

**CITY OF CORONA  
PROFESSIONAL SERVICES AGREEMENT  
WITH DUDEK  
(CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - RESIN  
TREATMENT OF NITRATE SOURCES WELLS 32 & 33 EQUIPPING PROJECT)**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this **21st** day of **June, 2017** ("Effective Date") by and between the City of Corona, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 ("City") and **Dudek**, a California corporation, with its principal place of business at **605 Third Street, Encinitas, California 92024** ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Construction Management and Inspection** services to public clients, is licensed in the State of California, and is familiar with the plans of City.

**2.2 Project.**

City desires to engage Consultant to render such services for the **Resin Treatment of Nitrate Sources Wells 32 & 33 Equipping Project** ("Project") as set forth in this Agreement.

**2.3 Corona Utility Authority.**

Consultant understands that the City has entered into a Water Enterprise Management Agreement and a Wastewater Enterprise Management Agreement, both dated as of February 6, 2002, with the Corona Utility Authority ("CUA") for the maintenance, management and operation of those utility systems (collectively, the "CUA Management Agreements"). To the extent that this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, City enters into this Agreement on behalf of the CUA and subject to the terms of the applicable CUA Management Agreement(s).

### 3. TERMS.

#### 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **Construction Management and Inspection** consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from **June 21, 2017** to **September 30, 2018** (“Term”), unless earlier terminated as provided herein. Consultant shall complete the Services within the Term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the Term of this Agreement one or more times by executing a written amendment pursuant to Section 3.6.8 below (each a “Renewal Term”). The terms “Term” and “Renewal Term” may sometimes be generally and collectively referred to as “Term” in this Agreement.

#### 3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the Term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant’s exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services within the Term of this Agreement, in accordance with the Schedule of Services set forth in Exhibit “B” attached hereto and incorporated herein by reference, and in accordance with any other completion schedule or milestones which may be separately agreed upon in writing by the Parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant’s conformance with the Schedule, City shall respond to Consultant’s submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All Services performed by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **George Litzinger, P.E., and Marius Jaskula, P.E.**

3.2.5 City's Representative. The City hereby designates **Tom Moody, Assistant General Manager**, or his designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **George Litzinger, P.E.**, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant agrees that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the Term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined

by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work or Services knowing them to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the Term of the Agreement. Consultant shall avoid any violation of any such law during the Term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.9 or any of its sub-sections.

3.2.9.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work or Services relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.9.1.

3.2.9.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to



terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.9.1 or 3.2.9.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.9.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.9.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.5 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.9.6 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Promptly following the Effective Date of this Agreement, but in no event before Consultant commences any Services under this Agreement, Consultant shall provide evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to

persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: **\$1,000,000** per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000** per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than **\$1,000,000** per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services, work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection therewith; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the

ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work or Services performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers which are satisfactory to the City and which meet either of the following criteria : (1) an insurer with a current A.M. Best's rating no less than A:VII and licensed as an admitted insurance carrier in California; or (2) an insurer with a current A.M. Best's rating no less than A:X and authorized to issue the required policies in California.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before any Services commence. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work and Services so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Services and the conditions under which the Services are to be performed.

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### 3.3 Fees and Payments.

3.3.1 Rates & Total Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation, including authorized reimbursements, shall not exceed **Two Hundred Ninety-two Thousand Dollars (\$292,000)** ("Total Compensation"), without written approval of City's Representative. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the Term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor Code, as well

as Title 8, Section 16000 et seq. of the California Code of Regulations (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the Total Compensation is \$1,000 or more, Consultant and its subconsultants shall fully comply with the Prevailing Wage Laws for their employees and any others to whom such laws are applicable. Consultant and its subconsultants shall also be responsible for any and all violations and fines imposed on them pursuant to the Prevailing Wage Laws. Pursuant to SB 854, which amended the Prevailing Wage Laws, this Agreement would also be subject to compliance monitoring and enforcement by the California Department of Industrial Relations (“DIR”). Beginning April 1, 2015, no consultant or subconsultant may be awarded this Agreement unless registered with the DIR pursuant to Labor Code Section 1725.5. The City will report all necessary agreements to the DIR as required by the Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the Project site. It is most efficient for the Consultant to obtain a copy of the prevailing wages in effect at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the DIR located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, Consultant may obtain a copy of the prevailing wages from the City’s Representative. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Termination of Agreement.**

3.4.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, as well as any authorized reimbursable expenses, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.5 Ownership of Materials and Confidentiality.**

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically, electronically or otherwise recorded or stored, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of five (5) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. In addition, before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.5.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a

party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

### **3.6 General Provisions.**

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

**Consultant:**

Dudek  
1645 S. Rancho Santa Fe Road, #201  
San Marcos, CA 92078  
Attn: George Litzinger, P.E.

**City:**

City of Corona  
400 South Vicentia Avenue  
Corona, CA 92882  
Attn: Tom Moody, Assistant General Manager  
Department of Water & Power

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to any alleged willful misconduct or negligent acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of City's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code Sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.



3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.6.1 Subconsultants; Assignment or Transfer. Consultant shall not subcontract any portion of the Services required under this Agreement, except as expressly authorized herein, without the prior written approval of the City. Subcontracts, if any, shall include a provision making them subject to all provisions of this Agreement. Consultant shall also not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to subcontract or take any other action not authorized herein shall be null and void, and any subconsultants, assignees, hypothecates or transferees shall acquire no right or interest by reason of such action.

3.6.6.2 Corona Utility Authority. To the extent that this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, Consultant has no right to terminate this Agreement, either with or without cause, based upon the existence or non-existence of either or both of the CUA Management Agreements. Therefore, if an applicable CUA Management Agreement expires or terminates for any reason, Consultant shall remain fully obligated to perform under this Agreement with the CUA or another third party contracted by the CUA for the maintenance, management and operation of the applicable utility system.

3.6.7 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.10 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.6.6, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.12 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the Term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.13 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.14 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.6.15 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.17 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.6.18 State Provisions. When funding for the Services is provided, in whole or in part, by an agency of the state government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (State Requirements) attached hereto and incorporated herein by reference ("State Requirements"). With respect to any conflict between

such State Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

**[SIGNATURES ON NEXT 2 PAGES]**

**CITY'S SIGNATURE PAGE FOR**  
**CITY OF CORONA**  
**PROFESSIONAL SERVICES AGREEMENT**  
**WITH DUDEK**  
**(CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - RESIN**  
**TREATMENT OF NITRATE SOURCES WELLS 32 & 33 EQUIPPING PROJECT)**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**CITY OF CORONA**

By: \_\_\_\_\_  
Nelson D. Nelson, P.E.  
Public Works Director

Reviewed By: \_\_\_\_\_  
Tom Moody  
Assistant General Manager

Reviewed By: \_\_\_\_\_  
Vernon R. Weisman, P.E.  
District Engineer

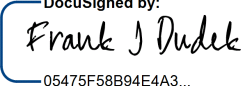
*Attest:*  
\_\_\_\_\_  
Lisa Mobley, City Clerk  
City of Corona, California

**CONSULTANT'S SIGNATURE PAGE FOR**  
**CITY OF CORONA**  
**PROFESSIONAL SERVICES AGREEMENT**  
**WITH DUDEK**  
**(CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES - RESIN**  
**TREATMENT OF NITRATE SOURCES WELLS 32 & 33 EQUIPPING PROJECT)**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**DUDEK**

a California corporation

By:  DocuSigned by:  
05475F58B94E4A3...  
Signature

FRANK J DUDEK

Name

PRESIDENT

Title (CEO, President, V.P.)

