 Capture Date(s): Fall 2022  
 Customer AOI filename: WWWD\_AOI.kml  
 Analysis Run by: Calvin Lietz on 5 August 2022  
 Total Area Requested: 127 square miles  
 Delivery Mechanism: Online links provided by email  
 Delivery Contact: Telat Yalcin - tyalcin@wwwd.org  
 Format: GeoTIFF  
 Compression Type: LZW

Tiling: Multiple tiles, with each covering approx 2 sq km/1 sq mile of the area of interest.  
 File Spec: Delivered as multiple files.

**Product Specifications:**

Ground Sampling Distance: 7.5cm/3"  
 Bands: 3 (RGB)  
 Horizontal Projection: NAD83 / California zone 5 (ftUS) (EPSG:2229)  
 Horizontal Accuracy: 75cm RMSEr  
 Timing: Offline Delivery to be provided thirty (30) days from either (a) the date of signature of the relevant Quote or Agreement; or (b) the Capture Date, whichever is the latest date.

Nearmap Reference: NMD-2610

**WE CHANGE THE WAY PEOPLE VIEW THE WORLD, SO THEY CAN PROFOUNDLY CHANGE THE WAY THEY WORK.**

[NEARMAP.COM](http://NEARMAP.COM)  
 10897 S River Front Parkway, Suite 150,  
 South Jordan Utah 84095  
 T: +1-844-463-2762  
 E: queries@nearmap.com | Twitter: @nearmap  
 File Number 5558775

# EXHIBIT B

**Nearmap US, Inc.**  
 10897 South River Front Parkway, Suite 150  
 South Jordan, UT 84095 USA  
**Phone:** +1 (801) 609 7250

<b>Customer Name</b>	West Valley Water District	<b>Quote Number</b>	Q080580
<b>Contract Commencement</b>	Contract commences upon signing of quote.	<b>Quote Expiry</b>	09/22/2022
<b>Subscription Term</b>	12 Month	<b>Account Rep</b>	Carrie Wiley carrie.wiley@nearmap.com
<b>Subscription Start Date</b>	08/10/2022	<b>Payment Term</b>	Net 30
		<b>Payment Method</b>	Invoice
<b>Bill To</b>	West Valley Water District Telat Yalcin 855 W. Baseline, Rialto, California, 92377 (909) 875-1804 tyalcin@wvwd.org	<b>Ship To</b>	West Valley Water District Telat Yalcin 855 W. Baseline, Rialto, California, 92377 (909) 875-1804 tyalcin@wvwd.org

PRODUCT	ALLOWANCE	COVERAGE	SEATS
Offline DEM	NA	Please refer to the attached Survey Specification for details	NA
<b>Subtotal</b>			\$6,500.00
<b>Estimated Tax</b>			\$0.00
<b>Total</b>			<b>USD \$6,500.00</b>



**ACCEPTANCE OF Q080580 will constitute an Agreement with Nearmap**

By selecting "Yes" or signing below, you acknowledge that (a) you have read, understood and agree to the Products Agreement attached to this Quote, (b) the Product-Specific Terms which can be found at <https://www.nearmap.com/us/en/legal/product-agreements>, (c) you have the authority to agree to this New Subscription Quote and (d) you agree to pay the fees set forth herein. This New Subscription Quote constitutes a binding commitment for the Contract Term stated above. You acknowledge that the Coverage Area by Nearmap is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.

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Signature / Digital Acceptance:

Date:

Full Name:

Position:

PO Number (if required):

If printed, please sign, scan and email to: [orders.us@nearmap.com](mailto:orders.us@nearmap.com)

Schedule 1

**Additional Terms and Conditions**



PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT BY EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.

## PRODUCTS AGREEMENT

### Recitals

- A. Nearmap is a provider of aerial imagery and location data and associated products and services.
- B. Nearmap agrees to supply the Licensee with the Products described in the Quote, subject to the terms of this agreement, the Additional Terms and Conditions, Product-Specific Terms, any Schedules and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the "**Agreement**").

Definitions of capitalized words are set out in section 18 of the Agreement.

