



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

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

WEDNESDAY, MAY 11TH, 2022 - 6:00 PM

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

Teleconference Notice: In an effort to prevent the spread of COVID-19 (Coronavirus), and in accordance with the Governor's Executive Order N-29-20 and the order of the County of San Bernardino dated March 17, 2020, there will be no public location for attending this Committee Meeting 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. If you require additional assistance, please contact the Executive Assistant at administration@wvwd.org.

BOARD OF DIRECTORS

Director Greg Young (Chair)

Director Angela 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. General Updates to Engineering Committee

- B.** Consider Amendment No.1 with Tom Dodson and Associates for the 24-inch Transmission Main Pepper Avenue and I-10 Railway. **(Page 3)**
- C.** Consider Award of Contract to Mike Roquet Construction, Inc. for Alder Avenue Paving. **(Page 17)**
- D.** Consider Amendment 2 to Task Order 1 with Hunt Ortmann Palffy Nieves Darling & Mah, Inc. For Professional Legal Services for the Oliver P. Roemer Water Filtration Facility Expansion Project. **(Page 32)**
- E.** Consider a Joint Community Facilities Agreement and Acquisition and Funding Agreement for the Narra Hills Development. **(Page 40)**

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 Committee Agenda at the District Offices on May 5TH, 2022.



Maisha Mesa, Executive Assistant



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

DATE: May 11, 2022
TO: Engineering, Operations and Planning Committee
FROM: Shamindra Manbahal, General Manager
SUBJECT: CONSIDER AMENDMENT NO. 1 WITH TOM DODSON AND ASSOCIATES FOR THE 24-INCH TRANSMISSION MAIN PEPPER AVENUE AND I-10 FWY RAILWAY

BACKGROUND:

West Valley Water District's (District) service area straddles the I-10 freeway at Pepper Avenue and the District has constructed a 24-inch transmission pipeline north and south of the freeway but has a small section that needs to be constructed to connect the two transmission mains. The completion of the connection piece would deliver water supplies north of the I-10 Freeway to the District's Pressure Zone 2 to the south and provide a more reliable transmission supply line. This transmission main terminates south of the I-10 eastbound off-ramp. To make the final connection, a new 24-inch transmission main will have to be bored under the Union Pacific Railroad (Railway). The requested design includes a 36-inch casing and approximately 600 lineal feet of 24-inch cement lined and mortar coated (cml&c) fully welded steel pipe, jacking and receiving pits, bore under the railway, connecting to the existing 24-inch pipeline, and install all necessary appurtenances.

DISCUSSION:

The District entered into an agreement with Tom Dodson and Associates (TDA) for the environmental services of the project. As part of complying with Caltrans requirements, TDA submitted a proposal for additional geotechnical and cultural resources services, including a site walkover for the Pepper Avenue pipeline and Hazardous Contamination Assessment. These studies will require updates and modifications to the current Biological Resource Assessment & Jurisdiction Delineation Report, and coordination to organize the updated submittal to Caltrans. Attached as Exhibit A is a copy of the proposals received by TDA to modify the report to cover the cost for the additional work.

FISCAL IMPACT:

The cost to perform the additional services as proposed by TDA is \$22,088.00. This item is included in the Fiscal Year 2021/22 Capital Improvement Budget under the W15008 Pepper Avenue at I-10 Fwy Zone 2 – 24" Transmission Main Railway Project. Sufficient funds are available in the project budget to cover the cost of Amendment No. 1.

STAFF RECOMMENDATION:

Staff recommends that this item be submitted for consideration, and that the Board of Directors approve this item and authorize the General Manager to execute the necessary documents.

Respectfully Submitted,

Shamindra Manbahal

Shamindra Manbahal, General Manager

RMG:ls

ATTACHMENT(S):

1. Exhibit A - Proposals Received by TDA

EXHIBIT A

**CRM TECH**

1016 E. Cooley Drive, Suite A/B
Colton, CA 92324

March 18, 2022

Tom Dodson & Associates
2150 N. Arrowhead Avenue
San Bernardino, CA 92405
Tom Dodson

SCOPE OF WORK AND COST PROPOSAL

Historical/Archaeological Resources Field Survey For the Encroachment Permit for a Pipeline at Pepper Avenue Project City of Colton, San Bernardino County, California

CRM TECH is pleased to submit to the Tom Dodson & Associates ("Client") this proposal concerning the field inspection for the project referenced above. The Area of Potential Effects (APE) consists of an alignment of approximately 560 feet located along the west side of Pepper Avenue, north and south of the Union Pacific Railroad lines, in the City of Colton, San Bernardino County, California. The field inspection is requested by Caltrans for an Encroachment Permit Application Package. The purpose of the field inspection is to determine if there are any archaeological/historical/cultural resources on the surface of the APE.

Scope of Work

To provide the requested information, CRM TECH will accomplish the following tasks:

1. Produce maps of the APE on appropriate maps of the area for use during the field inspection and for inclusion in the report.
2. Conduct a field inspection of the APE; this would include walking over the area to be impacted to look for evidence of cultural resource, taking notes regarding the soils, vegetation, current conditions (including any previous impacts), and taking a few representative photographs of the property.
3. Prepare a memo/letter report to document the methods and findings of Tasks 1-2.

Cost

CRM TECH proposes to complete the tasks listed above in order to provide the Client with the requested information for a cost of **\$1,460.00**.

Note that if cultural resources are encountered, they will not be recorded at this time.

**PROPOSAL TO PERFORM
HAZARDOUS CONTAMINATION ASSESSMENT
PROPOSED TRENCH CORRIDOR FOR
WVWD 24-INCH TRANSMISSION WATER MAIN
SOUTH PEPPER AVENUE AT UPRR CROSSING
COLTON
SAN BERNARDINO COUNTY, CALIFORNIA**

**REFERENCE NO. 6007.P
APRIL 5, 2022**

Prepared For:

Tom Dodson & Associates
P.O. Box 2307
San Bernardino, CA 92406-2307

Attention: Mr. Tom Dodson

April 5, 2022

Tom Dodson & Associates
P.O. Box 2307
San Bernardino, CA 92406-2307

Reference No. 6007.P

Attention: Mr. Tom Dodson

Subject: Proposal to Perform Hazardous Contamination Assessment, Proposed Trench Corridor for WVWD 24-inch Transmission Water Main, South Pepper Avenue at UPRR Crossing, Colton, San Bernardino County, California

LOR Geotechnical Group, Inc. (LOR) appreciates the opportunity to provide this proposal to perform Hazardous Contamination Assessment of the proposed trench corridor for a West Valley Water District (WVWD) transmission water main pipeline in Colton, California.

PROJECT DESCRIPTION AND PURPOSE

Based on information provided, the planned project involves an approximate 530-foot trench corridor for a proposed 24-inch cement mortar lined and coated steel transmission water main pipeline extending southwest from an existing pipeline within the west portion (southbound lane) of South Pepper Avenue approximately 130 feet, and then heads south approximately 400 feet. The north end of this trench corridor begins roughly 90 feet south-southwest of the center of the intersection of South Pepper Avenue and the on- and off-ramps associated with and south of the I-10 Freeway. Most of this corridor is situated within a California Department of Transportation (Caltrans) right-of-way (ROW), with an approximate 155-foot north-south oriented section outside of the Caltrans ROW and within a Union Pacific Railroad (UPRR) railway. Horizontal drilling, along with driving a 48-inch steel casing, is planned beneath the railway at depths ranging from roughly 5 to 9.5 feet below the ground surface (bgs). This horizontal drilling will require a bore pit, 40 feet long and 12 feet wide, and a receiving pit, 15 feet long and 10 feet wide, both located within the Caltrans ROW. The bore pit is located within the Caltrans ROW at the north side of the UPRR railway. The receiving pit is located approximately 65 feet south of the boundary for the Caltrans ROW and south of the UPRR railway. The planned trench corridor extending southwest from South Pepper Avenue includes an approximate 90-foot section along a moderately steep to steep slope. The planned trench along this slope is estimated to be as deep as 5.5 to 6 feet bgs.

Tom Dodson & Associates
April 5, 2022

Reference No. 6007.P

Based on a desktop review of the history of the planned trench corridor, including online historical aerial photographs and topographic maps, the use of the trench corridor appears to be vacant land with a railroad track in the late 1800s, possibly dryland farming in the late 1930s towards and including the south end of the corridor, addition of South Pepper Avenue (including the underlying fill materials) in the mid 1960s, and large expansion of the railway in the early 1970s. No past professional reports, including environmental site assessments, were provided to us for the preparation of this proposal.

The proposed Hazardous Contamination Assessment is being conducted to investigate soils to the full depth that will be required for displacement during planned trenching along the proposed pipeline corridor. Based on the past and current history of the planned trench corridor, three potential sources of contamination have been identified, including the fill materials of undetermined origin beneath the paved road for South Pepper Avenue, aerially deposited lead (ADL) from vehicle traffic along South Pepper Avenue dating back to the mid 1960s, and the UPRR railway. Based on the limitation of this investigation to the bounds of the Caltrans ROW, limited investigation will be conducted of potential contamination associated with the UPRR railway. A more thorough evaluation of the soils associated with the UPRR railway should be conducted during the planned horizontal drilling activities. The purpose of the proposed soil investigation will be to screen for potential contaminants of concern that may be present at concentrations exceeding California Department of Toxic Substances Control (DTSC) human health risk assessment soil screening levels and/or exceed thresholds for California hazardous waste classification. Documents that will be utilized to guide portions of the proposed soil investigation include the 2001 DTSC Information Advisory: Clean Imported Fill Material and June 2016 Soil Management for Aerially Deposited Lead-Contaminated Soils Agreement between DTSC and Caltrans.

PROPOSED SCOPE OF SERVICES

The following scope of services are proposed for the Hazardous Contamination Assessment.

Pre-Field Soil Sampling Activities

Prior to the field soil sampling activities which will involve soil boring (excavation), Underground Service Alert of Southern California (USA) will be notified a minimum of three days prior to commencement of the work. The locations of any known onsite private utility lines should be disclosed to this firm to avoid damaging the lines. Notification of the schedule of planned field activities will be communicated to the client.

Tom Dodson & Associates
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A site-specific Health and Safety Plan will be prepared to inform onsite field personnel of potential health and safety hazards that may be encountered during the course of field activities. A health and safety briefing will be conducted prior to the start of field activities.

We anticipate obtaining a Caltrans encroachment permit will be required for planning soil sampling activities within the Caltrans ROW. An estimate for rough costs for permit fees and time have been included within this proposal.

Soil Sampling Activities

A track-mounted, direct-push rig will be utilized to advance most of the proposed soil borings (SB-1 through SB-3) for soil sample collection, including near and north and south of the UPRR railway, and along/near the base of the fill slope leading down from South Pepper Avenue. It is anticipated that hand auger equipment will be utilized for the two proposed soil borings (SB-4 and SB-5) towards the top of the fill slope leading down from South Pepper Avenue. The two borings (SB-1 and SB-2) to be advanced near and north and south of the UPRR railway will be situated within the proposed horizontal bore and receiving pits for the eventual installation of the WVWD 24-inch transmission water main pipeline. These borings will be terminated at approximately 10 feet bgs to capture the maximum depths of the 48-inch steel casing which will be driven during the future horizontal drilling. The boring (SB-3) to be advanced along/near the base and the two hand-augered soil borings (SB-4 and SB-5) towards the top of the fill slope leading down from South Pepper Avenue will be terminated up to 6 feet bgs to capture the lower depths of the planned trenching for the WVWD water main pipeline installation. All soil borings will be backfilled with spoils from the boring advancement, followed by bentonite granules which will be hydrated.