By:  DocuSigned by:  
C308126EB9E14A1...  
Signature

Dave Carter

Name

CFO

Title (Secretary, CFO, Treasurer)

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

#### **Background and Project Description**

The City desires to develop 3,600 acre-ft/year of local groundwater supplies to replace water currently imported from the Colorado River. The effort to develop local groundwater supplies includes a variety of pumping, conveyance, and treatment facilities to enable the City to blend treated and untreated groundwater to achieve desired water quality targets. Local groundwater contains elevated levels of nitrates and is expected to also contain perchlorates. The proposed project will develop and equip a recently constructed groundwater well at 3822 Grant Street, Corona, at the Home Gardens County Water District property in unincorporated Home Gardens. Two wells were recently drilled at the site. Well 32 targeted a deep aquifer and pump testing indicates a maximum sustainable flow of 150-200 gpm with high levels of arsenic. The City plans to construct the infrastructure necessary for future equipping of this well, but will defer equipping, and possibly on-site arsenic treatment, to a later project. Well 33 was screened to intercept a shallower aquifer with a potential estimated sustainable yield of up to 1,500 gpm and moderate levels of nitrates and perchlorates which will be treated at the Ion Exchange Treatment Plant. The City will place Well 33 into service by equipping it with a 1,500 gpm vertical turbine pump and variable frequency drive.

The proposed project will include construction of:

- Reinforced concrete masonry unit wellhouse
- Wellheads for two wells
- 250-hp deep well vertical turbine pump at Well 33
- Piping, valves, fittings, flow meter, and associated mechanical equipment and improvements
- Miscellaneous yard piping
- Sewer service connection
- Piping connections to water supply transmission main
- Electrical, lighting, and instrumentation system including installation of City-furnished motor control center, switchgear, radio, and SCADA equipment
- New 600-amp electrical service from SCE
- SCADA programming and system integration
- Site improvements to include grading, drainage, asphalt concrete pavement, concrete flatwork, chain link fence and gate

Final design plans were completed by AKM Consulting Engineers.

Consultant, acting as an agent of City, shall provide construction management, inspection, administrative, and related services as required to manage the construction contract, and monitor and coordinate activities of the Contractor to complete the Project in accordance with City's objectives for cost, time, and quality. Consultant shall provide sufficient organization, personnel,

and management to carry out the requirements of the City. Consultant shall provide all necessary instruments, tools, and safety equipment required for their personnel to perform their work accurately, efficiently, and safely. In addition to the requirements specified elsewhere in this contract, the following also shall apply:

- a) Consultant shall conform to the safety provisions of OSHA's Construction and Safety Manuals.
- b) Consultant's personnel shall wear safety hard hats, safety vests, safety glasses, steel-toed shoes, or other approved attire at all times while working in the field.
- c) Consultant shall provide appropriate safety training for all Consultant's personnel required to work on and near the Project site.
- d) All safety equipment and personnel protective devices and gear shall be provided by the Consultant.

#### **A. SCHEDULE OF PERFORMANCE**

In order to successfully complete the construction project on time, within budget, and in conformance with the contract documents and best management practices, Consultant shall provide a combination of Construction Manager, Resident Engineer, Field Inspector, and Administrative Aide with significant experience in administering construction contracts, maintaining records, tracking schedules, and inspecting projects similar in magnitude and scope.

It is anticipated the Construction Manager and administrative support will be required after the Contractor is given the Notice to Proceed. It is anticipated the Field Inspector will be required after the contractor mobilizes for construction. Other personnel will be added when their services are required and as indicated by the Consultant's accepted current staffing plan. Personnel assigned to the contract on a full-time basis shall remain assigned to the contract for the duration of the contract.

#### **B. THE FOLLOWING PRESENTS THE SCOPE OF SERVICES FOR INSPECTION SERVICES.**

Under the direction of the City Project Manager, the Consultant shall perform construction management and inspection services, as well as office engineering and field calculations to support the construction of the Project.

##### **1. Construction Management**

A Construction Manager is required to supervise the activities of the construction management team, monitor the Contractor's progress, and report to the City Project Manager.

In general, the Construction Manager shall have the necessary experience and know-how of construction equipment, materials, methods, and workmanship for the specific work to be performed on the project. Construction Manager shall be able to understand

and interpret Plans and Specifications and shall be familiar with the Construction Specifications Institute (CSI) specifications system, Greenbook (Standard Specifications for Public Works Construction), City Standards, and OSHA Construction Safety Orders. Construction Manager shall be able to interact professionally with City personnel, contractors, engineers, property owners, business owners, and the public at large; coordinate with other City personnel; promote quality customer service; and respond promptly and courteously to requests. Construction Manager shall be able to follow verbal and written instructions, communicate clearly and concisely, both orally and in writing. Under the direction of the City Project Manager, Construction Manager will assume the following functional responsibilities and shall possess experience in all of these areas:

- a. Provide continuous construction management of the Work of the Contractor at the site when being performed. Monitor the work of the Contractor for compliance with the Contract Documents and review testing and inspection reports.
- b. Assist the Field Inspector(s) in performance of inspection tasks, as necessary, to ensure all work is in compliance with project plans and specifications and per federal, state and local requirements.
- c. Prepare monthly progress reports.
- d. Schedule and attend construction progress meetings. Prepare agendas and meeting minutes for construction progress meetings.
- e. Identify actual and potential problems associated with the Project and recommend sound engineering solutions to the City.
- f. Maintain an awareness of safety and health requirements and enforce applicable regulations and contract provisions for the protection of the public and project personnel.
- g. Prepare calculations, records, reports, and correspondence related to project activities and progress pay estimates.
- h. Verify the Contractor maintains the as-built drawings up-to-date during construction.
- i. Analyze the Project Plans and Specifications for possible errors and deficiencies and report such findings to the City Project Manager.
- j. Schedule, track, and document a variety of field quality control tests such as relative compaction, concrete slump tests, concrete cylinders, and other required field-tests. The City will employ and pay for the services of independent third-party testing laboratories and inspectors certified and accredited to perform all contractually-required testing and special inspections.
- k. Prepare monthly progress pay estimates including quantity measurements and calculations, document Contractor work performance and project events, keep records of extra work performance, implement minor changes in the work, implement revisions to the plans and specifications, and estimates for contract change orders. Review extra work invoices.



- l. Prepare Force Account extra work reports and potential claim reports and be available to attend and support any change order and claim settlements meetings.
- m. Review Contractor's schedule update data and status reports.
- n. Report promptly to the City Project Manager and notify the Contractor of safety violations observed during the inspection of Work.
- o. Maintain continuous 24-hour telephone accessibility during construction activity for emergency use.
- p. Prepare weekly statement of working days and deliver to Contractor on a weekly basis.
- q. Fill out incident (accident) reports.
- r. Take and promptly store photographs of the Project on daily basis.
- s. Document all Contractor delays, reasons for delay, length of time for delay, and phases of work.
- t. Assist in the preparation of "As-Built" plans and other record documents.
- u. Prepare a punch list of incomplete or unsatisfactory items for the Contractor to complete and participate in final inspections.
- v. Normal working hours are between 7:00 a.m. and 5:00 p.m. with a lunch break, subject to minor adjustments based on contractor's schedule.
- w. Perform other related duties as required.
- x. Maintain continuous communication with the City Project Manager and other field personnel and staff.