### 1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fees, Nearmap grants to the Licensee a limited, non-exclusive, non-transferrable license for the Term to use the Products for and to the extent of the Permitted Purpose (the "**License**").
- 1.2 **Authorized Users** The Products available under this License are only to be used by the total number of Authorized Users. The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Authorized Users. If the number of users exceeds the total number of Authorized Users, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Upon the expiration of the initial Term, this Agreement, subject to any amendments to this Agreement required by Nearmap, shall be renewed automatically for successive renewal terms of twelve (12) months each (each a "**Renewal Term**") unless terminated by either party by providing at least thirty (30) days written notice of its intention not to renew this Agreement prior to the expiry of the initial Term or any current Renewal Term.
- 1.4 **Replacement Product** Nearmap may from time to time supply the Licensee with a replacement Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the replacement Product from the date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by displaying the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee uses, copies, modifies, or distributes. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Data Use for Government Products** Nearmap measures data usage by the Licensee under this License for Government Products. When using Government Products, Nearmap's Fair Use Policy regulates the Licensee's consumption of data during the Term (or Renewal Term). The following conditions also apply to the Licensee's use of Government Products:
- (a) the amount of data used by the Licensee on the Government Products will be monitored and then calculated at the end of every Term or Renewal Term based on the total data of all users who access and use the Licensee's Nearmap account during that Period; and
- (b) if the Licensee elects to download and/or export Government Products available to the Licensee on the Website, this will be applied to the calculation of the Licensee's use of the Government Products.
- 1.7 **Allowance for Non-Government Products** Non-Government Products licensed to the Licensee may be subject to additional Allowance, Periodic Allowance, or Periodic Data Allowance terms that are published in the Product-Specific Terms, and if applicable, the Periodic Allowance Section.
- 1.8 **Unavailability** Subject to section 12, if a Product is not available for a period of three (3) consecutive days, the Term will be extended by the period of such unavailability.

### 2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **Permitted Purpose** The Products must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense** This License is granted only to the Licensee. The Licensee must not distribute, transfer, resell, assign, rent, lease, or sublicense any Product or any of the Licensee's rights under this License without Nearmap's prior written consent.
- 2.3 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Product available in any medium or manner to any third party (including but not limited to the Licensee's subsidiaries, affiliates, any lower or higher tiered governments and any neighbouring local government).
- 2.4 **Employees** The Licensee may make Products available to any employee of the Licensee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. Such employees are deemed to be Authorized Users. The Licensee is responsible and liable for any person who uses the Licensee's account access details or uses Products made available to the Licensee in breach of this Agreement, including, without limitation, for any additional fees that become payable if the Licensee exceeds the number of Authorized Users.

- 2.5 **No machine learning** The Licensee must not conduct machine learning work in connection with this Agreement or any Products, which includes but is not limited to any:
- (a) machine learning models (including the model form and model parameters);
- (b) outputs of machine learning models;
- (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
- (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.6 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
- (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sublicense, or other commercial purposes and mass downloads or bulk feeds of any imagery; and
- (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.7 **Restriction on integration methods** The Licensee is only permitted to use API integration methods, or other integration methods, as authorised by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software.
- 2.8 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
- (a) provide a link to another URL;
- (b) upload content or other information to the Website (except as necessary to use the Products);
- (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
- (d) use the Website in any way to send any unsolicited email (commercial or otherwise) or any other material for marketing or publicity purposes;
- (e) publish, post, distribute, disseminate, or otherwise transmit, defamatory, offensive, infringing, obscene, indecent, or other unlawful or objectionable confidential material or information;
- (f) make available, upload, or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms", or any other harmful software;
- (g) remove any content or information from the Website, other than that permitted under the terms of this License;
- (h) falsify the true ownership of a Product or other material or information made available via the Website;
- (i) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
- (j) use the Website other than in accordance with this Agreement;
- (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
- (l) provide or allow access to the Website which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.9 **Breach** If the Licensee breaches any of sections 2.1 to 2.8 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products, and take any other steps available to it at law.

### 3. THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES

- 3.1 **Authorized Users** Any password/ID issued by Nearmap to an Authorized User is personal and confidential to that Authorized User. If Nearmap suspects that any password/ID is being used by an unauthorized person, by a different Authorized User to the person to whom it was issued, or the number of Authorized Users has been exceeded, Nearmap may:
- (a) cancel that password/ID;
- (b) restrict the Licensee's access to the Product to low resolution imagery, or apply any other restrictions on access that Nearmap determines in its absolute discretion;
- (c) immediately cease the Licensee's access to the Product;
- (d) require the Licensee to pay for any additional fees due based on the standard Nearmap Fees for the applicable Product, in respect of any such unauthorized use; and/or

- (e) exercise any other right available to Nearmap under the terms of this Agreement or at law.
- 3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website remains available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. The Licensee may elect to subscribe to the Nearmap status page at <https://status.nearmap.com/> to receive notifications and updates relating to planned maintenance and uptime/downtime of the Website and APIs. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:
- (a) allocate such resources as may be necessary to remedy the Fault; and
- (b) otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated, in accordance with section 6.2, if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation, protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products, or breach of its security, and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.
- 3.5 **Audit** During the Term of this Agreement, and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion:
- (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant;
- (b) recover the reasonable cost of the audit if additional Fees exceed 5% of the Fees paid during the audit period; and
- (c) terminate this Agreement in accordance with section 6.3. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.
4. **FEES**
- 4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date, as set out in the Quote, at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable, except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "**Taxes**"). Licensee is responsible for paying all Taxes, except those assessable against Nearmap based on its income. Nearmap will invoice Licensee for such Taxes if Nearmap believes it has a legal obligation to do so and Licensee agrees to pay such Taxes if invoiced.
- 4.6 **Late Payment** If a scheduled Fee payment is still overdue after seven (7) days notice from Nearmap, to remedy the payment default, the Licensee agrees that Nearmap may charge the Licensee a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Fees of the relevant Product may only be increased at the end of the Term (including any Renewal Term) subject to Nearmap and the Licensee agreeing in writing.
5. **THE LICENSEE'S WARRANTIES**
- 5.1 **Warranty** The Licensee warrants that:
- (a) any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
- (b) the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
- (c) the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
- (d) the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
- (i) License;
- (ii) Products; and
- (iii) Website.
6. **TERMINATION AND EXPIRY**
- 6.1 **Initial Term** This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with

the terms of this Agreement or renewed under section 1.3.