Soil sample collection from each soil boring will occur at the following depths: approximately 1, 3, 5, 7, and/or 9 feet bgs. A total of up to nineteen (19) soil samples will be collected for potential laboratory analysis. Initially, the 1- and 3-foot soil samples will be analyzed from soil borings SB-1 and SB-2, all three soil samples will be analyzed from SB-3, and the 1- and 3-foot soil samples will be analyzed from soil borings SB-4 and SB-5. Soil sample analysis will include one or more of the following: petroleum hydrocarbon chain (gasoline to diesel to oil ranges), using United States Environmental Protection Agency (USEPA) Method 8015B; volatile organic compounds (VOCs) using USEPA Method 8260B; semi-volatile organic compounds (SVOCs) using USEPA Method 8270C; polychlorinated biphenyls (PCBs) using USEPA Method 8082; California Title 22 metals (total) using USEPA Methods 6020 and 7471A; lead (total) using USEPA Method 6020; organochlorine pesticides (OCPs) using USEPA Method 8081A; chlorinated

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herbicides using USEPA Method 8151A; pH using USEPA Method 9045C; and asbestos using Occupational Safety and Health Administration (OSHA) Method ID-191. Depending on the initial analytical results, additional analysis of the initial analyzed soil samples or additional soil samples may be warranted.

Report

Following completion of soil sampling activities and receipt of laboratory analytical results, a report will be prepared to document soil sampling activities, analytical results, and data evaluation, and will include relevant figures, tables, laboratory report(s), color photographs, etc. This report will include findings, conclusions, and recommendations.

ESTIMATED COSTS

| Description | Estimated Quantity | Extended Cost |
|--|--------------------|-----------------|
| TASK 1 - SOIL SAMPLING ACTIVITIES AND LABORATORY ANALYSIS | | |
| Direct-Push Rig Subcontractor | 1 day | \$2,900 |
| Staff Scientist | 12 hours | \$1,560 |
| Caltrans Encroachment Permitting | 1 | \$1,500 |
| Soil Sample Laboratory Analysis - Petroleum Hydrocarbon Chain | 7 samples | \$1,050 |
| Soil Sample Laboratory Analysis - VOCs | 7 samples | \$1,470 |
| Soil Sample Laboratory Analysis - SVOCs | 7 samples | \$2,100 |
| Soil Sample Laboratory Analysis - PCBs | 3 samples | \$288 |
| Soil Sample Laboratory Analysis - California Title 22 metals (total) | 7 samples | \$1,540 |
| Soil Sample Laboratory Analysis - Total Lead | 4 samples | \$96 |
| Soil Sample Laboratory Analysis - OCPs | 4 samples | \$480 |
| Soil Sample Laboratory Analysis - Asbestos | 3 samples | \$180 |
| Soil Sample Laboratory Analysis - Chlorinated Herbicides | 4 samples | \$720 |
| Soil Sample Laboratory Analysis - pH | 6 samples | \$144 |
| Soil Sample Laboratory Analysis - Additional | 1 | \$2,500 |
| TASK 2 - REPORT | 1 | \$3,500 |
| Estimated Total: | | \$20,028 |

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The above cost of \$20,028 is an estimate based on the information provided. LOR will perform the proposed environmental services, expecting not to exceed these estimated costs. If conditions are encountered or new site information is uncovered or provided that is significantly different from our assumptions, then additional costs and/or services may be required, including any additional reporting, analytical, or otherwise.

SCHEDULE AND DELIVERABLES

Following completion of field work and receipt of all laboratory analytical results, we can provide a results and evaluation summary verbally and/or by email if desired. We have tentatively scheduled a direct-push rig subcontractor for April 19, 2022 to perform the proposed soil sampling. We anticipate receipt of the laboratory analytical results within two weeks following soil sampling. We will complete the report within approximately 4 to 6 weeks of your notice to proceed, depending on the timeliness with which we receive laboratory analytical results, and assuming we can perform the soil sampling on the 19th, depending on weather, subcontractor equipment, and Caltrans encroachment permitting. A draft report can be prepared for client review and approval if desired. An electronic (PDF) copy and a wet-signed, hard copy of the final report will be prepared and submitted to the client.

CONDITIONS

This proposal represents the contract between Tom Dodson & Associates (the Client), and LOR Geotechnical Group, Inc., (the Consultant). If the contract meets with your approval, please indicate your acceptance by signing and returning one copy of the executed contract (attached Work Authorization Agreement) and providing the required retainer. The cost estimate for the above scope of work will be honored for a period of 90 days, after which we reserve the right to revise this proposal. The Client warrants that it has full legal right to authorize our entry upon the real property where our services are to be performed.

In order to obtain the benefit of a lower fee from LOR Geotechnical Group, Inc. (LOR), among other benefits, the Client agrees that, to the fullest extent permitted by law, LOR's total liability to client is limited to \$50,000.00 or LOR's total compensation, whichever is greater for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, negligent misrepresentation, strict liability, breach of contract, or breach of warranty.

Tom Dodson & Associates
April 5, 2022

Reference No. 6007.P

Services to be provided by LOR shall be provided in accordance with generally accepted professional environmental practice in the area where these services are to be rendered. Client acknowledges that the present standard in the environmental profession does not include a guarantee of perfection and, except as expressly set forth in the conditions above, no other warranty, expressed or implied, is extended.

As required by State Law, LOR will take precautions to avoid damage to subsurface structures and/or utilities by contacting USA at least three days prior to conducting any subsurface explorations. If in the public right-of-way, LOR will contact the jurisdictional agency in an attempt to identify any subsurface structures and/or utilities not identified by USA, such as non-pressurized sewer or storm drain, or other non-pressurized drain lines. The client agrees that LOR will not be responsible for any damage to subsurface structures and/or utilities which are not called to LOR's attention as indicated above and/or not fully and accurately described and located on any plans furnished to LOR prior to excavating. Private subsurface structures and/or utilities which are not under the purview of USA should be identified to LOR by the client prior to excavation activities by LOR. If requested by the client, LOR can provide services to assist in locating such subsurface structures and/or utilities, for an additional fee.

CLOSURE

We trust this proposal meets your needs. Should you have any questions, please do not hesitate to contact our office at your earliest convenience.

Respectfully submitted,
LOR Geotechnical Group, Inc.



John P. Leuer
President

MLH:JPL:ss

Distribution: Addressee, via email: tda@tdaenv.com

Attachment: Work Authorization Agreement

WORK AUTHORIZATION AGREEMENT

CLIENT: Tom Dodson & Associates
ADDRESS: P.O. Box 2307
San Bernardino, CA 92406-2307
ATTENTION: Mr. Tom Dodson
TELEPHONE: 909-882-3612 (v) 882-7015 (f)
EMAIL: tda@tdaenv.com

REFERENCE NO.: 6007.P
PROJECT NO.:
DATE: April 5, 2022
REQUESTED BY: Client
REF. PROJECT: 63430.1

CONTRACT AMOUNT: -- **ESTIMATE:** \$20,028 **P.O. NO.:** --
RETAINER REQUIRED: -- **PREPARED BY:** MLH

PROJECT: WWWD 24-inch Transmission Water Main
LOCATION: South Pepper Avenue & UPRR Crossing, Colton, San Bernardino County, California
DESCRIPTION OF WORK: Hazardous Contamination Assessment of Proposed Trench Corridor
REMARKS: --

Subject to the terms and conditions set forth on the reverse side of this Agreement.

LOR Geotechnical Group, Inc.

AUTHORIZED BY



Signature:

John P. Leuer, President

Title: _____ **Date:** _____

TERMS AND CONDITIONS

Right of Entry

The client will provide for right of entry of LOR Geotechnical Group, Inc. (LOR) personnel, as well as all equipment necessary in order to complete the work. LOR will take reasonable precautions to minimize any damage to the property, but it is understood by client that in the normal course of work, some damage may occur, the correction of which is not part of this Agreement. The client accepts this fact and will not hold LOR responsible for any damage other than that caused by the gross negligence or willful misconduct of LOR or its personnel.

Utilities

In the execution of this work, LOR will take all reasonable precautions to avoid damage to subterranean structures or utilities. The client agrees not to hold LOR responsible for damage to subterranean structures or utilities which are not called to LOR's attentions and fully and accurately described and located on the plans furnished.

Indemnification

LOR agrees to hold harmless and indemnify Client from any and all claims, liabilities, cause of action for injury to or death of any person, or for damage or destruction of tangible property (including reasonable attorney fees) resulting from the willful misconduct or any negligent acts or omissions on the part of LOR and its contractors, subcontractors or consultants retained by or under the direction and control of LOR. However, the hold harmless and indemnification shall not apply for any such claims, liabilities, cause of action for injury to or death of any person, or for damages or destruction of tangible property (including reasonable attorney fees) that arise out of the negligence, willful misconduct or incorrect information provided by Client.

Limitation of Liability

In order to obtain the benefit of a lower fee from LOR, among other benefits, the client agrees that, to the fullest extent permitted by law, LOR's total liability to client is limited to \$50,000.00 or LOR's total compensation, whichever is greater for any and all injuries, damages, claims losses, expenses, or claim expenses (including attorney's fees) arising out of this agreement from any cause of causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, negligent misrepresentation, strict liability, breach of contract, or breach of warranty.

Standard of Care

LOR is employed to render a professional service only, and payments made to LOR are compensation solely for such services rendered and recommendations made in carrying out the work. LOR shall perform its services in accordance with the usual and customary professional care and in accordance with generally accepted engineering and other professional practices in effect at the time LOR's findings opinions, factual presentations, professional advice and recommendations are rendered.

The client accepts that subsurface conditions can vary from conditions encountered at the location where explorations are made by LOR and that the data, interpretations of the data, and recommendations of LOR are based solely on that information which was available. LOR will not be responsible for any interpretation of data by others of the information developed. The data obtained during the investigation phase is subject to confirmation by conditions which are encountered during construction.

The client warrants that all information supplied by client to LOR for their use in completing its services under this Agreement are accurate and sufficient for use by LOR, and that LOR can rely on their completeness and accuracy.

Certificate of Merit

The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against LOR unless the Client has first provided LOR with a written certification executed by an independent consultant currently practicing in the same discipline as LOR and licensed in the State of California. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to LOR not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.

Disputes

In the event that a dispute arises relating to the performance of the services to be provided under this Agreement, which results in litigation or non-adjudicated settlement or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred in connection with such dispute, including staff time, court costs, attorney's fees and other claim-related expenses. The term "prevailing party" shall be determined by the same process. Neither the client nor LOR may delegate, assign, sublet or transfer his or its duties or interest in this Agreement without the prior express written consent of the other party.

BILLING

Reimbursable Expenses

Outside services performed by others and direct costs expended on the client's behalf are charged at cost plus twenty percent. These expenses include rental of drill rigs, bulldozers, backhoes, travel and subsistence, permits, reproduction costs, etc.

Travel Time

Travel time required to provide professional or technical services will be charged at the appropriate hourly rates. Mileage, truck and standard equipment charges are included in the hourly technician fee.

Overtime

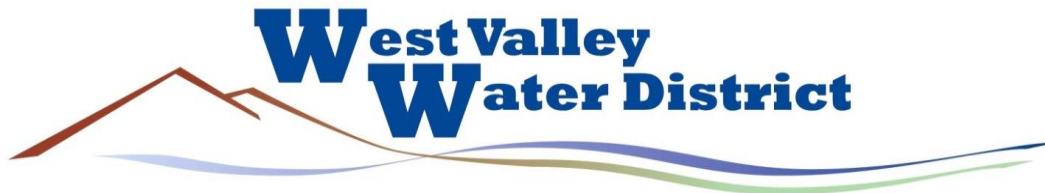
An overtime rate of 1.5 times the standard rate will be used for time in excess of 8 hours per day and Saturdays. An overtime rate of 2.0 times the standard rate will be added for work on Sundays, on official company holidays, and on all work in excess of 12 hours per day.