## **2. Field Inspection**

The number of Consultant inspection personnel required for the Project is expected to vary based on the needs of the Project. One or more Field Inspectors may be required depending on their knowledge, skills, abilities, experience, and certifications. In general, each Field Inspector shall have the necessary experience and know-how of construction equipment, materials, methods, and workmanship for the specific work to be performed on the project in their area of expertise. Field Inspector(s) shall be able to understand and interpret Plans and Specifications and shall be familiar with the Construction Specifications Institute (CSI) specifications system, Greenbook (Standard Specifications for Public Works Construction), City Standards, and OSHA Construction Safety Orders. Field Inspector(s) shall be certified in cases where special inspection is required and not otherwise provided by the City through third-party testing. Field Inspector(s) shall be able to interact professionally with City personnel, contractors, engineers, property owners, business owners, and the public at large; coordinate with other City personnel; promote quality customer service; and respond promptly and courteously to requests. Field Inspector(s) shall be able to follow verbal and written instructions, communicate clearly and concisely, both orally and in writing. Under the direction of the Construction Manager, Field Inspector(s) will assume the following functional responsibilities and shall possess experience in all of these areas:

- a. Provide continuous inspection of the Work of the Contractor at the site when being performed. Provide inspection of Work at off-site locations when required to ensure compliance with Construction Contract requirements. Observe the work of the Contractor for compliance with the Contract Documents and review testing and inspection reports.
- b. Perform and assist in performing the daily duties of construction quality assurance inspection and engineering including: excavation, compaction, subgrade inspection, backfill, base, paving, structures inspection, electrical inspection, welding inspection, drainage system inspection, underground utility construction inspection, quantity calculations, checking grade and alignment, monitoring construction site cleanliness, observing materials sampling and testing, and ensuring that all work is in compliance with project plans and specifications and per federal, state and local requirements.
- c. Prepare daily activities reports.
- d. Attend construction progress meetings as required.
- e. Identify actual and potential problems associated with the Project and recommend solutions to the City.
- f. Maintain an awareness of safety and health requirements and enforce applicable regulations and contract provisions for the protection of the public and project personnel.
- g. Prepare calculations, records, reports, and correspondence related to project activities and progress pay estimates.
- h. Review the Contractor's as-built drawings on a weekly basis to verify they are being updated as construction progresses.
- i. Analyze the Project Plans and Specifications for possible errors and deficiencies and report such findings to the Construction Manager.
- j. Observe the performance of a variety of field quality control tests such as relative compaction, concrete slump tests, concrete cylinders, and other required field-tests. The City will employ and pay for the services of independent third-party testing laboratories and inspectors certified and accredited to perform all contractually-required testing and special inspections. Consultant's inspectors shall observe and report on the performance of all tests and special inspections performed by the Contractor's independent third-party testing laboratories and inspectors to ensure compliance with the Construction Contract requirements (federal, state and local) requirements.
- k. Observe installation and testing of electrical, instrumentation, and control systems.
- l. Assist the Construction Manager with preparing monthly progress pay estimates including quantity measurement and calculations, documenting Contractor work performance and project events, keeping records of extra work performance, implementing minor changes in the work, implementing revisions to the plans and

specifications, and developing estimates for contract change orders. Review extra work invoices.

- m. Assist in preparing Force Account extra work reports and potential claim reports and be available to attend and support any change order and claim settlements meetings.
- n. Assist in review of Contractor's schedule update data and status reports.
- o. Report promptly to the Construction Manager and notify the Contractor of safety violations observed during the inspection of Work.
- p. Maintain continuous 24-hour telephone accessibility during construction activity for emergency use.
- q. Fill out incident (accident) reports.
- r. Take and promptly store photographs of the Project on daily basis.
- s. Prepare checklists and schedule of critical startup and commissioning items.
- t. Coordinate instrumentation and control system integration and startup with the City, the City's system integrator, Contractor, electrical sub-contractor, and design engineer to facilitate a successful startup and commissioning effort.
- u. Assist in the preparation of "As-Built" plans and other record documents.
- v. Assist in the preparation of a punch list of incomplete or unsatisfactory items for the Contractor to complete and participate in final inspections.
- w. Normal working hours are between 7:00 a.m. and 5:00 p.m. with a lunch break, subject to minor adjustments based on contractor's schedule.
- x. Perform other related duties as required.
- y. Maintain continuous communication with the Construction Manager and other field personnel and staff.

## **C. DELIVERABLES**

### **1. Construction Management**

Consultant shall create, maintain and deliver to the City the following construction management documentation and deliverables:

- a. Monthly progress reports, weekly Statement of Working Days, and extra-work performance reports.
- b. Force account extra work reports and potential claim reports.
- c. Monthly Consultant progress reports prepared by the Consultant's Project Manager and submitted with invoices for professional services.
- d. Contractors schedule updates and status reports.
- e. Construction meeting agendas and minutes.

- f. Field measurement reports, notes, and observations, and all reports, calculations and other applicable documents prepared for the project as required by City procedures.
- g. Shop drawings, equipment submittals, and materials submittals reviewed by the City and the Consultant.
- h. Requests for Information (RFI's) and responses to RFI's.
- i. Implementation records of minor revisions to plans and specifications.
- j. Quality control tests and third-party inspection reports and findings.
- k. Contractor's progress payment requests.
- l. Contract change order estimates.
- m. Project correspondence including, but not limited to, letters, memorandums, e-mails, and phone conversation records.
- n. Safety reports and violations.
- o. Photographs.
- p. Punch list of items necessary for completion as part of final inspection.
- q. Contractor's as-built drawings and field sketches

## **2. Inspection**

Consultant shall create, maintain and deliver to the City the following inspection documentation and deliverables:

- a. Daily inspection reports and extra-work diaries.
- b. Field measurement reports, notes, and observations, and all reports, calculations and other applicable documents prepared for the project as required by City procedures.
- c. Photographs.
- d. Material load tickets.

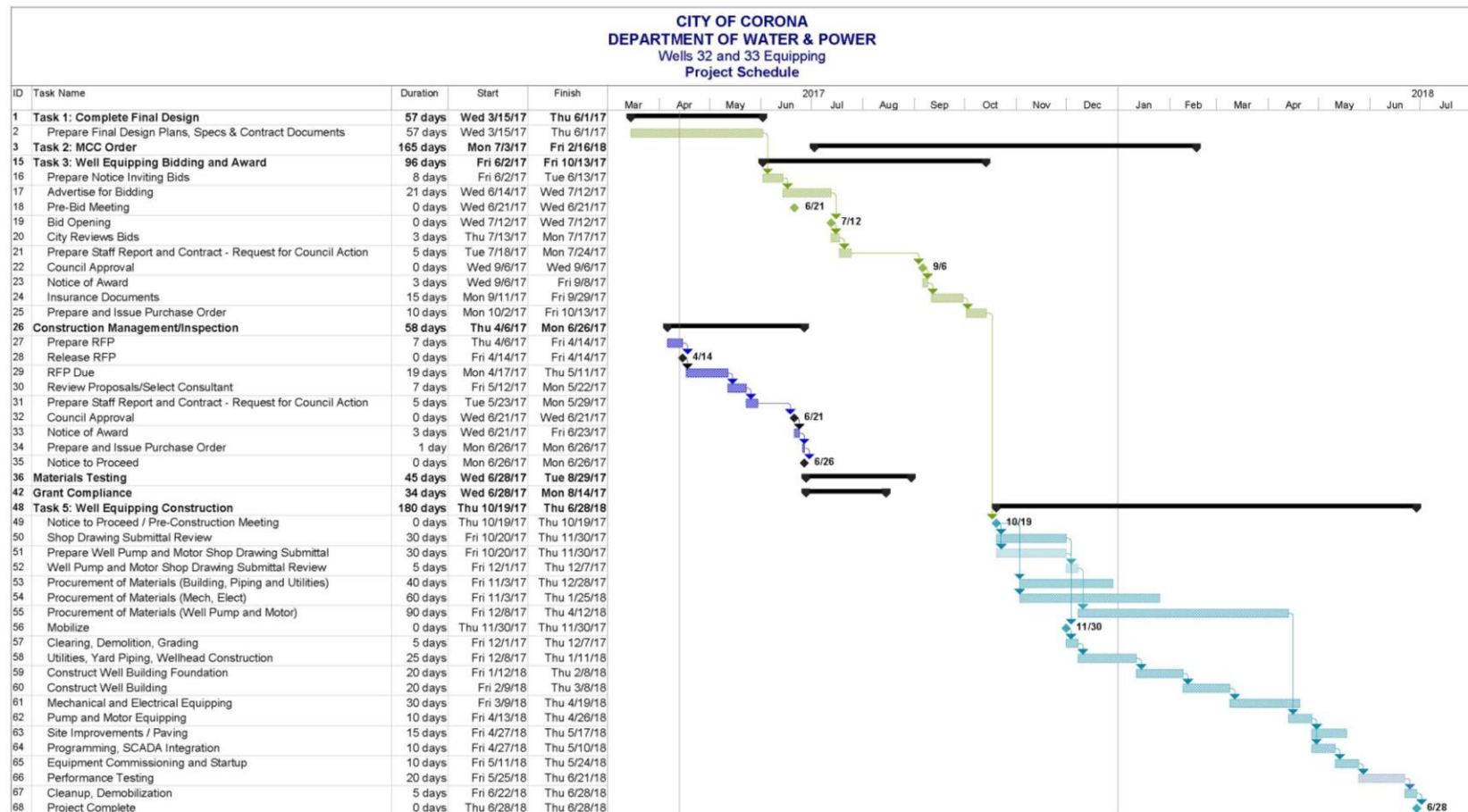
## **D. SPECIAL CONDITIONS:**

- 1. The City has contracted with Padilla & Associates to monitor and enforce the applicable provisions of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor code, as well as Title 8, Section 16000 et seq. of the California Code of Regulations ("Prevailing Wage Laws"), including but not limited to the standard provisions requiring payment of prevailing wages, maintenance and submission of certified weekly payroll records and hiring of apprentices, and compliance monitoring and enforcement by the DIR pursuant to SB 854. Consultant shall work with City staff and consultants to ensure the full compliance with applicable Prevailing Wage Laws.