- 6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- (a) the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
- (b) the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
- (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints, or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act, or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, or admits in writing its inability to pay its debt generally as they become due.
- 6.3 **Termination by Nearmap** Notwithstanding anything else in the Agreement, but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee ten (10) Business Days' notice, to terminate the Agreement and the License.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- (a) the License immediately terminates and the Products will no longer be available to the Licensee;
- (b) the Licensee must immediately destroy, delete, or return to Nearmap all Products; and
- (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee. The Licensee will be liable for any reasonable legal costs incurred by Nearmap in enforcing its rights following termination of this Agreement.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement, or a License, sections 1.5, 2, 4, 6.5, 7, 8, 9, 10, 13, 14, 15, and 17 will still be binding on the Licensee in relation to Products licensed or obtained during the Term.
7. **INTELLECTUAL PROPERTY**
- 7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information, and software are owned by Nearmap and are protected by copyright, moral rights, trademark, and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, any Product, or Content will pass or be licensed to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited, non-exclusive, non-transferable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under the Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.
8. **THIRD PARTY PROVIDERS**
- 8.1 Nearmap engages Third Party Providers in order to provide the Products and comply with its obligations under this Agreement and for the Licensee to receive the intended benefit of this Agreement. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on the Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap's liability is reduced to the extent that loss or damage of any kind is caused or contributed to, by Third Party Providers. For the Licensee's convenience, Nearmap has set out in this section 8 links to the terms and conditions of these Third Party Providers with which the Licensee is required to comply. The Licensee further acknowledges that by entering into the Agreement, the Licensee is deemed to accept the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
- (a) **Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee.  
[https://www.google.com/enterprise/earthmaps/legal/us/maps\\_purchase\\_agreement\\_apac.html](https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html);
- (b) **Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (the "**AWS Services**") which enables delivery of the

Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:

- (i) [\(http://aws.amazon.com/privacy/\)](http://aws.amazon.com/privacy/) Privacy Policy
- (ii) [\(http://aws.amazon.com/aup/\)](http://aws.amazon.com/aup/) Acceptable Use Policy
- (iii) [\(http://aws.amazon.com/terms/\)](http://aws.amazon.com/terms/) Terms of Use
- (iv) [\(http://aws.amazon.com/serviceterms/\)](http://aws.amazon.com/serviceterms/) Service Terms
- (v) [\(http://aws.amazon.com/trademark-guidelines/\)](http://aws.amazon.com/trademark-guidelines/) Trademark Guidelines

- (c) **NASA/NCAS** By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/us/en/legal/copyright>).

## 9. **WARRANTY AND LIABILITY**

- 9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.
- 9.2 **DISCLAIMER OF WARRANTIES** OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.
- 9.3 **NO REPRESENTATIONS** WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE CONTENT, THE PRODUCTS, AND THE WEBSITE, NEARMAP MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS, OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE. THE PRODUCTS AND THE WEBSITE ARE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES, AND DISTORTIONS, AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS OR THE WEBSITE.
- 9.4 **LIMIT OF LIABILITY** NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A REPRESENTATION, WARRANTY, CONDITION, OR GUARANTEE WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.
- 9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES, OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR, OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.
- 9.6 **AGGREGATE LIMIT** IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), EXTRACONTRACTUAL LIABILITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS, THE CONTENT, OR THE WEBSITE EXCEED ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE TWELVE (12) MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH, OR EVENT GIVING RISE TO THE LIABILITY.
- 9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the Products and related services. Without limiting any of the above, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider.
- 9.8 **Indemnity** To the extent permitted by law, the Licensee agrees to indemnify Nearmap and its directors, officers, employees, agents, mandataries, and subcontractors, from and against any and all direct or indirect claims, damages, losses, liabilities, expenses, and costs (including reasonable attorney's fees and costs) arising from or out of:
- (a) the Licensee's actual or alleged breach of any provisions of this Agreement;
  - (b) the Licensee's use of the Product for any purpose; and