Prepayments

A retainer of fifty percent of the total fee is required for all field studies. The balance of the fee must be paid at the time the report is released to the client.

Terms of Payment

Billings will be provided periodically and will be classified by fee categories set forth above or as given by proposal. Invoices rendered for professional services are due upon presentation. A service charge of 1.5 percent, per month, may be charged on accounts not paid within thirty days to cover additional processing and carrying costs. Any attorney's fees or other costs incurred in collecting any delinquent account will be paid by the client.



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

DATE: May 11, 2022
TO: Engineering, Operations and Planning Committee
FROM: Shamindra Manbahal, General Manager
SUBJECT: CONSIDER AWARD OF CONTRACT TO MIKE ROQUET
 CONSTRUCTION, INC. FOR ALDER AVENUE PAVING

BACKGROUND:

West Valley Water District (“District”) is proposing to pave approximately 800 feet of gravel access road on Alder Avenue to the Reservoirs R3-1, R2-2, and R2-3. Rain events have caused erosion to the existing gravel access road. It is used daily by the District staff and each time there is significant rain, the road becomes difficult to drive and District staff repair it. There are two households that use this District-owned road and staff is working with legal counsel to identify a legal mechanism to allow them to use the road, yet protect the District from liability.

DISCUSSION:

Mike Roquet Construction, Inc. (“MRC”) is a paving contractor that was selected by the District during a publicly advertised competitive bidding process. The contractors that participated in the bidding process entered their costs for all the services listed in a matrix created by District staff of the Operations department, which included all the services needed for repair and replacement of paving. On May 6, 2021, the Board of Directors approved the As-needed On-call Contract for MRC attached as Exhibit A. Utilizing the As-needed On-call contract, the access road can be paved by MRC to avoid future maintenance issues. The access road paving cost is \$167,086.66 and attached as Exhibit B is the proposal.

FISCAL IMPACT:

The Alder Road Paving Improvement project has a budget of \$166,000 in the Fiscal Year 2021/22. Additional funds will be needed. The District’s contingency budget for Capital Improvement Projects has funds available to transfer. A summary of the requested budget transfer is as follows:

| CIP FY 2021-2022 Project Name | Current Budget | Construction Cost | Transfer From/To | Remaining Budget |
|-------------------------------|----------------|-------------------|------------------|------------------|
| Contingency | \$127,408.01 | \$0.00 | (\$1,087.66) | \$126,320.35 |
| Alder Ave. Paving Improvement | \$166,000.00 | \$167,087.66 | \$1,087.00 | \$0.00 |

STAFF RECOMMENDATION:

Staff recommends that this item be submitted for consideration, and that the Board of Directors approve this item and authorize the General Manager to execute the necessary documents.

Respectfully Submitted,

Shamindra Manbahal

Shamindra Manbahal, General Manager

BP:ls

ATTACHMENT(S):

1. Exhibit A - MRC On-Call Agreement
2. Exhibit B - MRC Proposal

Exhibit A



March 4, 2021

West Valley Water District
855 W. Baseline Road
Rialto, CA
Attn: Al Robles

I am the president of Mike Roquet Construction Inc. and I offer this package and proposal for As-needed/On-call Permanent Trench Paving 2021.

A handwritten signature in black ink, appearing to read "Mike Roquet", is written over a horizontal line.

Mike Roquet
President
Mike Roquet Construction Inc.

P.O. Box 539, Highland, CA 92346 (951) 533-3797

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Company Statement of Qualifications

Mike Roquet Construction Inc. has been operating as a paving contractor specializing in utility trench paving since 2015. The company, equipment, and employees previously existed under the corporation name Roquet Paving Inc., founded in 1975.

Previous projects:

West Valley Water District
855 W. Baseline Rd., Rialto (909) 875-1804
Contact: Rudy Olguin
Project: corporate office parking lot repair. 2018
Project amount: \$50,000.00
Staff member – Mike Roquet, project manager
Staff member – Ed Duran, project foreman
Staff member – Terri Tate, office manager
Staff member – Dan Fitzgerald, project estimator
Project location: 855 W. Baseline Rd., Rialto
Scope of Work: Patching, crack-filling, seal coating, and striping front and back parking lots.

West Valley Water District
855 W. Baseline Rd., Rialto (909) 875-1804
Contact: Diana Gunn
Project: Annual on-call trench patching, 2018
Project amount: \$200,000.00
Staff member – Mike Roquet, project manager
Staff member – Ed Duran, project foreman
Staff member – Terri Tate, office manager
Staff member – Dan Fitzgerald, project estimator
Project location: Various locations throughout WVWD streets
Scope of Work: patch, grind, overlay, and repair asphalt streets due to utilities

West Valley Water District
855 W. Baseline Rd., Rialto (909) 875-1804
Contact: Al Robles
Project: Reinforced Concrete Material Bin construction, June 2018
Project amount: \$150,000.00
Staff member – Mike Roquet, project manager
Staff member – Ed Duran, project foreman
Staff member – Terri Tate, office manager
Staff member – Dan Fitzgerald, project estimator
Project location: Linden & Vineyard, Rialto, CA
Scope of Work: Constructed reinforced concrete walls and bins for materials.

East Valley Water District:

31111 Greenspot Rd., Highland, CA (909) 889-9501

Contact: Patrick Milroy

Project: Thermoplastic striping, July 2018

Project amount: \$5,000.00

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: various streets in Highland, CA

Scope of work: Install thermoplastic striping at various locations in City streets

East Valley Water District:

31111 Greenspot Rd., Highland, CA (909) 889-9501

Contact: Dale Barlow

Project: 3rd Street Lot Grading, Scheduled for April, 2021

Project amount: \$35,000.00

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: 3rd St. & Sterling Ave., San Bernardino

Scope of work: Grade lot, install class II base, pave an approach

Riverside-Highland Water Company

Contact: Craig Gudgion

12374 Michigan St., Grand Terrace, CA (909) 825-4128

Project: Santo Antonio/Washington St. Improvements

Project amount: \$163,000.00

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: Santo Antonio Dr. & Washington St., Coltons

Scope of work: Grind/overlay streets, misc concrete items, striping

Riverside-Highland Water Company

Contact: Craig Gudgion

12374 Michigan St., Grand Terrace, CA (909) 825-4128

Project: Water tank site paving, June 2020

Project amount: \$60,000.00

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: Pico Street & Blue Mountain Court, Grand Terrace

Scope of work: removed and replaced asphalt at tank site

Riverside-Highland Water Company

Contact: Craig Gudgion

12374 Michigan St., Grand Terrace, CA (909) 825-4128

Project: Street grind & overlay, Pico St. west of Michigan St., Grand Terrace

Project amount: \$35,000

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: Pico Street, w/o Michigan St. Grand Terrace

Scope of work: 13,000 sf utility trench grind and overlay

Merlin Johnson Construction

Contact: Jake Johnson

1214 Sapphire Ave., Mentone, CA (714) 794-4772

Project: 86,000 sf Highland Ave. grind and overlay, June 2019

Project amount: \$116,000.00

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: Highland Ave., San Bernardino, CA

Scope of work: 86,000 sf utility trench grind and overlay

Merlin Johnson Construction

Contact: Jake Johnson

1214 Sapphire Ave., Mentone, CA (714) 794-4772

Project: Utility trench overlay, April 2019

Project amount: \$167,000

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: 10th St., 11th St., Maple Ave., Bloomington

Scope of work: 115,000 sf of utility trench grind and overlay

City of Grand Terrace

Contact: Craig Bradshaw

22795 Barton Rd, Grand Terrace, CA (909) 824-6623

Project: Street repair, five locations

Project amount: \$6,900.00

Staff member – Mike Roquet, project manager

Staff member – Ed Duran, project foreman

Staff member – Terri Tate, office manager

Staff member – Dan Fitzgerald, project estimator

Project location: Various streets, City of Grand Terrace

Scope of work: Repair asphalt in five locations throughout city streets

KEY PERSONNEL BRIEF RESUMES:

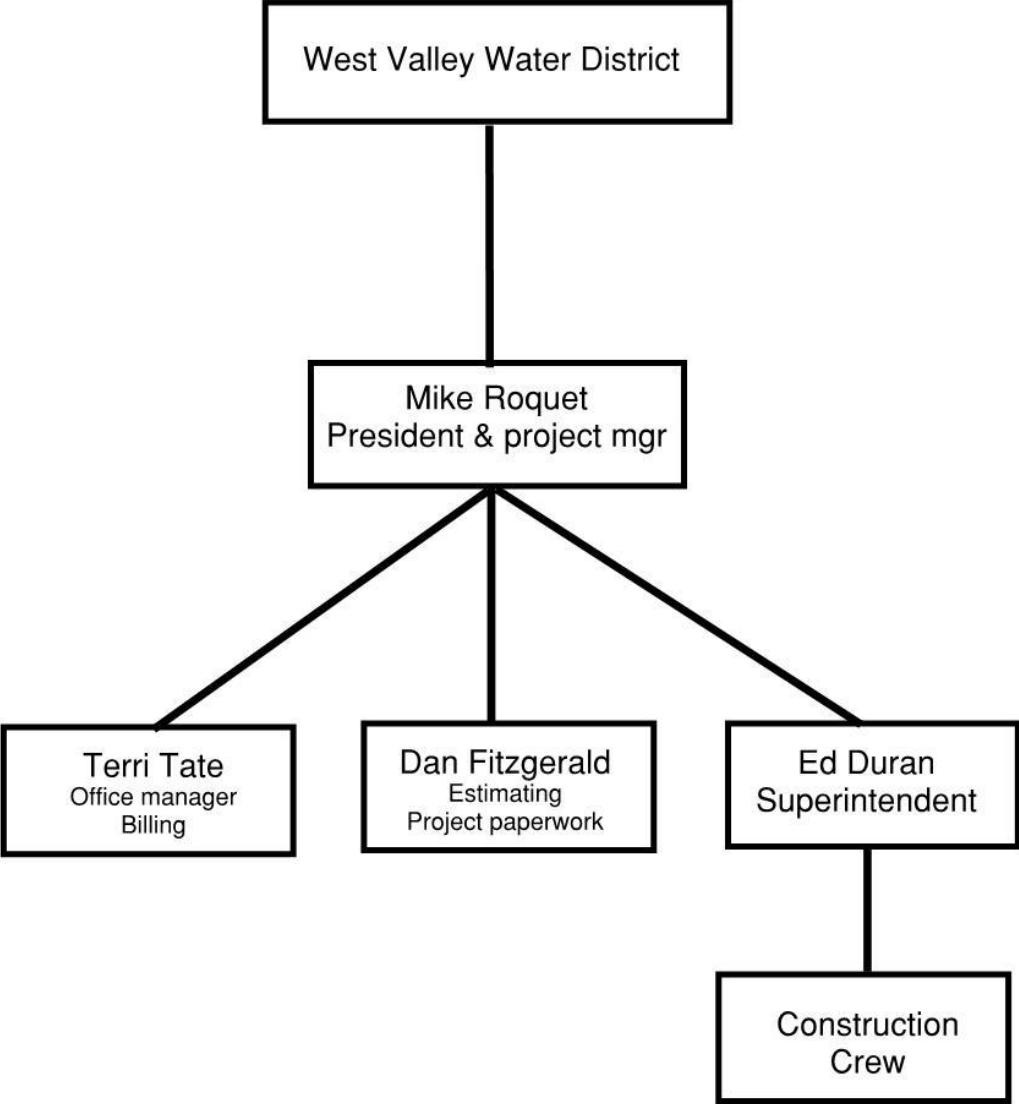
1. Mike Roquet
2015—present: President of Mike Roquet Construction.
1977 – 2015: Co-owner of Roquet Paving Inc.