2. The Work is to be funded with monies obtained by the City pursuant to Proposition 50 Public Agency Grant Funding Agreement No. 50144B02, entered into between the City and the California State Water Resources Control Board on or about November 18, 2014 and amended as of March 9, 2015 (“Grant Agreement”). Consultant and all subconsultants shall comply with all applicable federal and state laws, rules, regulations and permits, including but not limited to the requirements of the Grant Agreement and Amendment A-1, set forth in Exhibit “D” attached hereto and incorporated herein.

## EXHIBIT “B” SCHEDULE OF SERVICES

Consultant shall provide construction management, inspection, administrative and related services during the construction phase of the Resin Treatment of Nitrate Sources Wells 32 and 33 Well Equipping Project and shall meet any reasonable schedules and deadlines of the City and as required by the Grant Agreement between the State Water Resources Control Board and the City, set forth in Exhibit “D”, and shall complete the construction management and inspection services within the Term of this Agreement.



**EXHIBIT “C”  
COMPENSATION**

Total Compensation, including authorized reimbursements, shall not exceed Two Hundred Ninety-two Thousand Dollars (\$292,000) without written approval of City’s Representative.

Construction Management	\$247,000
Electrical Inspection	\$40,000
Direct Costs	\$5,000

**EXHIBIT “D”  
STATE REQUIREMENTS**

The Work is to be funded in full or part with monies obtained by the City pursuant to Proposition 50 Public Agency Grant Funding Agreement No. 50144B02, entered into between the City and the California State Water Resources Control Board on or about November 18, 2014 and amended as of March 9, 2015 (“Grant Agreement”). Consultant and all subconsultants shall comply with all applicable federal and state laws, rules, regulations and permits, including but not limited to the requirements of the Grant Agreement and Amendment A-1.

**[FUNDING AGREEMENT ATTACHED ON FOLLOWING PAGES]**



Proposition 50 Public Agency Grant  
Funding Agreement No. **50144B02**  
Amendment **A-1**



AMENDMENT TO  
FUNDING AGREEMENT  
BETWEEN  
THE CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
AND  
CITY OF CORONA  
  
PROJECT NUMBER P50-3310037-287

FOR A GRANT UNDER CHAPTER 4b OF THE WATER SECURITY, CLEAN  
DRINKING WATER, COASTAL AND BEACH PROTECTION ACT OF 2002

(Rev 12-16-14)

City of Corona  
Proposition 50 Public Agency Grant  
Funding Agreement No. 50144B02  
Amendment A-1  
Page 1 of 3

In consideration of the covenants and conditions set forth herein and in that certain agreement between the parties referenced above, Funding Agreement Number **50144B02** dated **November 18, 2014** (the "Agreement"), the parties hereby amend said Agreement as follows:

1. In Section 10. "PROJECT OFFICIALS AND NOTICES", first and second paragraphs are deleted in their entirety and replaced with:

"State's Grant Administrator shall be its **Chief, Drinking Water Technical Assistance Section, Division of Financial Assistance, State Water Resources Control Board**. Unless otherwise expressly provided herein, all communications given to State's Grant Administrator shall be deemed given to State.

State's Grant Administrator shall be its representative for administration of this Agreement, and shall have authority to make recommendations and findings with respect to each controversy arising under or in connection with this Agreement, including but not limited to, the interpretation, performance, or payment for work performed under this Agreement. All such recommendations and findings shall be communicated to the Deputy Director, Division of Financial Assistance of the State Water Resources Control Board, and disputes shall be resolved in accordance with Article A-22, hereof."

2. In Section 10. "PROJECT OFFICIALS AND NOTICES", the address for delivery of written notices to State is changed to:

"State Water Resources Control Board  
Division of Financial Assistance  
Attn: Proposition 50 Program  
P.O. Box 944212  
Sacramento, CA 94244"

3. Article A-22, "DISPUTE CLAUSE", is deleted in its entirety and replaced with:

"ARTICLE A-22. DISPUTE CLAUSE

Supplier shall continue with its responsibilities under this Agreement during any dispute.

Any dispute arising under this Agreement, which is not resolved by agreement of the Parties, shall be decided by the Division's Deputy Director, or his or her authorized representative. The decision of the Division's Deputy Director ("the Decision") shall be reduced to writing and a copy thereof sent by certified or registered mail to Supplier and (Rev 12-16-14)

City of Corona  
Proposition 50 Public Agency Grant  
Funding Agreement No. 50144B02  
Amendment A-1  
Page 2 of 3

a copy provided to the Board's Executive Director. The Decision shall be final and conclusive unless, within thirty (30) calendar days after the date of mailing of the Decision to Supplier, Supplier mails or otherwise furnishes a written appeal of the Decision to the Board's Executive Director. The decision of the Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, Supplier shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Supplier shall continue to fulfill and comply with all the terms, provisions, and commitments of this Agreement. Nothing herein shall be construed to make final the decision of the Board, or any official or representative thereof, on any question of law."

4. Notwithstanding any other term or condition of the Agreement, including but not limited to Article A-8, thereof, **Supplier** shall commence Project construction no later than **November 18, 2015**.

These modifications comprise "Amendment **50144B02 A-1**" and are incorporated into and made part of the Agreement. Except as modified by this Amendment **50144B02 A-1**, all other terms and conditions of said Agreement shall remain in full force and effect.

[Signatures appear on the following page.]

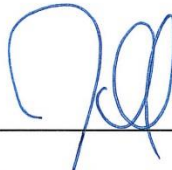
City of Corona  
Proposition 50 Public Agency Grant  
Funding Agreement No. 50144B02  
Amendment A-1  
Page 3 of 3

**DATE OF EXECUTION**

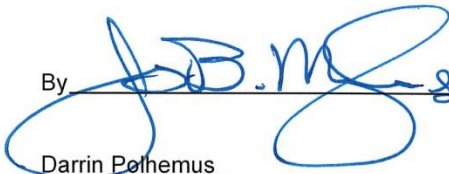
Date of execution of this Amendment **50144B02 A-1** shall be the date of the latest in time execution by a party hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

CITY OF CORONA

7K   
By \_\_\_\_\_  
Jonathan Daly  
Print Name  
General Manager  
Title  
3/2/15  
Date

CALIFORNIA  
STATE WATER RESOURCES CONTROL  
BOARD

  
By \_\_\_\_\_  
Darrin Polhemus  
Print Name  
Deputy Director  
Title  
3/9/15  
Date

Proposition 50 Public Agency Grant  
Funding Agreement No. 50144B02

CDPH  
Drinking Water Program

JUL 18 2014

Headquarters - Sacramento

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY  
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

FUNDING AGREEMENT  
BETWEEN  
THE STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC HEALTH  
AND  
**CITY OF CORONA**

**PROJECT NUMBER P50-3310037-287**

FOR A GRANT UNDER CHAPTER 4b OF THE WATER SECURITY, CLEAN DRINKING  
WATER, COASTAL AND BEACH PROTECTION ACT OF 2002

Funding Agreement No. 50144B02

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SPECIAL TERMS AND CONDITIONS