- (c) the Licensee's use of, or any third party's use of, or inability to use, any Derivative Works, including without limitation, any output from the Derivative Works.
- 9.9 **Notice of claim** Nearmap will provide the Licensee with notice of any claim or allegation, under section 9.8, and Nearmap has the right to participate in the defense of any such claim at its expense.
- ## 10. **COPYRIGHT COMPLAINTS**
- 10.1 Subject to section 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products, in accordance with this License, infringes their copyright ("**Infringement Claim**"), Nearmap will defend the Licensee against the Claim and pay any settlement to which Nearmap consents or final court-awarded damages for which the Licensee is liable.
- 10.2 The Licensee must:
- (a) promptly notify Nearmap of any such Infringement Claim;
  - (b) not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
  - (c) permit Nearmap to conduct the defense of the Infringement Claim including all negotiations for settlement; and
  - (d) provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Infringement Claim.
- 10.3 Nearmap will have no liability for any Infringement Claim:
- (a) that arises from any:
    - (i) use of the Product in violation of this Agreement;
    - (ii) modification of the Product by anyone other than Nearmap, or a party authorized by Nearmap, in writing to modify the portion of the Product applicable to the Infringement Claim; or
    - (iii) third-party products, services, hardware, software, or other materials, or a combination of these with the Products, which would not be infringing without this combination; or
  - (b) if the Licensee fails to comply with section 10.2.
- 10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Infringement Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.
- ## 11. **PRIVACY POLICY**
- 11.1 Nearmap will collect, use, and disclose any personal information supplied by the Licensee as set out in Nearmap's Privacy Policy, as amended from time to time, and currently available at <https://www.nearmap.com/us/en/legal/privacy-policy>. The Licensee hereby consents to those collections, uses, and disclosures.
- 11.2 To the maximum extent permitted by law, by entering into this Agreement, the Licensee expressly consents to receiving general emails relating to product updates, new products, or anything related to the usage of the product from Nearmap, but prior written consent is required to receive by email direct marketing communications from Nearmap.
- 11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products. Nearmap will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products.
- ## 12. **FORCE MAJEURE**
- 12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, strike or other labor dispute, riot or other act of civil disorder, embargo, or other cause beyond the performing party's reasonable control ("**Force Majeure Event**"):
  - (a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and
  - (b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party, as a result of, and to the extent that, the affected party is unable to perform, or is delayed in performing, its obligations under this Agreement because of the Force Majeure Event.
- 12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:
  - (a) Promptly (when reasonably possible to do so) give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
  - (b) take all reasonable steps to overcome the effects of the Force Majeure Event; and
  - (c) resume compliance as soon as practicable after the Force Majeure Event no longer affects it.
- ## 13. **CONFIDENTIALITY**
- 13.1 The Licensee must not use any Confidential Information for any purpose not expressly permitted hereunder. The Licensee will disclose Confidential Information only to its employees who have a need to know, for purposes of this Agreement, and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Licensee will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect its own confidential or proprietary information of similar nature and with no less than reasonable care.
- ## 14. **NOTICES**
- 14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally recognized private courier (with signature required and all

fees prepaid); or (d) sent by email with confirmation of transmission. Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150, South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

#### 15. TECHNOLOGY EXPORT

- 15.1 The Licensee shall not: (a) permit any third party to access or use the Product in violation of any U.S. or Canadian law or regulation; or (b) export any software provided by Nearmap, or otherwise remove it from the United States or Canada, except in compliance with all applicable U.S. and Canadian laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Product in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria) or a Canadian embargo.

#### 16. NEARMAP NOW

- 16.1 **Survey** During the Term, the Licensee may request a survey of an area which is not covered (in its entirety or in part) by the Coverage Area ("Survey"). The Licensee must provide a detailed description of the area that is to be covered by the Survey and which is to be included in the Survey Specification. Upon receipt of such a request in writing, Nearmap may, in its absolute discretion, agree to provide the Survey to the Licensee for a Survey Fee.
- 16.2 **Delivery of Survey** Subject to sections 12 and 16.1, Nearmap will deliver the Survey to the Licensee by uploading the Survey to the Website within six (6) months of the date on which Nearmap receives payment of the Survey Fee in full from the Licensee. Nearmap will notify the Licensee in writing once the Survey has been uploaded to the Website.
- 16.3 **Availability to other Nearmap customers** Nearmap may, at its absolute discretion, allow other customers of Nearmap to access the Survey on the Website.
- 16.4 **Refund of Survey Fee** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3 prior to delivery of the Survey, Nearmap will refund the Survey Fee to the Licensee.
- 16.5 **Other Products** This Section 16 will not be applicable to the Licensee if the Licensee has not purchased a Survey.

#### 17. MISCELLANEOUS TERMS

- 17.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with our existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to us from time to time.
- 17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.
- 17.3 **Precedence of Documents** This Agreement is comprised of:  
 (a) the Additional Terms and Conditions;  
 (b) the Quote;  
 (c) any Product-Specific Terms; and  
 (d) this products agreement.  
 If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence. This Agreement between Nearmap and the Licensee supersedes all terms and conditions attached to the Licensee's purchase order.
- 17.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.
- 17.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.
- 17.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 17.7 **Severability** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.
- 17.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.
- 17.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.
- 17.10 **Entire Agreement** This Agreement:  
 (a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and supersedes any prior agreement or understanding on anything connected with that subject matter.
- 17.11 **Counterparts** This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts

have been duly executed by, or on behalf of, Nearmap and the Licensee.