2. Edward Duran
2015 – present: Superintendent of Mike Roquet Const. Inc. construction crews.
1980—2015: Foreman for Roquet Paving.
1976 – 1980: Equipment operator/raker for Roquet Paving

3. Terri Tate
2015 – present: Office manager, accounting, project management.
1980 – 2015: Secretary/book-keeper at Roquet Paving Inc.

4. Dan Fitzgerald
2015 – present – Estimator at Mike Roquet Construction.
2012—2015: Estimator at Roquet Paving.
1976 – 2012: Estimator for various grading and paving contractors.

ORGANIZATION CHART



ATTACHMENT A

Billing Schedule and Hourly Rates

BARE EQUIPMENT LIST*:

| | |
|--------------------------------------|--------------|
| LeeBoy Paving Machine | \$150.00 /hr |
| Cedar Rapids Paving Machine | 159.00 /hr |
| 3 – 5 ton Vibratory Roller | 30.00 /hr |
| 5 – 8 ton Asphalt Roller | 60.00 /hr |
| Tack Truck (spray wand-type) | 20.00 /rh |
| Tool Truck | 20.00 /hr |
| Tool Truck | 20.00 /hr |
| CAT Motor Grader | 160.00 /hr |
| 2000 Gallon Water Truck | 75.00 /hr |
| CAT Skiploader | 75.00 /hr |
| Skidsteer w/ grinder and broom | 140.00 /hr |
| Small parking lot Sweeper | 40.00 /hr |
| Hyundai Rubber Tire Loader | 137.00 /hr |
| John Deer Loader | 100.00 /hr |
| Asphalt Berm Machine | 400.00 /day |
| Walk-behind saw (asphalt & concrete) | 600.00 /day |
| Bobtail dump truck | 37.50/hr |
| Ten-wheel dump truck | 45.00 /hr |
| Ten-wheel dump truck | 45.00 /hr |
| Flatbed trailer (equipment delivery) | 50.00 /hr |
| Construction signs (various types) | 400.00 /day |
| Arrow boards | 150.00 /day |

*Operator additional

Name of Firm: Mike Roquet Construction Inc.

Name of Firm: Mike Roquet Construction Inc.

Coast and Billing Schedules

Asphalt Remove & Replace (price per square foot)

| | 4 Inch | 6 Inch | 8 Inch | Grind 1/10 Ft & Replace |
|----------------------|--------|--------|--------|-------------------------|
| Minimum: Up to 50 SF | 450.00 | 500.00 | 575.00 | 450.00 |
| 51-100 | 9.60 | 10.80 | 12.42 | 5.40 |
| 101-500 | 8.90 | 9.60 | 10.56 | 4.14 |
| 501-2,000 | 6.75 | 7.25 | 8.30 | 2.90 |
| 2,001-15,000 | 5.50 | 6.40 | 6.75 | 2.25 |
| 15,001-30,000 | 4.50 | 5.25 | 5.68 | 2.00 |

Concrete Remove & Replace (Price Per Square Foot)

| | 4-inch sidewalk | 6-inch sidewalk | 6-inch curb & gutter |
|-------------|-----------------|-----------------|----------------------|
| 0-50 SF | 35.00 | 40.00 | 50.00 |
| 51-200 SF | 25.00 | 30.00 | 40.00 |
| 201-2000 | 8.00 | 9.00 | 21.00 |
| 2,001-3,000 | 4.50 | 5.50 | 21.00 |

6 Inch Curb & Gutter (New) Price per linear foot

| | Unit Price |
|----------------------|------------|
| Minimum: up to 10 LF | 2,200.00 |
| 11-100 | 35.00 |
| 101-500 | 22.00 |
| 501-2,000 | 18.00 |

6 Inch Asphalt Berm (New) Price per linear foot

| | Unit Price |
|----------------------|------------|
| Minimum: up to 10 LF | 400.00 |
| 11-100 | 35.00 |
| 101-500 | 10.00 |
| 501-2,000 | 6.00 |

Striping & Pavement Markers

| | Minimum Amount 20 Linear foot or less |
|--|---------------------------------------|
| Thermoplastic Paint with glass beads | 1,932.00 |
| Striping Paint-conventional two coats with glass beads | 1,200.00 |
| Pavement Markers | 500.00 |

Exhibit B



P.O. Box 539
Highland, CA 92346
(951) 533-3797
Lic #1007568

PROPOSAL

To:

Page 1 of 1

April 11, 2022

West Valley Water District

855 W. Baseline Rd.

Rialto, CA 92376

(909) 875-1804

JOB LOCATION: TANK SITE ACCESS ROAD, 11660 ALDER AVE., FONTANA

We hereby submit specifications and estimates for:

Item *total*

ACCESS ROAD PAVING:

1. Rough grade site and build a roadway 14.5' wide x 800'.
2. Furnish and install an overside drain (1 ea) and down drain (30 lf).
3. Fine-grade 12,035 sf of subgrade and compact to 95% relative compaction.
4. Furnish and install 4" of crushed misc. base (CMB) meeting class II specifications, compacted to 95% relative compaction.
5. Furnish and install 3" of asphalt concrete surface course (C2-PG64-10 R0) compacted to 95% relative compaction on 12,035 sf.
6. Install up to 830 lf of 8" high asphalt machine-extruded dike at one of the pavement edges.
7. Material cost increase for asphalt: \$7.75 /ton x 230 tons = \$1,782.50
8. Material cost increase for asphalt berm mix: \$4.52 /ton x 33 tons = \$149.16

Lump sum: \$167,087.66

GENERAL CONDITIONS:

- One move-in is included.
- Price includes prevailing wages.
- Updated prices per this proposal based on Vulcan material quote # 981266, dated 04/07/2022. Previous Vulcan material quote was dated 01/06/2022.
- Price includes cost of obtaining payment and performance bonds.
- Price includes 6 field density tests: 2 for subgrade, 2 for CMB, and 2 for asphalt surface course.
- Site to balance. Import or export of dirt is not included.
- EXCLUSIONS: permits, fees, engineering, staking, water costs, water meter, blasting, rock handling, rock removal, seal coats, striping, import or export of dirt, damage to buried objects not visible from the surface, relocation of utilities, utility removal, disconnecting utilities, redwood header
- Proposal good through April 30, 2022.
- Any attorney fees, costs, or other expenses which may be incurred in the collection of monies as may become due under this contract or enforcement of the terms of this contract will be paid for by the customer.
- Unless otherwise herein provided, this contract shall be due and payable at Mike Roquet Construction Inc., P.O. Box 539, Highland, CA 92346 within 30 days from date of invoice.

Mike Roquet

President

Mike Roquet Construction Inc.



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

DATE: May 11, 2022
TO: Engineering, Operations and Planning Committee
FROM: Shamindra Manbahal, General Manager
SUBJECT: CONSIDER AMENDMENT 2 TO TASK ORDER 1 WITH HUNT ORTMANN PALFFY NIEVES DARLING & MAH, INC. FOR PROFESSIONAL LEGAL SERVICES FOR THE OLIVER P. ROEMER WATER FILTRATION FACILITY EXPANSION PROJECT

DISCUSSION:

On April 15, 2021, the Board of Directors of West Valley Water District (District) approved an Agreement for Professional Services with Hunt Ortmann Palffy Nieves Darling & Mah, Inc. (Hunt Ortmann). This experienced and qualified law firm was selected through a Request for Proposal process on PlanetBids and was chosen based on their extensive Design Build (DB) project delivery procurement contract drafting and legal advisory experience. Since retaining this firm they have provided sound legal advice related to the Oliver P. Roemer Water Filtration Upgrade and Expansion project. Additional funds are required to draft comprehensive contract language, provide advice and assistance related to the procurement and development of the project facilities and infrastructure, and legal services and opinions related to California Environmental Quality Act (CEQA), project financing and funding including, but not limited to, State Revolving Funds (SRF), Water Infrastructure Finance and Innovation Act (WIFIA) and compliance with public works contracting and design-build laws in California.

FISCAL IMPACT:

Amendment 2 to Task Oder 1 with Hunt Ortmann for legal services for the Oliver P. Roemer Water Filtration Facility Expansion Project is a not to exceed fee of \$100,000. This item was included in the Fiscal Year 2021/22 Capital Improvement Budget under the Oliver P. Roemer Water Filtration Facility Expansion Project (W19041).

STAFF RECOMMENDATION:

Staff recommends that this item be submitted for consideration, and that the Board of Directors approve this item and authorize the General Manager to execute the necessary documents.

Respectfully Submitted,

Shamindra Manbahal

Shamindra Manbahal, General Manager

LJ:ls

ATTACHMENT(S):

1. Exhibit A - Amendment 2 - Task Order 1 - Hunt Ortmann

EXHIBIT A

TASK ORDER NO. 1

AMENDMENT 2

**Professional Legal Services for the
Oliver P. Roemer Water Filtration Facility Expansion Project**

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 Hunt Ortmann Palffy Nieves Darling & Mah, Inc. (“Consultant”).

RECITALS

- A. On or about (April 15, 2021) 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**

Shamindra Manbahal, General Manager

Peggy Asche, Board Secretary

CONSULTANT:

Hunt Ortmann Palfy Nieves Darling & Mah, Inc.

By _____

Name _____

Its _____

By _____

Name _____

Its _____

EXHIBIT “1”
TO
TASK ORDER NO. 1
AMENDMENT NO. 2
SCOPE OF SERVICES

- Drafting comprehensive contract language.
- Providing advice and assistance related to the procurement and development of the Project facilities and infrastructure.
- Legal services and opinions may also be requested as they relate to California Environmental Quality Act (CEQA) compliance, requirements established as a condition to project financing and funding including, but not limited to, SRF, WIFIA and consistency with public works contracting and design-build laws in California.

EXHIBIT "2"
TO
TASK ORDER NO. 1
AMENDMENT NO. 2

Budget not to exceed \$100,000.

EXHIBIT "3"
TO
TASK ORDER NO. 1
AMENDMENT NO. 2
SCHEDULE

As needed services.



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

DATE: May 11, 2022
TO: Engineering, Operations and Planning Committee
FROM: Shamindra Manbahal, General Manager
SUBJECT: CONSIDER A JOINT COMMUNITY FACILITIES AGREEMENT AND ACQUISITION AND FUNDING AGREEMENT FOR THE NARRA HILLS DEVELOPMENT

DISCUSSION:

As part of developing land in northern Fontana, west of the I-15 Freeway and north of Duncan Canyon Road, Tentative Tract Map 20010 and the Narra Hills (formerly known as Monarch Hills) development, LS Fontana LLC (“Developer”) of the property, have petitioned the City of Fontana (“City”) to create a Community Facilities District (“CFD”) through proceedings under the Mello-Roos Community Facilities Act of 1982. CFD No. 109 would finance the purchase, construction, modification, expansion, improvement or rehabilitation of public facilities and the payment of development impact (capacity charges) and other fees. The City would act as the lead agency and would form the CFD and the issuance of bonds for the proposed CFD with the repayment of the bonds secured by special taxes levied on taxable property.

The special taxes levied through the CFD would be used to finance certain public facilities including facilities to be owned, operated, and maintained by West Valley Water District (“WVWD”). The WVWD facilities include certain fees and charges included in WVWD’s capacity and connection fee program and used to fund master planned water facilities necessary to provide service to the property and other facilities to be constructed by or on behalf of Owner. Upon the construction of the facilities and the inspection and acceptance by WVWD, the facilities will be conveyed to WVWD.