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ATTACHMENTS

1. Budget and Expenditure Summary (Article A-3(c))
2. Claim form (Article A-6(a))
3. Final Release (Article A-6 (f)(4))



City of Corona  
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STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY  
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

FUNDING AGREEMENT  
BETWEEN  
STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC HEALTH  
AND  
**CITY OF CORONA**  
**PROJECT NUMBER P50-3310037-287**

UNDER CHAPTER 4b OF THE WATER SECURITY, CLEAN DRINKING WATER,  
COASTAL AND BEACH PROTECTION ACT OF 2002

THIS AGREEMENT, is entered into between the State of California Department of Public Health, herein referred to as "State", and **City of Corona**, a Municipality, in the County of Riverside, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as "Supplier", which parties do hereby agree as follows:

SECTION 1. PURPOSE OF FUNDING

This Agreement provides funding in the form of a grant made by State to the Supplier under the provisions of the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, Division 26.5 of the Water Code, commencing with Section 79500, herein referred to as the "Act". The purpose of the funding is to assist in financing a project which will enable **Supplier** to meet safe drinking water standards and reduce demand on the Colorado River, herein referred to as the "Project". Funds may be used only for such eligible project costs as are approved by State.

Supplier is solely responsible for the design, construction, operation, and maintenance of the Project; and for all persons or entities engaged in such work, including but not limited to contractors, subcontractors, suppliers, and providers of services. Review or approval of plans, specifications, bid documents or other

construction documents by State is solely for the purpose of proper administration of the funds by State and shall not be deemed to relieve or restrict Supplier's responsibility.

## SECTION 2. INCORPORATION OF OTHER DOCUMENTS

This Agreement incorporates by this reference Exhibit A, "Standard Conditions"; Exhibit B, "Special Terms and Conditions"; Supplier's Application to State for Proposition 50 Funding; project plans and specifications as submitted to and approved by State; and any attachments to said documents.

Supplier accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents and exhibits thereto, and to fulfill all assurances, declarations, representations, and statements made by Supplier in its application, documents, amendments, and communications filed in support of its request for funding, including but not limited to any and all plans and specifications submitted to and approved by State.

## SECTION 3. PROJECT COST

Supplier represents that the total cost of the Project is estimated to be \$8,554,752 of which State agrees that \$8,554,752 is the total Eligible Project Costs.

## SECTION 4. GRANT AMOUNT

Subject to the availability of funds and in accordance with the terms of this Agreement, State will provide grant funding to Supplier in an amount not to exceed \$3,067,600, herein referred to as "Grant Amount".

## SECTION 5. SUPPLIER'S COST AND MATCHING FUNDS

Supplier agrees to fund any Project costs which are in excess of the Grant Amount set forth in Section 4 of this Agreement. Matching funds are incurred Eligible Project Costs paid, or to be paid, with non-State funds, herein referred to as "Matching Funds". Unless otherwise noted in Exhibit B, Matching Funds are required. Supplier must provide Matching Funds in an amount not less than the Grant Amount. Supplier's Cost for this Project, including Matching Funds, is estimated to be \$5,487,152, herein referred to as "Supplier's Cost". Each disbursement of grant funds is expressly conditioned upon Supplier's demonstration that it has incurred an equal amount of costs approved by State as Matching Funds.

## SECTION 6. COMPETITIVE BIDDING

All construction contracts related in any way to the Project shall be let by competitive bid procedures which assure award of such contracts to the lowest

responsible bidders. Supplier shall comply with all applicable state or local ordinances for competitive bidding and all applicable labor laws.

Supplier shall not award a contract until a summary of bids and identification of the lowest responsible bidder are submitted to State. A full explanation must be provided if Supplier is proposing to award a contract to anyone other than the lowest responsible bidder.

#### SECTION 7. REQUIREMENTS FOR DISBURSEMENT

Not later than ninety (90) days following Date of Execution of this Agreement, Supplier shall satisfy all conditions precedent to the disbursement of funds under this Agreement, including Basic Conditions Precedent as set forth in Article A-3 of the Standard Conditions. Failure by Supplier to satisfy said conditions and requirements by this date may, at the option of State, result in cancellation of this Agreement under Article A-7 of the Standard Conditions and/or declaration that Supplier is in default pursuant to Article A-24 of the Standard Conditions.

#### SECTION 8. SPECIAL TERMS AND CONDITIONS

Supplier shall satisfy the special terms and conditions set forth in Exhibit B. Failure by Supplier to timely satisfy the special terms and conditions may, at the option of State, result in cancellation of this Agreement under Article A-7 of the Standard Conditions, and/or declaration that Supplier is in default pursuant to Article A-24 of the Standard Conditions.

#### SECTION 9. OPERATION AND MAINTENANCE OF PROJECT

Upon Project completion, and for a period of 20 years, which is the reasonably expected useful life of the Project, Supplier shall, as further consideration for this funding, commence and continue operation of the Project; cause the Project to be operated in an efficient and economical manner; provide for the making of all repairs, renewals, and replacements necessary for the effective operation of the Project; and cause the Project to be maintained in as good of condition as upon its construction, ordinary and reasonable wear and depreciation excepted. Failure by Supplier to operate and maintain the Project in accordance with this provision may, at the option of State, be considered a material breach of Agreement and may be treated as a default under Article A-24 of the Standard Conditions.

#### SECTION 10. PROJECT OFFICIALS AND NOTICES

State's Grant Administrator shall be the Chief, Safe Drinking Water State Revolving Fund and Small Water Systems Section, Division of Drinking Water and Environmental Management, California Department of Public Health. All communications given to State's Grant Administrator shall be deemed given to State.

State's Grant Administrator shall be State's representative for administration of this Agreement, and shall have authority to make recommendations and findings with respect to each controversy arising under or in connection with this Agreement. All such recommendations and findings shall be communicated to the Chief, Division of Drinking Water and Environmental Management of the California Department of Public Health, and disputes shall be resolved in accordance with Article A-22 of the Standard Conditions.

Supplier's Grant Administrator shall be Jonathan Daly, General Manager. Supplier's Grant Administrator shall be Supplier's representative for administration of this Agreement. All communications given to Supplier's Grant Administrator shall be deemed given to Supplier.

Either party may change its Grant Administrator upon written notice to the other party.

Notices required to be given in writing by Supplier under this Agreement shall be sent to:

State of California  
California Department of Public Health  
Division of Drinking Water and  
Environmental Management  
Attention: Proposition 50 Program  
1616 Capitol Avenue, MS7408  
Post Office Box 997377  
Sacramento, CA 95899-7377

Notices required to be given in writing by State under this Agreement shall be sent to:

Jonathan Daly  
General Manager  
City of Corona  
755 Corporation Yard Way  
Corona, CA 92880

A change of address for delivery of notice may be given by written notice to the other party.

All written notices that are required either expressly or by implication to be given by one party to the other under this Agreement shall be signed for State by its Grant Administrator and for Supplier by its Grant Administrator. Except as otherwise expressly required by this Agreement, all such notices shall be deemed to have been

given if delivered personally or if enclosed in a properly addressed postage prepaid envelope and deposited in a United States Post Office for delivery by registered or certified mail.

#### SECTION 11. ENFORCEMENT

Any enforcement action, arising out of or relating to this Agreement, may be brought by State or any agent thereof.

#### SECTION 12. MISCELLANEOUS PROVISIONS

##### ATTORNEY FEES

In the event either party commences an action or proceeding concerning the subject matter of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorney fees incurred therein.

##### SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

##### GOVERNING LAW

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

##### CHILD SUPPORT COMPLIANCE ACT

Supplier acknowledges that it is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. Supplier further acknowledges that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

##### LEGAL CAPACITY

Supplier hereby warrants and represents that it is a legal entity in good standing, and that it has the authority to enter into this Agreement.

Supplier shall notify State as promptly as feasible of any proposed change in Supplier's ownership, organization, legal form or service area.