- 17.12 **Language** The parties have expressly agreed that this Agreement, and all ancillary agreements, documents, or notices relating to the Agreement, be drafted solely in the English language. Les parties aux présentes ont expressément convenu que cet accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.
- 17.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee is carrying on business (without giving effect to the conflicts of laws provisions thereof).

#### 18. DEFINITIONS

In this Agreement:

- Additional Terms and Conditions** means the additional terms and conditions (if any) set out in the Quote.
- Affiliate** means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least 50% of the voting equity of another entity (or other comparable interest for an entity other than a corporation).
- Allowance** means any usage allowance the Licensee is permitted to use and/or drawn down against for any Licensed Non-Government Products as specified in the Quote.
- API** means application programming interface.
- Authorized User** means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement, and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product.
- Business Days** means any day other than a Saturday, a Sunday or a recognized public holiday in Utah, USA.
- Claim** means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding, or judgment of any kind, however calculated or caused, and whether direct or indirect, consequential, incidental or economic.
- Commencement Date** means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.
- Commercial Purpose** means to distribute, transfer, sell, sublicense, or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.
- Confidential Information** means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of Nearmap or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:  
 (a) is or becomes part of the public domain otherwise than as a consequence of a breach of the Agreement;  
 (b) the Licensee has obtained from a source other than Nearmap which source is entitled to disclose it; or  
 (c) the Licensee has developed or acquired independently before the date of the Agreement, and can provide reasonable proof.
- Content** means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.
- Coverage Area** means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.
- Derivative Work** means any new work created by or for the Licensee that incorporates, embeds, or includes all or part of a Nearmap Product or Content.
- Fair Use Policy** means the policy as attached to the Quote.
- Fault** means any fault, failure, error, or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees, agents, or mandataries.
- Fees** means the fees specified in the Quote, payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee.
- Government Products** means any Products specified in the Quote that are described as "Nearmap Vertical for Government" and "Nearmap Oblique for Government" and includes any other Products offered by Nearmap for government customers only where use of its License is connected to the Fair Use policy.
- Intellectual Property Rights** includes all industrial and intellectual property rights throughout the world, including copyright, moral rights, trademarks, patents, rights to protect confidential information, and any other similar rights.
- Late Payment Fee** means a fee, as notified by Nearmap to the Licensee, corresponding to the costs incurred by Nearmap (including, without limitation, administrative and other costs) in recovering any payment not made by the Licensee on the due or scheduled date for payment. Late fees incur interest at the rate of 1.5% per month (being 18% per year).
- License** means the license granted in section 1.1.
- Licensee** means the person or entity specified in the "Customer Name" section of the Quote.
- Nearmap** means Nearmap US, Inc.
- Non-Government Products** means all Products specified in the Quote that do not fall under the definition of Government Products.
- Operational Hours** means 9am to 5pm PT.

**Periodic Allowance** or **Periodic Data Allowance** means the data allowance specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

**Periodic Allowance Section** means section 1.6 (or its equivalent) in the most current version of the products agreement currently located at [here](#).

**Permitted Purpose** means the use of Products by the Licensee for internal purposes in the Licensee's ordinary business, and at all times excludes any:

- (a) Commercial Purpose;
- (b) Unlawful Purpose;
- (c) Integration, or attempt to integrate, the Product in an internal system of the Licensee or of a third party; and
- (d) Redistribution or copying of files, images, or photographs, or making such files, images, or photographs available in any medium or manner that is contained in the Products to any third party (except as expressly permitted under this Agreement).

**Products** means any Nearmap products specified in the Quote (and further described on the Website) and, if applicable, the Survey. For the avoidance of doubt, Products include Content.

**Product-Specific Terms** means additional terms and conditions that apply to certain Products, currently located [here](#).

**Quote** the document produced after the Licensee places an initial order for the Product(s), requests any changes to its License, or renews its License, which may be titled "New Subscription Quote", "Renewal Quote" or "Amendment Quote".

**Schedule** means a schedule to this Agreement, where such schedule has been incorporated by reference to form part of this Agreement.