A CFD can finance facilities to be owned or operated by an entity other than the agency that created the CFD only pursuant to a Joint Community Facilities Agreement (“JCFA”). Attached, as Exhibit A is a copy of the JCFA with the City of Fontana, City of Fontana Community Facilities District No. 109 and WVWD. The purpose of this Agreement is to provide a mechanism by which the CFD may levy special taxes and issue bonds to provide a source of funds to finance, in whole or in part, WVWD fees and the acquisition of facilities. On August 19, 2021 the Board of Directors of the WVWD approved the participation in a CFD for the Narra Hills (formerly known as Monarch Hills) development.

WVWD would still receive capacity charges and fees from the Developer prior to construction of the facilities required to support the development. The Developer would also pay for and construct

those required facilities. Attached, as Exhibit B is a copy of an Acquisition and Funding Agreement (“Facilities Agreement”) which establishes the terms by which the water district facilities shall be constructed and the process by which the developer shall request payment from the CFD. WVWD’s participation in the CFD would not result in any adverse impact to WVWD.

Attached as Exhibit C is a copy of Resolution No. 2022-10, Resolution of the Board of Directors of the West Valley Water District adopting the Joint Community Facilities Agreement.

FISCAL IMPACT:

No fiscal impact.

STAFF RECOMMENDATION:

Staff recommends that this item be submitted for consideration, and that the Board of Directors approve the Acquisition and Funding Agreement with LS Fontana LLC and the Joint Community Facilities Agreement between the City of Fontana, City of Fontana Community Facilities District No. 109 and West Valley Water District and adopt Resolution No. 2022-10, Resolution of the Board of Directors of the West Valley Water District adopting the Joint Community Facilities Agreement.

Respectfully Submitted,

Shamindra Manbahal

Shamindra Manbahal, General Manager

LSJ

ATTACHMENT(S):

1. Exhibit A - Joint Community Facilities Agreement
2. Exhibit B - Acquisition and Funding Agreement
3. Exhibit C - Resolution No. 2022-10

EXHIBIT A



JOINT COMMUNITY FACILITIES AGREEMENT

by and among

CITY OF FONTANA

**CITY OF FONTANA
COMMUNITY FACILITIES DISTRICT NO. 109
(NARRA HILLS)**

and

WEST VALLEY WATER DISTRICT

Dated as of _____ 1, 2022



JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this “Facilities Agreement”), dated as of _____ 1, 2022, is by and among the CITY OF FONTANA, a general law city organized and existing under the laws of the State of California (the “City”), CITY OF FONTANA COMMUNITY FACILITIES DISTRICT NO. 109 (NARRA HILLS), a community facilities district organized and existing under the laws of the State of California (the “Community Facilities District”), and the WEST VALLEY WATER DISTRICT, a municipal water district organized and existing under the laws of the State of California (the “Water District”).

WITNESSETH:

WHEREAS, the City Council of the City (the “City Council”) has, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the “Act”), established the Community Facilities District;

WHEREAS, pursuant to the Act, the proceedings of the City Council and an election held within the Community Facilities District, the Community Facilities District is authorized to issue special tax bonds (the “Bonds”) secured by special taxes (the “Special Taxes”) levied within the Community Facilities District to finance certain public facilities (the “Facilities”);

WHEREAS, the Facilities proposed to be financed by the Community Facilities District include certain Facilities to be owned and operated by the City (the “City Facilities”), certain Facilities to be owned and operated by the Water District (the “Water District Facilities”) and certain Facilities to be owned and operated by certain other public agencies (the “Other Agency Facilities”);

WHEREAS, Section 53316.2 of the Act provides that a community facilities district may finance facilities to be owned or operated by a public agency other than the agency that created the community facilities district only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to said Section;

WHEREAS, Section 53316.2 of the Act further provides that at any time prior to the adoption of the resolution of formation creating a community facilities district or a resolution of change to alter a district, or a resolution or resolutions authorizing issuance of bonds pursuant to Section 53356 of the Act, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to said Section and Sections 53316.4 and 53316.6 of the Act to exercise any power authorized by the Act with respect to the community facilities district being created if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to the residents of that entity;

WHEREAS, no resolution authorizing the issuance of any Bonds has been adopted;

WHEREAS, the City Council and the Board of Directors of the Water District have each adopted a resolution declaring that such a joint agreement would be beneficial to the residents of that entity;

WHEREAS, LS-FONTANA LLC (the “Developer”) is developing the property within the boundaries of the Community Facilities District;

WHEREAS, development of such property will require the acquisition, construction and installation of certain Water District Facilities;

WHEREAS, in order to provide for the acquisition, construction and installation of such Water District Facilities, the Water District and the Developer are entering into an Acquisition and Funding Agreement (the “Acquisition Agreement”), pursuant to which the Developer will acquire, construct and install, or cause to be acquired, constructed and installed, certain of the Water District Facilities and, upon satisfaction of the conditions specified therein, the Water District will acquire and take title to such Water District Facilities and that the Developer will be paid the purchase price thereof from proceeds of Special Taxes or Bonds (collectively, “District Proceeds”) made available for such purpose by the Community Facilities District; and

WHEREAS, the City, the Community Facilities District and the Water District desire to enter into this Facilities Agreement in accordance with Sections 53316.2, 53316.4 and 53316.6 of the Act in order to provide for the financing of the Water District Facilities with District Proceeds;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Issuance of Bonds. (a) It is anticipated that the Community Facilities District will issue Bonds to finance the acquisition, construction and installation of the City Facilities, the Water District Facilities and the Other Agency Facilities. The City Council, acting as the legislative body of the Community Facilities District, shall, in its sole discretion, determine whether, when, under what conditions and to what extent Bonds shall be issued to finance the acquisition, construction and installation of the City Facilities, the Water District Facilities or the Other Agency Facilities, or any combination thereof. In no event shall the Water District have any right to compel the Community Facilities District to issue Bonds to finance the acquisition, construction and installation of Water District Facilities or to disburse Bond proceeds to pay the costs of the acquisition, construction and installation of Water District Facilities.

(b) It is anticipated that the Community Facilities District may make proceeds of Special Taxes available to finance the acquisition, construction and installation of the City Facilities, the Water District Facilities and the Other Agency Facilities. The City Council, acting as the legislative body of the Community Facilities District, shall, in its sole discretion, determine whether, when, under what conditions and to what extent any such Special Tax proceeds shall be made available to finance the acquisition, construction and installation of the City Facilities, the Water District Facilities or the Other Agency Facilities, or any combination thereof. In no event shall the Water District have any right to compel the Community Facilities District to make proceeds of Special Taxes available to finance the acquisition, construction and installation of Water District Facilities or to disburse such Special Tax proceeds to pay the costs of the acquisition, construction and installation of Water District Facilities.

Section 2. Water District Facilities. (a) The Water District Facilities, including any real or tangible property that is to be purchased, constructed, expanded or rehabilitated, are described in Exhibit A attached hereto.

(b) It is anticipated that the Community Facilities District will make District Proceeds available to finance the acquisition, construction and installation of the Water District Facilities. If the Community Facilities District makes District Proceeds available for such purpose, the Community Facilities District shall notify the Water District of the amount of such District Proceeds available for such purpose within 15 days of such District Proceeds becoming so available. The Community Facilities District makes no representation that, if District Proceeds are made available to finance the acquisition, construction and installation of the Water District Facilities, such District Proceeds will be sufficient to finance the acquisition, construction and installation of all of the Water District Facilities, and neither the City nor the Community Facilities District shall have any liability to the Water District if such District Proceeds are insufficient for such purpose. If the Community Facilities District determines not to make District Proceeds available to finance the acquisition, construction and installation of the Water District Facilities, neither the City nor the Community Facilities District shall have any obligation to provide any amounts to finance or pay the costs of the acquisition, construction and installation of the Water District Facilities.

Section 3. Disbursements. (a) District Proceeds available for the acquisition, construction and installation of the Water District Facilities shall be deposited in a special account (howsoever denominated, the “Water District Facilities Account”), which (i) prior to the issuance of Bonds, is to be established and held by or on behalf of the Community Facilities District, and (ii) upon the issuance of Bonds is to be established and held under the Indenture pursuant to which the Bonds are issued. Moneys on deposit in the Water District Facilities Account shall be invested and disbursed at the direction of the Community Facilities District.

(b) To the extent that moneys are available therein, the Community Facilities District shall cause disbursements to be made from the Water District Facilities Account from time to time to pay the costs of the acquisition, construction and installation of the Water District Facilities upon submission of a written request of the Water District stating (i) the name and address of the person to whom payment is to be made, (ii) the amount to be paid, (iii) that an obligation in such amount has been incurred by the Water District, (iv) the purpose for which the obligation to be paid was incurred, (v) that each item of the obligation to be paid constitutes a cost of the Water District Facilities, (vi) that the obligation to be paid has not been the subject of a prior Water District request for disbursement from the Water District Facilities Account, (vii) that each portion of the Water District Facilities for which payment is requested was constructed under the direction and supervision, or under the authority of, the Water District or was constructed as if it had been constructed under the direction and supervision, or under the authority of, the Water District, and (viii) that each portion of the Water District Facilities for which payment is requested is being acquired and purchased in accordance the provisions of the Act and the Acquisition Agreement.

The Community Facilities District shall process in a timely manner written requests for disbursements received from the Water District that conform to the requirements hereof.

Section 4. Construction, Ownership and Maintenance of City Facilities and Water District Facilities. (a) The Water District shall have no responsibility for the acquisition, construction and installation of the City Facilities. The City Facilities shall be and remain the sole and separate property of the City and shall be operated, maintained and utilized by the City. The Water District shall not have any ownership interest in the City Facilities, and the Water District shall have no responsibility for the operation, maintenance or utilization of the City Facilities.

(b) Neither the City nor the Community Facilities District shall have any responsibility for the acquisition, construction and installation of the Water District Facilities or the Other Agency Facilities. The Water District Facilities shall be and remain the sole and separate property of the Water District and shall be operated, maintained and utilized by the Water District, and the Other Agency Facilities financed by the Community Facilities District for a local agency shall be and remain the sole and separate property of such local agency and shall be operated, maintained and utilized by such local agency. Neither the City nor the Community Facilities District shall have any ownership interest in the Water District Facilities or the Other Agency Facilities, and neither the City nor the Community Facilities District shall have any responsibility for the operation, maintenance or utilization of the Water District Facilities or the Other Agency Facilities.

Section 5. Tax Matters. In connection with the issuance of any Bonds, a portion of the proceeds of which are to be made available to finance the acquisition, construction and installation of the Water District Facilities, the Water District shall execute and deliver such certifications and agreements as may be reasonably required in order for bond counsel to conclude that interest on such Bonds will be excluded from gross income under Section 103 of the Internal Revenue Code of 1986.

Section 6. Indemnification. (a) The City agrees to protect, indemnify, defend and hold the Water District, and its officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits actions, decrees, judgments, awards, attorneys' fees and court costs which the Water District, or its officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the Water District, or its officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of the acquisition, construction, installation, operation, maintenance or utilization of the City Facilities. If the City fails to do so, the Water District shall have the right, but not the obligation, to defend the same and charge all of the direct and incidental costs of such defense, including any attorneys' fees or court costs, to and recover the same from the City.

No indemnification is required to be paid by the City for any claim, loss or expense arising from the willful misconduct or negligence of the Water District, or its officers, employees or agents.