# VENUE

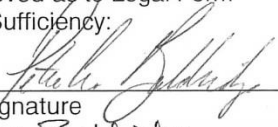
The parties agree that venue of any action between the parties arising out of this Agreement, including disputes that may arise following termination of the Agreement, shall be County of Sacramento, State of California.

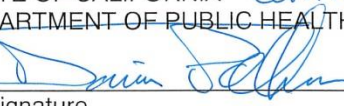
# DATE OF EXECUTION

Date of Execution of this Agreement is the date of the latest in time execution by a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

Approved as to Legal Form  
 and Sufficiency:

By:   
 Signature  
Peter Baldridge  
 Print Name  
Assistant Chief Counsel  
 Title  
6/2/14  
 Date

State Water Resources  
STATE OF CALIFORNIA Control Board  
DEPARTMENT OF PUBLIC HEALTH  
 By:   
 Signature  
Darrin Polhemus  
 Print Name  
Deputy Director  
 Title  
11/19/2014  
 Date

SUPPLIER  
 CITY OF CORONA


By:   
 Signature  
Jonathan Daly  
 Print Name  
General Manager, DWP  
 Title  
TSS Public Safety Wing  
 Address  
Corona CA 92880  
 City State Zip  
7/16/14  
 Date

EXHIBIT A

STANDARD CONDITIONS

ARTICLE A-1. DEFINITIONS

Whenever in this Agreement the following terms are used, their meaning shall be as follows unless the context clearly requires otherwise:

Agreement: The Funding Agreement to which this Exhibit A "Standard Conditions" is appended.

Days: Calendar days unless otherwise expressly indicated.

Month: Calendar month unless otherwise expressly indicated.

Year: Calendar year unless otherwise expressly indicated.

Eligible Project Costs: Those project costs which are eligible for funding under the Act and applicable State law and implementing criteria.

Force Account: The use of Supplier's own employees or equipment on the Project.

Grant Amount: The total amount disbursed to Supplier under this Agreement.

Public Water System or Public Water Supply System: A system for the provision to the public of water for human consumption, as defined in Part 12, Chapter 4 (commencing with Section 116270), of Division 104 of the Health and Safety Code, as it may be amended.

ARTICLE A-2. TERM OF AGREEMENT

Subject to the provisions of Article A-7, this Agreement shall become effective on the Date of Execution and shall remain in effect until the expiration of the period of time required for operation and maintenance of the Project, as set forth in Section 9 of this Agreement.

ARTICLE A-3. BASIC CONDITIONS PRECEDENT

State shall have no obligation to disburse funds under this Agreement unless and until:

(a) Supplier has provided satisfactory documentation of the action taken by its governing body authorizing it to enter into this Agreement, and designating a

representative to execute this Agreement and to sign a claim for disbursement of funds.

(b) Supplier has provided detailed information concerning the account established for deposit of funds received from State.

(c) Supplier has submitted an initial budget approved by State in the form of **Attachment 1** to this Agreement.

#### ARTICLE A-4. COMPLIANCE WITH LAWS, REGULATIONS, AND PERMIT REQUIREMENTS

Supplier shall at all times comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules and regulations, permits, and all applicable local ordinances, including, but not limited to, environmental, labor, procurement and safety laws, rules, regulations, permits, and ordinances.

#### ARTICLE A-5. PROJECT CHANGES

The Project shall be constructed in accordance with the plans and specifications approved by State on February 28, 2014. Supplier shall not make any change in the Project, or issue any change order to a contractor, without receiving prior written approval from State.

Supplier may request a one-time increase in the total funding provided in this Agreement. Such request shall be based upon the final accepted construction bids. Such request may be granted or denied at the sole discretion of State. Supplier shall submit evidence to State that Matching Funds are available in an amount equal to the amount of additional grant funding requested.

Supplier shall submit to State in writing any proposed changes to the Project budget including but not limited to transferring of funds between line item allotments. Supplier shall obtain written approval of such proposed changes from State before the proposed changes are adopted.

Supplier shall not use any funds from any contingency allotment without receiving prior written approval from State.

#### ARTICLE A-6. DISBURSEMENTS BY STATE

##### (a) Claims

Supplier shall request disbursement by submitting to State a claim(s) for incurred Eligible Project Costs. A claim for disbursement of funds shall be provided in the form



of **Attachment 2** to this Agreement and shall be submitted no later than ninety (90) days following execution of this Agreement, and thereafter at least once per quarter and shall not be submitted more than once a month and shall include:

(1) a statement with supporting documentation of Eligible Project Costs that have been incurred during the period identified in the particular claim, including, but not limited to construction, legal, engineering, and administrative fees associated with the Project;

(2) a statement, with supporting documentation, demonstrating that Matching Funds equal to the amount of the claim have been incurred.

(b) Disbursements

Following the review and approval of a claim by State, it will disburse to Supplier an approved amount, subject to any retention requirements specified in Exhibit B, Special Terms and Conditions, and subject to the availability of funds. Any and all funds disbursed to Supplier under this Agreement, and any and all interest earned by Supplier on such funds, shall be used solely to pay Eligible Project Costs.

(c) Rejection of Claims

A claim may be rejected by State if:

(1) it is submitted without signature;

(2) it is submitted under signature of a person other than Supplier's duly authorized representative;

(3) Supplier fails to timely submit a final claim within the time period specified in Article A-6(f);

(4) Supplier fails to adequately demonstrate required Matching Funds.

State will notify Supplier of any claim so rejected, and the reasons therefore.

(d) Correction of Claims

A claim containing a mathematical error will be corrected by State, after telephone notification to Supplier, and will thereafter be treated as if submitted in the corrected amount. State will confirm correction of the error, to Supplier, in writing.

(e) Adjustments to Claims

If upon review of a claim State determines that any portion or portions of the costs claimed are ineligible to be funded under the Act, State law, implementing criteria, or the terms of this Agreement, State will notify Supplier, by certified or registered mail, of its determination concerning Supplier's failure to adequately document costs as Eligible Project Costs. Supplier may, within thirty (30) days of the date of receipt of such notice, submit additional documentation or evidence to cure such deficiency(ies). If Supplier does not submit additional information, or if State determines such additional information to be inadequate, State will adjust the pending claim by the amount of the ineligible cost(s).

Supplier may submit additional documentation or evidence, and resubmit any such rejected costs on a subsequent claim.

(f) Final Claim and Disbursement

Not later than six (6) months from the Project Completion Date, as set forth in Article A-8, Supplier shall submit a final claim. With the final claim, Supplier shall provide:

- (1) A statement of full written disclosure of all sources and amounts of funds contributed to the Project;
- (2) A certification by Supplier's Grant Administrator that the data disclosed is true and correct;
- (3) Proof of a Recorded Notice of Completion;
- (4) A fully executed "Final Release" in the form of **Attachment 3** to this Agreement.

Should Supplier fail to make the full disclosure and certification required by parts 1 and 2 of this paragraph (f), or should State become aware through any means that Supplier did not disclose all funding sources for the project; the project may be referred to the California Department of Finance for a full project audit.

(g) Force Account

Costs of construction or construction related activities performed by Force Account, if determined by State, in its sole discretion, to be Eligible Project Costs, may be used as Matching Funds, but are not eligible for grant funding under the terms of this Agreement.

Costs of engineering, legal, and administrative activities performed by Force Account, if determined by State, in its sole discretion, to be Eligible Project Costs, may

be used as Matching Funds or may be eligible for grant funding pursuant to the terms of this Agreement.

When Supplier uses the services of its own employees, Supplier shall establish accounts and maintain records which reasonably document all employee hours and costs charged to the Project and the associated tasks performed by each employee.