**Subscription Period** means the period stated in the "Subscription Period" column of the Quote.

**Subscription Start Date** means the date specified in the "Subscription Start Date" section of the Quote.

**Survey** has the meaning (if any) given to that section 16.1.

**Survey Fee** means the fee for the Survey as agreed in writing between Nearmap and the Licensee.

**Survey Specification** means the survey specification referred to in the Quote.

**Term** means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

**Third Party Providers** means third party providers of products and services to Nearmap.

**Unlawful Purpose** means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

**Website** means all pages and sub-sites available within the nearmap.com domain.

**General**

1. It is important to Nearmap that all customers are able to access the Products and Services. Accordingly, we have devised a Fair Use Policy that applies to the data usage of the Products and Services.
2. In this Fair Use Policy:
  - a. **Excessive Use** has the meaning given to that term in section 7 of this Fair Use Policy;
  - b. **Fair Use Policy** means this policy;
  - c. **Nearmap, we, us** or **our** means Nearmap US, Inc.;
  - d. **Products** has the meaning given to that term in Your Nearmap Agreement;
  - e. **Services** has the meaning given to that term in Your Nearmap Agreement;
  - f. **You** or **Your** means any customer of Nearmap;
  - g. **Your Nearmap Agreement** means the agreement pursuant to which Nearmap provides You with various products and services; and
  - h. **Unreasonable Use** has the meaning given to that term in section 5 of this Fair Use Policy.
3. We reserve the right to vary the terms of this Fair Use Policy from time to time.
4. This Fair Use Policy is in addition to Your Nearmap Agreement and in the event of any inconsistency between the terms of this Fair Use Policy and the terms and conditions of Your Nearmap Agreement, Your Nearmap Agreement prevails.

**Unreasonable Use**

5. We consider Your use of the Products and Services unreasonable where You use it in a manner which is reasonably considered by Nearmap to be fraudulent use, to be contrary to Your Nearmap Agreement or to adversely affect other Nearmap customers' use of or access to the Products and Services.
6. Among other things, "fraudulent use" includes resupply of the Products and Services without Nearmap's consent so that someone else may access or use the Products and Services or take advantage of the Products and Services.

**Excessive Use**

7. Excessive Use is a continuing and unreasonably disproportionate use of the Products and Services when compared to other average individual named users.

**Nearmap's Rights**

8. Where Your use of the Products and Services constitutes Unreasonable Use and/or Excessive Use, Nearmap may contact You to discuss changing Your usage pattern so that it conforms with this Fair Use Policy, or to upgrade to a more suitable Product or Service (if applicable).
9. If, after Nearmap has contacted You, Your Unreasonable Use and/or Excessive Use continues, Nearmap may, without further notice to You:
  - a. restrict Your access to low resolution imagery for the remainder of the month; and/or
  - b. restrict Your access to low resolution imagery for the remainder of the month until Your data allowance is reset at the beginning of the next month (if applicable); and/or
  - c. restrict Your access for the remainder of the month; and/or
  - d. restrict Your access to Nearmap until Your data allowance is reset at the beginning of the next month (if applicable); and/or
  - e. immediately cease Your access to Nearmap; and/or
  - f. exercise any other right available to Nearmap under the terms of Your Nearmap Agreement.