(b) The Water District agrees to protect, indemnify, defend and hold the City and the Community Facilities District, and their respective officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits actions, decrees, judgments, awards, attorneys' fees and court costs which the City or the Community Facilities District, or their respective officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the City or the Community Facilities

District, or their respective officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of the acquisition, construction, installation, operation, maintenance or utilization of the Water District Facilities. If the Water District fails to do so, the City and the Community Facilities District shall have the right, but not the obligation, to defend the same and charge all of the direct and incidental costs of such defense, including any attorneys' fees or court costs, to and recover the same from the Water District.

No indemnification is required to be paid by the Water District for any claim, loss or expense arising from the willful misconduct or negligence of the City or the Community Facilities District, or their respective officers, employees or agents.

Section 7. Nature of Agreement; Allocation of Special Taxes. This Facilities Agreement shall constitute a joint community facilities agreement entered into pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Act. The entire amount of the proceeds of the Special Taxes shall be allocated and distributed to the City.

Section 8. Limitation of Rights to Parties. Nothing in this Facilities Agreement expressed or implied is intended or shall be construed to give to any person other than the City, the Community Facilities District and the Water District any legal or equitable right, remedy or claim under or in respect of this Facilities Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Community Facilities District and the Water District.

Section 9. Notices. All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attention: Chief Financial Officer, Management Services

If to the Community Facilities District:

City of Fontana Community Facilities
District No. 109 (Narra Hills)
c/o City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attention: Chief Financial Officer, Management Services

If to the Water District:

West Valley Water District
Post Office Box 920
Rialto, CA 92377-0920
Attention: General Manager

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by electronic mail, on the date sent, but only if confirmation of the receipt of such electronic mail is received or if notice is concurrently sent by another means specified herein, (d) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 10. Severability. If any part of this Facilities Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Facilities Agreement shall be given effect to the fullest extent reasonably possible.

Section 11. Successors. This Facilities Agreement shall be binding upon and inure to the benefit of the successors of the parties hereto.

Section 12. Amendments. This Facilities Agreement may be amended, supplemented or otherwise modified only by an instrument in writing executed and delivered by each of the parties hereto.

Section 13. Governing Laws. This Facilities Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 14. Counterparts. This Facilities Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Facilities Agreement as of the date first written above.

CITY OF FONTANA

By: _____

**CITY OF FONTANA COMMUNITY
FACILITIES DISTRICT NO. 109
(NARRA HILLS)**

By: _____

WEST VALLEY WATER DISTRICT

By: _____

EXHIBIT A**DESCRIPTION OF WATER DISTRICT FACILITIES**

The types of facilities to be owned and operated by the Water District and financed by the District Proceeds are water distribution facilities, together with appurtenances and appurtenant work.

EXHIBIT B

**ACQUISITION AND FUNDING AGREEMENT
(WEST VALLEY WATER DISTRICT)**

THIS ACQUISITION AND FUNDING AGREEMENT (the “Facilities Agreement”) is made and entered into as of _____, 2022 by and between the West Valley Water District (the “Water District”) and LS-Fontana LLC, a Delaware limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, pursuant to the request of the Developer, the City Council (the “City Council”) of the City of Fontana has initiated proceedings under the Mello-Roos Community Facilities Act of 1982 (the “Act”) to create City of Fontana Community Facilities District No. 109 (Narra Hills) (the “Community Facilities District”), to authorize the levy of special taxes (the “Special Taxes”) upon the land within the Community Facilities District and to issue bonds (the “Bonds”) secured by the Special Taxes, the proceeds of which are to be used to finance certain public facilities;

WHEREAS, the Developer is the developer of all of the property (the “Property”) within the proposed boundaries of the Community Facilities District, which Property and Community Facilities District are depicted on Exhibit “E” attached hereto;

WHEREAS, the facilities proposed to be financed by the Community Facilities District include certain facilities to be owned, operated and maintained by the Water District including facilities included in fee programs of the Water District and facilities to be constructed by the Developer, all as described in Exhibit “A” attached hereto (the “Water District Facilities”), as well as facilities to be owned, operated or maintained by the City and the San Bernardino County Flood Control District (the “Other Facilities” and with the Water District Facilities, the “Facilities”);

WHEREAS, the Water District Facilities include (i) certain fees and charges included in the Water District’s capacity and connection fee program and used to fund master plan water facilities necessary to provide service to the Property (the “Water District Fees”), which fees, as of the date of this Facilities Agreement, are estimated to total \$6,625,722 and (ii) certain other facilities to be constructed by or on behalf of Developer and acquired by Water District for their actual cost, together with appurtenances and appurtenant work, and incidental expenses related thereto (the “Water District Acquisition Facilities”);

WHEREAS, upon the construction of the Water District Acquisition Facilities by or on behalf of Developer and the inspection and acceptance thereof by Water District, the Water District Acquisition Facilities will be conveyed to and accepted by Water District;

WHEREAS, Section 53316.2 of the Act provides that a community facilities district may finance facilities to be owned or operated by an entity other than the agency that created the community facilities district only pursuant to a joint community facilities agreement (“JCFA”) adopted pursuant to said Section;

WHEREAS, concurrent with the approval of this Facilities Agreement, the City and the Water District shall enter into a JCFA dated _____, 2022 in accordance with Sections 53316.2, 53316.4 and 53316.6 of the Act in order to provide for the financing of the Water District

Facilities through the levy of Special Taxes and issuance of Bonds by the Community Facilities District; and

WHEREAS, the purpose of this Facilities Agreement is to establish the terms pursuant to which (i) the Developer shall bid and contract for the construction of the Water District Acquisition Facilities; (ii) the Developer shall submit payment requests to the Water District for processing in order to receive disbursement from the Community Facilities District pursuant to the JCFA for such Water District Acquisition Facilities; and (iii) the Developer shall advance Water District Fees to the Water District prior to the availability of “District Proceeds” (defined below) and be reimbursed such advances when District Proceeds are disbursed to the Water District pursuant to the JCFA; and (iv) the Developer shall receive credit against future Water District Fees remaining to be paid to the extent the Water District receives District Proceeds.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. Water District Facilities. The Water District Facilities, including any real or tangible property which is to be purchased, constructed, expanded or rehabilitated, are described in Exhibit “A” attached hereto.

Section 2. Financing of Water District Facilities.

(a) **District Proceeds.** It is anticipated that the Community Facilities District will levy Special Taxes to pay directly for Facilities and issue Bonds in one or more series secured by Special Taxes to finance the acquisition, construction and installation of Facilities. The proceeds of such Special Taxes and Bonds available for Water District Facilities shall be referred to as “District Proceeds.” Under the terms set forth herein and the JCFA, the Community Facilities District will provide District Proceeds to finance the acquisition, construction and installation of all or a portion of the Water District Facilities. Notwithstanding any other provision of this Facilities Agreement, the fact that there may not be sufficient District Proceeds available to pay for the Water District Facilities shall not relieve Developer, or its successors and assigns, of its obligation to pay to Water District the Water District Fees described in Exhibit “A” hereto required to be paid in connection with the development of the Property or to otherwise construct any Water District Acquisition Facilities that are required as a condition to development of the Property.

(b) **Water District Fees.** As District Proceeds are transferred to Water District to fund Water District Fees, Developer shall receive a credit, in an amount equal to the amount of such District Proceeds so received, against the Water District Fees required to be paid by the Developer in connection with the development of the Property.

Developer may advance Water District Fees to the Water District prior to the availability of sufficient District Proceeds. Each such cash advance shall be referred to as a “Deposit.” In the event Developer makes a Deposit with the Water District, the full amount of such Deposit shall be reimbursed to Developer by Water District from available District Proceeds. Such Deposits shall be retained by the Water District and the Water District shall have no obligation to reimburse them except to the extent District Proceeds subsequently become available. From time to time, Developer may request that the Water District submit a request to the City for a disbursement of District Proceeds pursuant to Section 3 of the JCFA and in the form attached hereto as Exhibit D-2 for the purpose of

financing Water District Facilities in satisfaction of Water District Fees applicable to the development of the Property. Upon the Water District's receipt of such disbursement, Developer shall be reimbursed its prior Deposits and to the extent the disbursement exceeds the prior Deposits, Developer shall receive a dollar-for-dollar credit against the Water Fees remaining to be paid in connection with the development of the Property.

(c) **Water District Acquisition Facilities.** Developer shall be reimbursed from District Proceeds for its costs incurred in connection with the Water District Acquisition Facilities in accordance with Section 3.(c) below.

Section 3. Water District Acquisition Facilities. The parties acknowledge that Water District may require Developer, pursuant to its rules and regulations, to design, construct and dedicate to Water District the Water District Acquisition Facilities as a condition to development of the Property. The Developer shall construct and install all Water District Acquisition Facilities that are acquired with District Proceeds in accordance with the provisions of this Section 3.

(a) **Construction and Acquisition of Water District Acquisition Facilities.**

(i) Developer shall, at no cost to Water District, be responsible for the preparation of the plans and specifications for the construction of the Water District Acquisition Facilities (the "Plans and Specifications"). The Plans and Specifications shall conform to the requirements of Water District for such facilities and shall be subject to the review and approval by Water District. All cost and expense of Water District review (including, but not limited to, Water District's agents, employees and independent contractors) shall be paid by Developer and shall be deemed eligible costs available for reimbursement from the Acquisition and Construction Fund (District Proceeds) of the Acquisition and Construction Fund (CFD) to the extent reasonable. Developer represents that the Plans and Specifications will conform to all applicable federal, state and local governmental rules, ordinances and regulations and all applicable environmental protection laws. Developer's submission of the Plans and Specifications to Water District shall evidence Developer's representation and warranty to Water District that the Plans and Specifications are complete, accurate, workable and in compliance with all governmental requirements with respect thereto. Developer, at its cost and expense, shall, except as otherwise provided herein, pay all permit fees, connection fees and other fees customarily charged by Water District as may now exist or may be charged in the future arising out of the planning, engineering or construction of the Water District Acquisition Facilities, and such fees shall be deemed eligible costs available for reimbursement from District Proceeds.

(ii) The Water District Acquisition Facilities must be constructed in strict accordance with the Plans and Specifications as approved by Water District. Any deviations from the approved Plans and Specifications must be approved by the Water District, in writing. Developer shall be solely responsible for the bidding, contracting and construction of the Water District Acquisition Facilities to be acquired with District Proceeds in accordance with the requirements set forth in Exhibit "B" hereto. Except as otherwise provided herein, the City, Water District and the Community Facilities District shall have no responsibility whatsoever for the bidding, contracting and construction of the Water District Acquisition Facilities. The Developer shall construct and install all Water District Acquisition Facilities on the following terms and conditions:

(A) The Developer shall construct and complete the Water District Acquisition Facilities (or subject portion thereof) at no cost or expense to Water District and in accordance with the laws, rules and regulations of all governmental bodies and agencies having jurisdiction over the Water District Acquisition Facilities (or subject portion thereof).

(B) The Developer shall be required to furnish labor and material payment bonds and contract performance bonds in an amount equal to one hundred percent (100%) of the contract price for the Water District Acquisition Facilities (or such portion thereof) naming the Developer, City, Community Facilities District and Water District as obligees and issued by insurance or surety companies approved by the Water District. All such bonds shall be in a form approved by the Water District.

(C) The Developer shall deliver to Water District a Certificate of Insurance evidencing coverage for “builder’s risk,” evidence of employer liability insurance with limits of at least One Million Dollars per occurrence and evidence of comprehensive liability insurance (automobile and general liability) with limits of at least Five Million Dollars per occurrence. The Developer shall maintain, keep in force and pay all premiums required to maintain and keep in force all insurance at all times during which such work is in progress. The general liability insurance to be obtained by the Developer shall name the Water District as an additional insured. The Developer shall further maintain and provide evidence of workers’ compensation insurance coverage as provided by law.