#### ARTICLE A-7. WITHHOLDING OF GRANT DISBURSEMENTS BY STATE AND CANCELLATION OF AGREEMENT

##### (a) Conditions for Withholding

If State determines that the Project is not being carried out substantially in accordance with the provisions of this Agreement or that Supplier has failed in any other respect to comply with the terms and conditions of this Agreement, State may give written notice of such failure to comply. If Supplier does not cure any such failure to State's satisfaction within ten (10) calendar days of receipt of such notice, State may withhold from the Supplier all or any portion of the grant funding and take any other action that it deems necessary to protect its interests, including but not limited to declaring Supplier in default as set forth in Article A-24, or canceling this Agreement pursuant to Subpart (b) of this Article A-7.

##### (b) Withholding Entire Grant Amount

If State determines to withhold the entire Grant Amount from Supplier pursuant to Subpart (a) of this Article A-7, notice of such a determination shall constitute a notice of cancellation of this Agreement, and this Agreement shall no longer be binding on any party hereto. Said Notice of Cancellation shall be sent to Supplier by certified or registered mail, and shall be effective upon receipt.

##### (c) Withholding Balance of Grant Amount

When a portion of the grant amount has been disbursed to Supplier and State determines to withhold funding, State will notify Supplier in writing, via certified or registered mail, that State is withholding the balance of the funding from Supplier, pursuant to Subpart (a) of this Article A-7. In such event, Supplier will be deemed to be in default and subject to the provisions of Article A-24.

#### ARTICLE A-8. TIMING OF PROJECT

Supplier agrees to proceed expeditiously, and shall meet a Project Completion Date of no later than three (3) years following the Date of Execution of this Agreement. Supplier shall commence Project construction no later than 120 days following Date of Execution of this Agreement. Supplier's failure to meet said Project Completion Date may, at the option of State, be considered a material breach of agreement and may be

treated as a default under Article A-24. The facility shall not be placed into operation until State has conducted a final inspection and notifies Supplier in writing that the Project is complete.

When the Project is complete, Supplier shall certify to State that the Project is complete in accordance with the approved plans and specifications and ready for final inspection by State. The date of such certification by Supplier shall be the Project Completion Date for purposes of this Agreement.

#### ARTICLE A-9. SUPPLIER'S CONTRACTS

Supplier shall be solely responsible for resolution of any and all disputes arising out of or related to Supplier's construction and contracts for construction of the Project, including but not limited to bid disputes and payment disputes with Supplier's contractors and subcontractors and shall provide appropriate releases (as set forth in California Civil Code Title 15) as may be requested by State.

#### ARTICLE A-10. AUDIT AND INSPECTION OF BOOKS AND RECORDS

(a) Upon execution of this Agreement and until three (3) years following final disbursement under this Agreement, pursuant to Government Code Section 8546.7, the parties shall be subject to the examination and audit by State or any agent thereof, and the State Auditor, with respect to all matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement. If any litigation, claim, negotiation, audit or other action is commenced before the expiration of said three (3) year period, all records must be retained until such action is resolved, or until the end of said three (3) year period whichever shall later occur. All records of Supplier relating in any way to funding received pursuant to this Agreement shall be preserved for this purpose.

(b) During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by Supplier to comply with this provision shall be considered a substantial failure to comply with this Agreement, State may declare Supplier in default as set forth in Article A-24, withhold disbursements to Supplier, or take any other action it deems necessary to protect its interests. The provisions of this Subpart (b) shall be effective until expiration of the time period provided in Subpart (a) of this Article A-10.

#### ARTICLE A-11. REMITTANCE OF FUNDS BY SUPPLIER

Within thirty (30) days following the date of final disbursement of funds, Supplier shall remit to State any funds that were disbursed under this Agreement and were not utilized to pay Eligible Project Costs. Such funds will not be included in the Grant Amount.

#### ARTICLE A-12. ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENTS

##### (a) Separate Accounting of Grant Disbursements

Supplier shall account for the funds disbursed pursuant to this Agreement separately from all other Supplier's funds. Supplier shall maintain accounting procedures that are in accordance with Generally Accepted Accounting Principles. Supplier shall keep complete and accurate records of all receipts, disbursements, and interest earned on such funds.

Supplier shall require its agents, contractors and subcontractors to maintain books, records, and other documents pertinent to their work in accordance with Generally Accepted Accounting Principles. Such records shall be subject to inspection by State at any and all reasonable times.

##### (b) Disposition of Funds Disbursed

In addition to specific requirements set forth in this Agreement, all funds disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to all provisions of law applicable to Supplier.

##### (c) Interim and Final Audits

In addition to the provisions of Article A-10, at any time following execution of this Agreement and until completion of the Project, or final disbursement whichever shall occur last, State reserves the right to conduct an audit of Supplier's disposition of all funds disbursed under this Agreement. After completion of the Project, State may require Supplier to conduct a final audit, at Supplier's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant.

Failure or refusal by Supplier to comply with these provisions shall be considered a substantial breach of this Agreement.

#### ARTICLE A-13. INSPECTIONS OF PROJECT BY STATE

State shall have the right but not the duty to inspect the work being performed on the Project at any and all reasonable times during the term of this Agreement. This right

shall extend to any subcontracts, and Supplier shall include provisions ensuring such access in all its contracts or subcontracts related to the Project.

#### ARTICLE A-14. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION

During the term of this Agreement Supplier shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, without prior written consent of State.

#### ARTICLE A-15. NONDISCRIMINATION CLAUSE

During the performance of this Agreement, Supplier, its contractors and subcontractors, shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Supplier, its contractors and subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Supplier, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated there under (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding State Agency to implement such article.

By signing this Agreement, Supplier assures State that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989); Federal Water Pollution Control Act Amendments of 1972, Pub.L. No. 92-500, 86 Stat 816; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Agreement as the "anti-discrimination laws".

Supplier agrees to collect and maintain information to show compliance with the "anti-discrimination laws" including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.

Supplier, its contractors and subcontractors shall give written notice of their obligations under this Article to labor organizations with which they have a collective bargaining or other agreement.

Supplier's signature on this Agreement shall constitute a certification under penalty of perjury under the laws of the State of California that Supplier has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.

Supplier shall include the nondiscrimination and compliance provisions of this Article A-15 in all contracts and subcontracts to perform work on the Project.

#### ARTICLE A-16. WORKERS' COMPENSATION CLAUSE

Supplier affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Supplier affirms that it will comply with such provisions before commencing performance of work under this Agreement and will make its contractors and subcontractors aware of this provision.

#### ARTICLE A-17. SUCCESSORS AND ASSIGNS

This Agreement and all of its provisions shall inure to the benefit of, apply to, and bind the heirs, successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part hereof by Supplier shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.

#### ARTICLE A-18. STATE TO BE HELD HARMLESS

Supplier shall indemnify, hold harmless, protect and defend State and its officers, employees, agents and representatives from any loss, suit, action or claim brought for, or on account of any violation of law, ordinance, rule, or regulation, or any injury, damage, or loss, including death, caused by acts or omissions of Supplier, its employees, contractors, or agents; or in any way arising from, or related to the Project.

#### ARTICLE A-19. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive, and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

**ARTICLE A-20. AMENDMENTS**

This Agreement may be amended only by mutual written agreement signed by the parties hereto. Requests by Supplier for amendments must be in writing stating the amendment request and the reason for the request.

**ARTICLE A-21. WAIVER OF RIGHTS**

It is the intention of the parties hereto that from time to time either party may waive any of its rights under this Agreement unless contrary to law. Any waiver by either party hereto of rights arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other rights or matters.

**ARTICLE A-22. DISPUTE CLAUSE**

Any dispute that Supplier may have regarding the performance of this Agreement including, but not limited to, claims for additional disbursements of funds or extension of time, shall be submitted to State's Grant Administrator identified in Section 10 of this Agreement. State's Grant Administrator may make findings and recommendations and transmit a copy of the claim and any such findings and recommendations to the California Department of Public Health, Chief, Division of Drinking Water and Environmental Management, who shall make a decision on such dispute which decision shall be in writing and transmitted to Supplier by certified or registered mail. Said decision shall be final and conclusive.

**ARTICLE A-23. PERFORMANCE AND ASSURANCES**

Supplier agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the final plans and specifications as submitted to and approved by State, and to apply funds received only to Eligible Project Costs and to operate and maintain the Project in accordance with applicable provisions of the law.