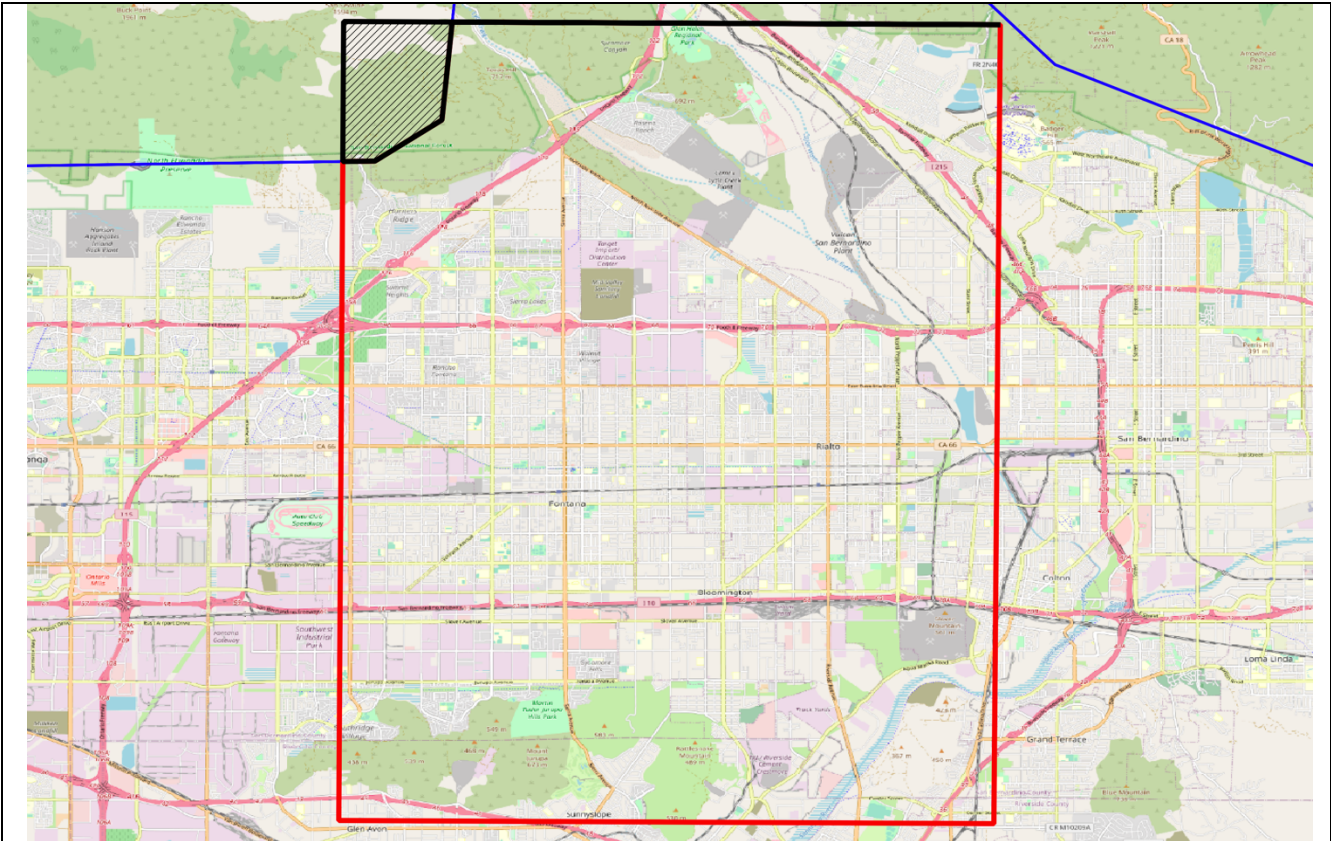


# 3D OFFLINE DELIVERY

# ORDER SUMMARY - SPECIFICATION.

NEARMAP LOCATION CONTENT FOR:  
West Valley Water District

# 3D OFFLINE DELIVERY - ORDER SUMMARY.



Proposed Delivery Area     
  Customer Requested AOI     
  Nearmap Coverage

### Delivery Specification

**Customer:** West Valley Water District  
**Description:** West Valley Water District - Fall 2022  
**Capture Date(s):** Fall 2022  
**Customer AOI filename:** WWD\_AOI.kml  
**Analysis Run by:** Nick Stasiak on August 9<sup>th</sup>, 2022  
**Total Area Requested:** 127/124 sq miles  
**Delivery Mechanism:** Online links provided by email  
**Delivery Contact:** Telat tyalcin@wwd.org  
**Format(s):**

Textured Mesh	DSM	TrueOrtho	Point Cloud	DTM
				[GEOTIFF]

**Tiling:** Multiple tiles, with each covering approx 2 sq km of the area of interest.

**File Spec:** Delivered as multiple zip files of up to 8GB each. Once unzipped, each folder represents 1 tile; each tile folder contains multiple files.

### Product Specifications

**Ground Sampling Distance:** 15cm DSM, 5cm TrueOrtho  
**Horizontal Projection:** EPSG:2229  
**Vertical Projection:** EPSG:6360  
**Horizontal Accuracy:** 28cm RMSEr  
**Vertical Accuracy:** 40cm RMSEz

Nearmap Reference: NMD-2630

**WE CHANGE THE WAY PEOPLE VIEW THE WORLD, SO THEY CAN PROFOUNDLY CHANGE THE WAY THEY WORK.**

**NEARMAP.COM**  
 10897 S River Front Parkway, Suite 150,  
 South Jordan, Utah 84095  
 T: +1-844-463-2762  
 E: queries@nearmap.com | Twitter: @nearmap  
 File Number 5558775





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

**DATE:** August 16, 2022  
**TO:** Engineering, Operations and Planning Committee  
**FROM:** Van Jew, Acting General Manager  
**SUBJECT:** POTENTIAL ANNEXATION INTO SAN BERNARDINO VALLEY  
 MUNICIPAL WATER DISTRICT'S SERVICE AREA

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**BACKGROUND:**

The Inland Empire Utilities Agency's (IEUA) mission is to provide supplemental imported State Water Project (SWP) water purchased from the Metropolitan Water District of Southern California (MWD) to their retail subagencies. The San Bernardino Valley Municipal Water District (Valley District) is also a State Water Contractor that provides supplemental imported SWP water to their retail subagencies. West Valley Water District happens to be a retail subagency to both IEUA and Valley District.

Citrus Avenue in the City of Fontana runs north/south thru West Valley Water District's (WVWD) service area and is also the boundary between these two State Water Contractors. The portion of WVWD's service area west of Citrus Avenue represents about 6% of WVWD's entire service area and is the part in MWD/IEUA's service area (see "Exhibit A" attached). This State Water Contractor boundary causes undue institutional problems for WVWD. East of Citrus Avenue WVWD has plenty of imported water available to meet retail demands even with the current 5% Department of Water Resource allocation and plenty of groundwater to move across Citrus Avenue, but cannot do so without risking exporting a benefit out of Valley District's service area, given their groundwater replenishment investments.

**DISCUSSION:**

Given the dynamics of limited water supply west of Citrus Avenue due to the institutional (not water supply) barrier that exists, WVWD's service west of Citrus Avenue has become a SWP water dependent area. Further exacerbating this condition, WVWD may be subject to penalty rate imported water costs from now thru December 31, 2023. Being subject to penalty water west of Citrus Avenue puts an undue burden on WVWD in light of the fact that east of Citrus Avenue, WVWD has plenty of non-penalty imported water and groundwater available.