(D) The Developer shall comply with such other requirements relating to the construction of the Water District Acquisition Facilities (or subject portion thereof) which Water District may impose by written notification delivered to the Developer at any time, either prior to the receipt of bids by the Developer for the construction of the Water District Acquisition Facilities (or subject portion thereof) or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof. As set forth above, the Developer shall be deemed the awarding body and shall be solely responsible for compliance and enforcement of the provisions of the Labor Code, Government Code and Public Contract Code to the extent expressly applicable to a non-governmental entity constructing infrastructure to be acquired by a public entity. Developer shall pay or cause its construction contractors to pay prevailing wages with respect to the Water District Acquisition Facilities and any other facilities constructed by Developer as required by the Labor Code.

(E) Water District shall have access to inspect the Water District Acquisition Facilities during normal business hours by making reasonable advance arrangements with Developer. It is understood and agreed that Water District’s inspection personnel shall have the authority to enforce the Plans and Specifications, which authority shall include requiring that all unacceptable material, workmanship installation be replaced, repaired or corrected by the Developer. All cost and expense of Water District’s inspection (including, but not limited to, Water District’s agents, employees and independent contractors) shall be paid by Developer and be eligible for reimbursement with District Proceeds. Other than the final inspection and approval of the Water District Acquisition Facilities (or subject portion thereof), any inspection completed by Water District shall be for the sole use and benefit of Water District and neither the Developer nor any third party shall be entitled to rely thereon for any purpose. Water District does not undertake or assume any responsibility for or owe a duty to select, review or supervise the creation of

the Water District Acquisition Facilities (or subject portion thereof). Upon completion of the construction of the Water District Acquisition Facilities (or subject portion thereof) to the satisfaction of Water District's inspectors, the Developer shall notify Water District in writing that the construction of the Water District Acquisition Facilities (or subject portion thereof) has been completed in accordance with the Plans and Specifications.

(F) Upon satisfactory completion of the Water District Acquisition Facilities (or subject portion thereof) in accordance with the Plans and Specifications and Water District's standard requirements, in accordance with the terms thereof, the Developer shall forthwith file with the County Recorder of the County of San Bernardino, a Notice of Completion pursuant to the provisions of the Civil Code. The Developer shall furnish to Water District a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Recorder. Any actual costs reasonably incurred by Water District in inspecting and approving the construction of the Water District Acquisition Facilities (or subject portion thereof) not previously paid by the Developer or funded with District Proceeds shall be paid by Developer.

(G) The Developer shall provide to Water District such evidence as Water District shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the Water District Acquisition Facilities (or subject portion thereof) have been paid, and that no claims on behalf of any such person, firm or corporation are outstanding.

(H) The Developer shall, at the time Water District acquires the Water District Acquisition Facilities (or subject portion thereof), grant to Water District, by appropriate instruments prescribed by Water District, all easements across private property, fee title, ownership deeds, public access or rights-of-way which may be necessary for the proper operation and maintenance of the Water District Acquisition Facilities (or subject portion thereof), or any part thereof. The Developer shall insure that all deeds of trust and mortgages are subordinated to the easements and reconveyed as to the fee title ownership.

(I) Upon completion of the Water District Acquisition Facilities (or subject portion thereof) and completion of the final inspection, testing and written assurance thereof by Water District, the Developer shall execute and deliver a Bill of Sale in the form and content acceptable to Water District. The Bill of Sale shall convey title of the Water District Acquisition Facilities (or subject portion thereof) to Water District. The Water District Acquisition Facilities (or subject portion thereof) shall be transferred to Water District free of all liens and encumbrances.

(J) Prior to the transfer of ownership of the Water District Acquisition Facilities (or subject portion thereof) by the Developer to Water District, the Developer shall be responsible for the maintenance thereof and shall maintain and transfer the Water District Acquisition Facilities (or subject portion thereof) to Water District in as good condition as the Water District Acquisition Facilities (or subject portion thereof) were in at the time the Developer notified Water District that construction of same had been completed in accordance with the Plans and Specifications. The Developer shall provide to Water District, a two-year performance bond (following date of final acceptance by Water District of the Water District Acquisition Facilities (or subject portion thereof)) for materials and workmanship guarantee providing that Developer will

repair, at its expense, all failures of or to the Water District Acquisition Facilities (or subject portion thereof) which was furnished, installed and/or constructed due to faulty materials or installation, within said two-year period. In the event Developer or the surety fails to cause satisfactory repair, as determined by Water District, within ten (10) business days following written notice or such longer period of time as Water District may reasonably determine, Water District may cause such repairs to be completed at Developer's surety's cost and expense. Notwithstanding the above-referenced ten (10) business day or other specified repair period, Water District shall have the unqualified right to immediately make any emergency repairs necessary to eliminate any threat to the public's health, safety or welfare, at Developer's and/or surety's cost and expense. Nothing in this subparagraph shall limit or abrogate any other claims, demands or actions Water District may have against Developer and/or Developer's surety on account of damages sustained by reason of such defect, nor shall the provisions of this subparagraph limit, abrogate or affect any warranties in favor of Water District which are expressed or implied by law.

(K) Water District shall have the right to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer for the design and construction of the Water District Acquisition Facilities (or subject portion thereof) during normal business hours by making reasonable advance arrangements with Developer.

(iii) For purposes of this Agreement, a Water District Acquisition Facility shall be deemed "substantially completed" when Developer has notified Water District that the Water District Acquisition Facility has been completed in accordance with its Plans and Specifications, Water District's inspector has inspected the facility, prepared a final "punch list" and has determined that the only punch list items required to be completed are items not required for the safe operation of the Water District Acquisition Facility and can therefore be completed after the Water District Acquisition Facility has been opened to or made available for public use. For purposes of this Agreement, a Water District Acquisition Facility shall be deemed "finally completed" when all punch list items have been completed to the satisfaction of Water District, and Water District has accepted the Water District Acquisition Facilities pursuant to subparagraph (a) above.

(b) Acquisition and Ownership of Water District Acquisition Facilities.

(i) For purposes of determining the acquisition price to be paid from District Proceeds for the acquisition of each Water District Acquisition Facility, the value of such facility shall be based on the "Actual Costs" submitted by the Developer, as that term is defined in Exhibit "C" attached hereto and incorporated herein by reference. Upon the transfer of ownership of the Water District Acquisition Facilities to Water District, Water District shall be responsible for the maintenance of the Water District Acquisition Facilities.

(ii) Upon acceptance of the Water District Acquisition Facilities by Water District, Water District shall incorporate the Water District Acquisition Facilities in Water District's system. Following the expiration of any warranty period applicable to the construction of the Water District Acquisition Facilities during which time Developer shall be responsible for the maintenance of the Water District Acquisition Facilities, Water District shall thereafter be responsible for maintenance of the Water District Acquisition Facilities in accordance with all applicable Water District procedures and practices.

(c) **Payment Requests.**

(i) Notwithstanding the timing of substantial completion or final completion and acceptance of the Water District Acquisition Facilities, Developer may submit a payment request upon substantial or final completion of a Water District Acquisition Facility. The form of payment request to be submitted to Water District by Developer in requesting a disbursement from the Community Facilities District of the acquisition price of the Water District Acquisition Facility, shall be substantially in the form of Exhibit “D-1” hereto. Within ten (10) business days of Developer’s submission to Water District of a payment request, Water District shall determine if the Water District Acquisition Facility has been substantially completed and shall either deny or approve the payment request, which approval shall not be unreasonably withheld. If Water District denies any payment request it shall provide Developer a detailed written explanation describing the reasons or rational for such denial. All denied payment requests may be resubmitted for approval. Developer shall reimburse Water District for its actual costs incurred in connection with the processing of such payment requests, including the inspection of the Water District Acquisition Facilities and such amounts shall be included in the acquisition price paid by the Community Facilities District.

(ii) In connection with Water District’s approval of a payment request, Water District and Developer shall authorize the Community Facilities District to disburse the acquisition price with respect to the approved Water District Acquisition Facilities pursuant to a disbursement request, which shall be substantially in the form of Exhibit “D-2” hereto. The sole source of funds for payment of the acquisition price or funding with respect to the approved Water District Acquisition Facilities shall be the District Proceeds made available by the Community Facilities District for Water District Facilities.

Section 4. Indemnification. The Developer shall assume the defense of, and hold harmless the Water District and its officers, directors, officials, employees and agents, and each of them, from and against all actions, damages, claims, losses or expenses, including reasonable attorneys’ fees and costs, of every type and description to which they may be subjected or put, by reason of, or resulting from, (i) any act or omission of Developer under this Facilities Agreement, (ii) the design, engineering, construction and installation of the Water District Acquisition Facilities to be constructed by Developer, including its consultants, contractors, subcontractors, and anyone directly or indirectly employed by Developer or anyone for whose acts any of them may be liable in connection with the construction of the Water District Acquisition Facilities, the establishment of the Community Facilities District, (iii) the levy of Special Taxes, the issuance of the Bonds, (iv) the financing of all or a portion of the Water District Acquisition Facilities from District Proceeds, and (v) any disclosure made by Developer in connection with the offering and sale of the Bonds or any continuing disclosure made at any time by Developer with respect to the Bonds, or any matters relating thereto. If the Developer fails to do so, the Water District shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including any fees or costs, to, and recover the same from, the Developer.

Section 5. Notices. All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the parties in writing time to time, namely:

If to the Water District:

West Valley Water District
Post Office Box 920
Rialto, California 92377-0920
Attention: General Manager

If to the Developer:

LS-Fontana LLC
7525 Irvine Center Drive, Suite 200
Irvine, California 92618
Attention: Shannon Whittaker

Each such notice, statement, demand, consent, authorization, offer, designation, request or other hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram, electronic mail or telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 6. California Law. This Facilities Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 7. Attorney Fees. In the event of any legal action or proceeding arising from or related in any way to a breach of or enforcement or interpretation of this Facilities Agreement, the prevailing party shall be entitled to recover from the opposing party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

Section 8. Severability. If any part of this Facilities Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Facilities Agreement shall be given effect to the fullest extent reasonably possible.

Section 9. Successors and Assigns. This Facilities Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 10. No Third Party Beneficiaries. Except as provided explicitly in this Facilities Agreement, no person or entity shall be deemed to be a third-party beneficiary hereof, and nothing in this Facilities Agreement (either express or implied) is intended to confer upon any person or entity other than the Water District and Developer any rights, remedies, obligations or liabilities under or by reason of this Facilities Agreement. This Facilities Agreement may be assigned by Developer to a third party upon the consent of Water District, which consent shall not be unreasonably withheld or delayed.

Section 11. Counterparts. This Facilities Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

Section 12. Independent Contractor. In performing this Facilities Agreement, Developer is an independent contractor and not the agent of Water District. Except as provided herein, Water District shall have no responsibility for payment to any contractor or supplier of Developer. It is not intended by the parties that this Facilities Agreement create a partnership or joint venture among them and this Facilities Agreement shall not otherwise be construed.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Facilities Agreement as of the date first written above.

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

APPROVED AS TO FORM:

By: _____
Shamindra Manbahal,
General Manager

By: _____
Robert Tafoya
Tafoya & Garcia LLP

By: _____
Channing Hawkins,
President of the Board of Directors

LS-FONTANA LLC, a Delaware limited liability company

By: _____
Name: _____
Its _____

EXHIBIT "A"

DESCRIPTION OF WATER DISTRICT FACILITIES

Water District Fees¹

- 1. Connection Fee (3/4" meter) (205 DUs) \$11,076 per DU
- 2. Connection Fee (1" meter) (155 DUs) \$18,497 per DU
- 3. Connection Fee (2" meter) (14) \$59,035 per meter
- 4. Fire Flow Charge \$1,198 per ____

Water District Acquisition Facilities

The type of Water District Acquisition Facilities eligible to be financed by Community Facilities District under the Act are as follows:

Lytle Creek Road (Tract 20010) approximately ____ linear feet of water improvements (including 12" ductile iron pipeline, appurtenances etc.) (Estimated cost \$1,197,000)

The description of the Water District Acquisition Facilities are preliminary. The final location, scope, nature and specification, of the Water District Acquisition Facilities shall be determined by reference to the final Water District-approved Plans and Specifications for each facility and may include facilities that are not described above, as approved by the General Manager.