**ARTICLE A-24. DEFAULT PROVISIONS**

(a) Supplier will be in default under this Agreement if any of the following occur:

- (1) Supplier's failure to make any remittances required by this Agreement;
- (2) Supplier's substantial breach of this Agreement, or any supplement or amendment to it;
- (3) Supplier's making of any false warranty, representation, or statement with respect to this Agreement or the Project;



(4) Dissolution or cessation of operations by Supplier, termination of Supplier's existence, insolvency of Supplier, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Supplier; and/or

(5) Supplier's failure to provide required Matching Funds.

(b) When an event of default occurs, State may give Supplier notice of default. Supplier shall have ten (10) calendar days from the date of such notice to cure the default. If Supplier fails to timely cure the default to the satisfaction of State, then State may do any or all of the following:

(1) Declare that any and all amounts disbursed to Supplier under the terms of this Agreement shall be deemed an obligation of Supplier and due and payable to State;

(2) Declare Supplier's obligations immediately due and payable, with or without demand or notice to Supplier, which Supplier expressly waives;

(3) Terminate any obligation of State to make further disbursements to Supplier under this Agreement;

(4) Perform any of Supplier's obligations under this Agreement for Supplier's account; and/or

(5) Take any other action it deems necessary to protect its interests.

(c) Supplier agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to State as a result of a breach of agreement by Supplier, whether such breach occurs before or after completion of the Project.

(d) No waiver by State of any breach or default will be a waiver of any other breach or default.

#### ARTICLE A-25. DRUG-FREE WORKPLACE CERTIFICATION

By signing this Agreement, Supplier hereby certifies under penalty of perjury under the laws of the State of California that Supplier will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

(b) Establish a Drug-Free Awareness program to inform employees about all of the following:

- (1) The dangers of drug abuse in the workplace;
- (2) The person's or organization's policy of maintaining a drug-free workplace;
- (3) Any available counseling, rehabilitation and employee assistance programs;
- (4) Penalties that may be imposed upon employees for drug abuse violations.

(c) Every employee who works on the Project:

- (1) Shall be issued a copy of Supplier's drug-free policy statement;
- (2) Shall agree to abide by terms of Supplier's statement as a condition of employment on the Project.

This Agreement may be subject to suspension of payments or termination, or both, and Supplier may be subject to debarment if State determines that: (1) Supplier has made a false certification, or (2) Supplier has violated the certification by failing to carry out the requirements of this Article A-25.

#### ARTICLE A-26. CONFLICT OF INTEREST – CURRENT AND FORMER STATE EMPLOYEES

(a) Current State Officers and Employees:

(1) Supplier shall not utilize in the performance of this Agreement any state officer or employee in the state civil service or other appointed state official unless the employment, activity, or enterprise is required as a condition of the officer or employee's regular state employment. Employee in the state civil service is defined to be any person legally holding a permanent or intermittent position in the state civil service.

(2) If any state officer or employee is utilized or employed in the performance of this Agreement, Supplier shall first obtain written verification from State that the employment, activity, or enterprise is required as a condition of the officer's, employee's, or official's regular state employment and shall keep said verification on file for three (3) years after the termination of this Agreement.

(3) Supplier may not accept occasional work from any currently employed state officer, employee, or official.

(4) If Supplier accepts volunteer work from any currently employed state officer, employee, or official, Supplier may not reimburse, or otherwise pay or compensate, such person for expenses incurred, including, without limitation, travel expenses, per diem, or the like, in connection with volunteer work on behalf of Supplier.

(5) Supplier shall not employ any state officers, employees, or officials who are on paid or unpaid leave of absence from their regular state employment.

(6) Supplier or anyone having a financial interest in the Agreement may not become a state officer, employee, or official during the term of this Agreement. Supplier shall notify each of its employees, and any other person having a financial interest in this Agreement that it is unlawful under the Public Contract Code for such person to become a state officer, employee, or official during the term of this Agreement unless any relationship with the Supplier giving rise to a financial interest, as an employee or otherwise, is first terminated.

(7) Occasional or one-time reimbursement of a state employee's travel expenses is not acceptable.

(b) Former State Officers and Employees:

(1) Supplier shall not utilize in the performance of this Agreement any formerly employed person of any state agency or department that was employed under the state civil service, or otherwise appointed to serve in the State Government, if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision making process relevant to the Agreement while employed in any capacity by any state agency or department. This prohibition shall apply for a two (2) year period beginning on the date the person left state employment.

(2) Supplier shall not utilize within twelve (12) months from the date of separation from services, a former employee of the contracting state agency or department if that former employee was employed in a policy making position in the same general subject area as the proposed Agreement within the twelve (12) month period prior to the employee leaving state service.

ARTICLE A-27. ADDITIONAL INSURED

Supplier agrees that for any policy of general liability insurance concerning the construction of the Project, it will cause, and will require its contractors and subcontractors to cause, a certificate of insurance to be issued showing State, its officers, agents, employees, and servants as additional insured's; and shall provide State with a copy of all such certificates prior to the commencement of construction of the Project.

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#### ARTICLE A-28. PROHIBITED USE OF STATE FUNDS FOR SOFTWARE

Supplier certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

#### ARTICLE A-29. LABOR COMPLIANCE

Supplier shall comply with all applicable provisions of Labor Code, Division 2, Part 7, Chapter 1, Article 2, commencing with Section 1770 and implementing regulations regarding labor compliance monitoring and prevailing wage requirements. Supplier's failure or refusal to comply with this requirement shall be considered a substantial breach of this Agreement.

EXHIBIT B

SPECIAL TERMS AND CONDITIONS

ARTICLE B-1.

1. **Supplier** shall be reimbursed only for such Eligible Project Costs consisting of eligible construction expenses incurred on or after July 31, 2013, the date of the Letter of Commitment, and eligible preliminary expenses incurred after March 5, 2005.
2. **Supplier** may use only Eligible Project Costs incurred after October 28, 2003 to satisfy Matching Fund requirements.
3. **Supplier** shall notify the State's Riverside District Office within 10 days following commencement of Project construction.
4. **Supplier** shall notify the State's Riverside District Office at the completion of the Project.
5. **Supplier** shall notify the State's Riverside District Office at the following Project milestones:
  - a. Beginning of construction of the treatment facility and wells.
  - b. 50% completion of construction of the treatment facility and wells.
  - c. Thirty (30) days prior to 100% completion of the treatment facility and wells.
6. **Supplier** shall notify the State's Riverside District Office prior to any start-up testing of the treatment facilities or well facilities.
7. No later than ninety (90) days prior to 100% completion of the treatment facility and wells, **Supplier** shall submit a Water Supply Permit application to the State's Riverside District office to operate the treatment facility and wells.
8. **Supplier** shall submit documentation to the State's Riverside District office no later than thirty (30) days prior to the selection or purchase of the resin treatment system demonstrating that the major components of the treatment system comply with the California Waterworks Standards, specifically Section 64591, Title 22, of the California Code of Regulations. The major components of the treatment system, including the media used, must be tested and certified as meeting the specifications of NSF International/American National Standard Institute (NSF/ANSI) 61-2005 / Addendum 1.0-2005.

9. The **Supplier's** construction and operation of the Resin Treatment of Nitrate Sources Project shall result in the production of at least an additional 2,230 gallons per minute of potable water to meet water demand and shall reduce the amount of water imported from the Colorado River by at least 1,260 acre-feet per year.
10. **Supplier** agrees to operate the Project in a manner to achieve the annual savings of Colorado River water, as specified in Special Condition 9, above, for its reasonably expected useful life as specified in Section 9 of this Agreement based upon a running 10-year average. Calculation of the running average determination will begin after the fifth year of operation and will be based on the number of years of operation of the Project after the Project Completion Date, as specified in Article A-8 of this Agreement.
11. **Supplier** shall implement the mitigation measures identified in the Program Environmental Impact Report, titled City of Corona Groundwater Management Plan, prepared for the project.