To both relieve MWD/IEUA of a SWP dependent area and to resolve WVWD's undue institutional water supply problem, WVWD has reached out to both IEUA and Valley District to investigate annexing that small portion of WVWD's service area west of Citrus Avenue into Valley District's

service area and de-annexing that area from MWD/IEUA's service area. MWD/IEUA and Valley District appear to be initially supportive of this concept. This boundary realignment, should it go through, would be a tremendous benefit to the rate payers of WVWD by providing a reliable and drought resistant water supply at a reasonable rate and in a sustainable manner. Staff will provide subsequent updates on this topic as discussions progress.

**FISCAL IMPACT:**

No fiscal impact.

**STAFF RECOMMENDATION:**

For information only.

Respectfully Submitted,

*Van Jew*

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Van Jew, Acting General Manager

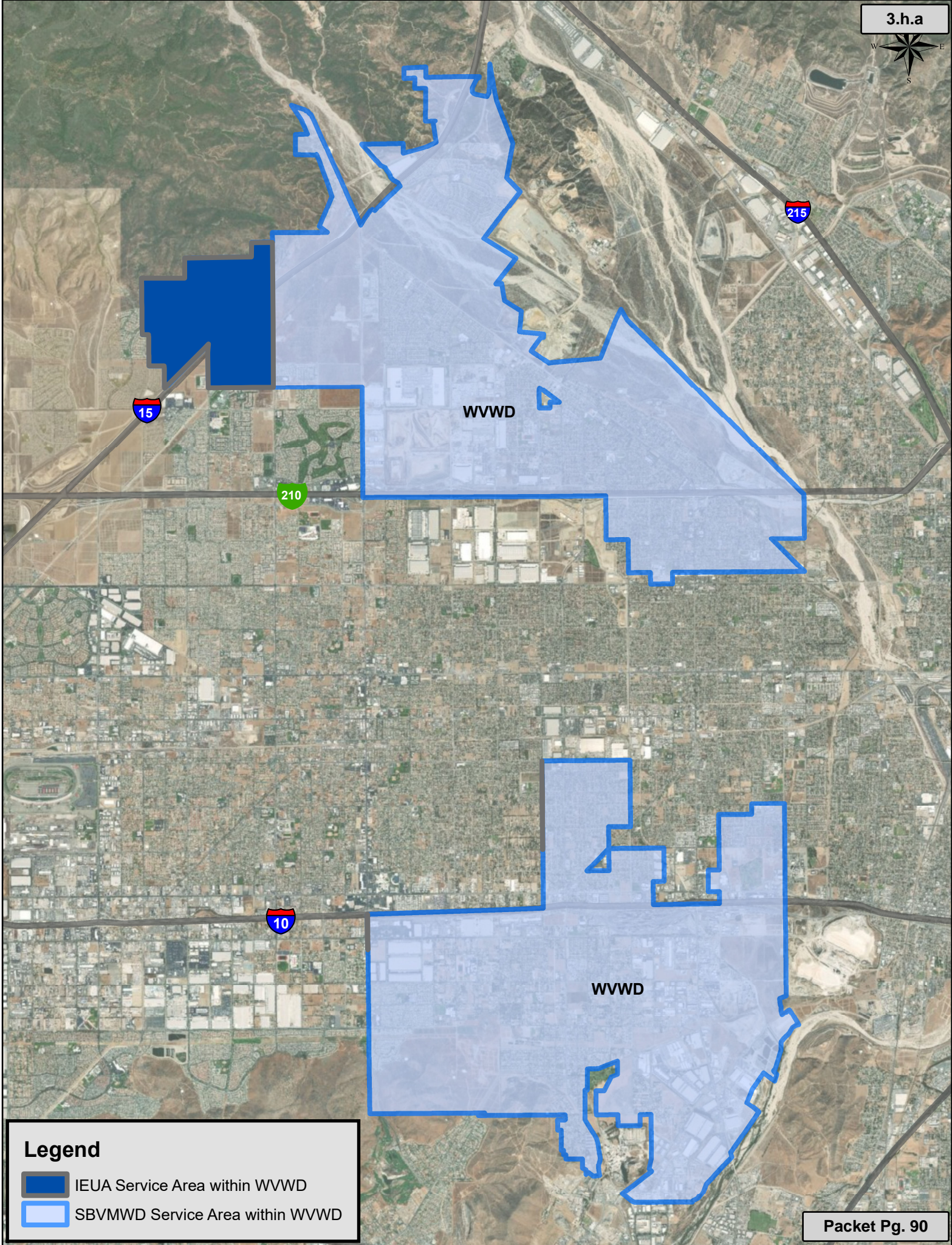
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**ATTACHMENT(S):**

1. Exhibit A - IEUA Service Area within WVWD

# EXHIBIT A







WVWD

WVWD

**Legend**

-  IEUA Service Area within WVWD
-  SBVMWD Service Area within WVWD