¹ Amounts stated for each fee are as of the date of this Facilities Agreement. The amounts eligible to be financed shall be the current amounts payable whenever payment is required pursuant to Water District policies.

EXHIBIT "B"**BIDDING, CONTRACTING AND CONSTRUCTION REQUIREMENTS**

1. Bids shall be solicited at least three (3) qualified contractors, provided at least three (3) qualified contractors are reasonably available. Developer may also directly solicit bids.
2. The bidding response time shall be not less than ten (10) working days.
3. An authorized representative of Water District shall be provided a copy of the tabulation of bid results.
4. Contract(s) the construction of the Water District Acquisition Facilities shall be awarded to the qualified bidder submitting the lowest responsible bid, as determined by Developer.
5. The contractor to whom a contract is awarded shall be required to pay not less than the prevailing rates of wages pursuant to Labor Code Sections 1770, 1773 and 1773.1. A current copy of applicable wage rates shall be on file in the Office of the Water District Engineer, as required by Labor Code Section 1773.2.

EXHIBIT “C”**ACTUAL COSTS**

The eligible costs for the Water District Acquisition Facilities shall include all of the actual costs and expenses, directly or indirectly related to the design, planning, engineering, construction, installation and testing of the Water District Acquisition Facilities (the “Actual Costs”). Actual Costs shall include without limitation, the following:

1. Costs for the construction of the Water District Acquisition Facilities, including, without limitation, costs incurred in the employment of licensed contractors to construct, install, complete and test the Water District Acquisition Facilities.
2. Allocated grading costs based upon the square footage of grading area for the Water District Acquisition Facilities and the grading of slope areas relating to the Water District Acquisition Facilities as a percentage of the total graded area under the applicable grading contract, if separable.
3. All permit fees, inspection fees and other fees actually charged by governmental agencies or other entities, including Water District, arising out of or in connection with the design, planning, engineering, construction, installation or testing of the Water District Acquisition Facilities.
4. Costs of tests, inspections, studies, reports and surveys, including, without limitation, any environmental, archaeological, biological or cultural studies or any mitigation requirements that may be requested by federal, state or local agencies evaluations attributable to the Water District Acquisition Facilities.
5. Professional costs and fees associated with design, engineering, accounting, inspection, construction staking, materials testing, legal and accounting and other similar services.
6. Costs of labor and material payment bonds and contract performance and maintenance bonds.
7. Builder’s risk insurance, employer’s liability insurance and comprehensive liability insurance obtained with respect to the Water District Acquisition Facilities.
8. Costs of acquiring from unrelated third parties any fee or easement interest in real property or licenses or encroachment permits to install the Water District Acquisition Facilities, including, without limitation, temporary construction easements, haul road and maintenance easements, the cost to prepare surveys, deeds and easement documents, and professional and escrow fees.
9. Construction and project management and supervision not to exceed 5% of the costs of construction of the related Water District Acquisition Facilities.
10. Costs and expenses of Water District in connection with the performance of its obligations under this Facilities Agreement, including, but not limited to, (i) attorneys, accountants

and other professionals retained in connection with Water District's compliance with this Facilities Agreement or any matter related to the design, planning, engineering, construction, installation or testing of the Water District Acquisition Facilities, and (ii) employee time to review the Plans and Specifications, inspect the construction and installation of the Water District Acquisition Facilities and process payment requests. All costs must be properly documented and reasonable to be reimbursed.

EXHIBIT “D-1”

FORM OF PAYMENT REQUEST

The undersigned hereby requests payment from the applicable account or subaccount thereof, established by City of Fontana Community Facilities District No. 109 (Narra Hills) (the “CFD”), an amount equal to \$_____ for the Water District Acquisition Facilities (as defined in the Acquisition and Funding Agreement by and between West Valley Water District (“Water District”) and LS-Fontana LLC (“Developer”), dated _____, 2022 (the “Facilities Agreement”)), all as more fully described in Attachment 1 hereto. In connection with this payment request, the undersigned hereby represents and warrants to Water District as follows:

1. He(she) is a duly authorized officer or representative of the undersigned, qualified to execute this Payment Request for payment on behalf of the undersigned and is knowledgeable as to the matters set forth herein.

2. All costs of the Water District Acquisition Facilities for which payment is requested hereby are those Actual Costs (as described in Exhibit “C” to the Facilities Agreement) and have not been inflated in any respect. The Actual Costs for which payment is requested have not been the subject of any prior disbursement request submitted to the CFD.

3. Supporting documentation (such as third party invoices, lien releases and cancelled checks or other evidence of payment) is attached with respect to each cost for which payment is requested.

4. The Water District Acquisition Facilities for which payment is requested was constructed in accordance with the requirements of the Facilities Agreement.

5. The undersigned is in compliance with the terms and provisions of the Facilities Agreement and no portion of the amount being requested to be paid was previously paid.

6. The acquisition price for the Water District Acquisition Facilities (a detailed calculation of which is shown in Attachment 1 hereto) has been calculated in conformance with the terms of the Facilities Agreement.

7. The Water District Acquisition Facilities have been transferred to the Water District or provision for transfer has been made for them.

8. All provisions of the Facilities Agreement have been complied with.

9. Please authorize payment of the acquisition price by the CFD to the following, if other than the undersigned, in the amounts or percentages indicated:

[Insert names of payees and amounts or percentages]

I declare under penalty of perjury that the above representations and warranties are true and connect.

Date: _____

[DEVELOPER]

By: _____

Name: _____

Title: _____

ACCEPTED AND APPROVED BY
WEST VALLEY WATER DISTRICT

By: _____

Name: _____

Title: _____

ATTACHMENT 1

**SUMMARY OF WATER DISTRICT ACQUISITION FACILITIES
TO BE ACQUIRED AS PART OF PAYMENT REQUEST**

| <u>Water District Acquisition Facilities</u> | <u>Actual Costs</u> | <u>Disbursement Requested</u> |
|--|---------------------|-----------------------------------|
|--|---------------------|-----------------------------------|

[List here Water District Acquisition Facilities for which payment is requested, and attach support documentation]

**EXHIBIT “D-2”
DISBURSEMENT REQUEST FORM**

**(Acquisition Facilities/Water District Fees)
City of Fontana Community Facilities District No. 109 (Narra Hills)**

Pursuant to the Joint Community Facilities Agreement by and among the City of Fontana, City of Fontana Community Facilities District No. 109 (Narra Hills) and West Valley Water District dated as of _____, 2022 (the “JCFA”), City of Fontana Community Facilities District No. 109 (Narra Hills) (the “CFD”) is hereby requested to pay from the Water District Facilities Account (as defined in the JCFA) or any applicable account or subaccount thereof established by the CFD, the amount of \$ _____ (the “Requested Amount”).

The Requested Amount shall be paid to the following Payee:

[Insert name and wire instruction for Payee]

The Water District has incurred an obligation in the Requested Amount for the purpose of constructing or acquiring Water District Facilities and each item of such obligation reflected in the Requested Amount constitutes a cost of the Water District Facilities and has not been the subject of a prior request for disbursement from the Water District Facilities Account. Each portion of the Water District Facilities for which payment is requested was constructed, is being, or will be constructed under the direction and supervision, or under the authority of the Water District, or was constructed as if it had been constructed under the direction and supervision, or under the authority of the Water District.

Capitalized terms not defined herein shall have the meaning set forth in the JCFA.

WEST VALLEY WATER DISTRICT

By: _____

Its: _____

Date: _____

**EXHIBIT “E”
CFD BOUNDARY MAP**

[Attached]

EXHIBIT C

**RESOLUTION NO. 2022-10
RESOLUTION OF THE BOARD OF DIRECTORS OF THE
WEST VALLEY WATER DISTRICT
ADOPTING A JOINT COMMUNITY FACILITIES AGREEMENT
WITH THE CITY OF FONTANA AND CITY OF FONTANA
COMMUNITY FACILITIES DISTRICT NO. 109**

WHEREAS, the City Council of the City of Fontana will be initiating proceedings under the Mello-Roos Community Facilities Act of 1982 (the “Act”) to create City of Fontana Community Facilities District No. 109 (Narra Hills) (the “Community Facilities District”), to authorize the levy of special taxes (the “Special Taxes”) upon the land within the improvement areas of the Community Facilities District (“Improvement Area”) and to issue bonds (the “Bonds”) secured by the Special Taxes, the proceeds of which are to be used to finance certain public facilities; and

WHEREAS, the LS-Fontana LLC (“Owner”) is the owner of all of the property (the “Property”) within the proposed boundaries of the Community Facilities District; and

WHEREAS, the facilities proposed to be financed by the Community Facilities District include certain facilities to be owned, operated and maintained by West Valley Water District (the “Water District Facilities”), as well as facilities to be owned, operated or maintained by the City of Fontana (the “City Facilities”); and

WHEREAS, the Water District Facilities include (i) certain fees and charges included in West Valley Water District’s (“WVWD”) capacity and connection fee program and used to fund master plan water facilities necessary to provide service to the Property (the “Water District Fees”), which fees, as of the date of the Acquisition and Funding Agreement, are estimated to total \$6,625,722 and (ii) certain other master planned facilities to be constructed by or on behalf of Owner and acquired by WVWD for their actual cost, together with appurtenances and appurtenant work, and incidental expenses related thereto (each, a “Water District Acquisition Facility,” and collectively, the “Water District Acquisition Facilities”); and

WHEREAS, upon the construction of the Water District Acquisition Facilities by or on behalf of Owner and the inspection and acceptance thereof by WVWD, the Water District Acquisition Facilities will be conveyed to and accepted by WVWD; and

WHEREAS, Section 53316.2 of the Act provides that a Community Facilities District may finance facilities to be owned or operated by an entity other than the agency that created the community facilities district only pursuant to a Joint Community Facilities Agreement or a Joint Exercise of Powers Agreement adopted pursuant to said Section; and

WHEREAS, Section 53316.2 of the Act further provides that at any time prior to the adoption of the resolution of formation creating a Community Facilities District or resolution of issuance, the legislative bodies of two or more local agencies may enter into a Joint Community Facilities Agreement pursuant to said Section and Sections 53316.4 and 53316.6 of the Act to exercise any power authorized by the Act with respect to the Community Facilities District being created if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to the residents of that entity; and

WHEREAS, subsection (e) of Section 53316.2 of the Act permits the City of Fontana to have primary responsibility for formation of a Community Facilities District; and

WHEREAS, the City of Fontana and WVWD desire to enter into a Joint Community Facilities Agreement in accordance with Sections 53316.2, 53316.4 and 53316.6 of the Act in order to provide for the financing of the Water District Facilities through the levy of Special Taxes and issuance of Bonds by the Community Facilities District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the West Valley Water District as follows:

The Joint Community Facilities Agreement, presented at this meeting, is hereby approved and adopted.

ADOPTED, SIGNED, AND APPROVED THIS 19th DAY OF MAY, 2022.

AYES: DIRECTORS:
NOES: DIRECTORS:
ABSENT: DIRECTORS:
ABSTAIN: DIRECTORS:

Channing Hawkins,
President of the Board of Directors
of West Valley Water District

ATTEST:

Peggy Asche
Board Secretary