

SECOND AMENDMENT TO THE CONSULTING SERVICES AGREEMENT

This Second Amendment to the Consulting Services Agreement (“*Amendment*”) is entered into as of _____, 2024, by and between the Santa Ana Watershed Association (“*SAWA*”) (“*Consultant*”) and San Bernardino Valley Municipal Water District, a water district organized and incorporated under the California Municipal Water District Law of 1911 (“*District*”). Consultant and District are hereafter referred to individually as “*Party*” and collectively as the “*Parties*.”

RECITALS

A. The Parties entered into that certain Consulting Services Agreement, dated March 15, 2022 (“*Consulting Agreement*”), whereby Consultant agreed to provide certain professional grant support services related to riparian bird surveys and reporting in connection with the Upper Santa Ana River Habitat Conservation Plan (“HCP”). The Consulting Agreement provided for a Maximum Fee of \$265,875.

B. On or about March 21, 2023, the Parties agreed to the First Amendment which extended the Term of the Agreement to March 21, 2024, and increased the Maximum Fee by Two Hundred Sixty-Five Thousand Six Hundred Twenty Dollars (\$265,620), reflecting a new total Maximum Fee of Five Hundred Thirty-One Thousand Four Hundred Ninety-Five Dollars (\$531,495).

C. The Parties desire to further amend the Consulting Services Agreement to increase the Maximum Fee and extend the Term of Service as described herein.

OPERATIVE TERMS

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals; Defined Terms. The Recitals are material to this Amendment, and by this reference are hereby incorporated herein. For purposes of this Amendment, all capitalized terms shall have the meanings given to such terms in the Consulting Agreement, unless such terms are otherwise defined herein.

2. Term. The Term of the Agreement is hereby extended and shall automatically terminate when the Compensation Amount has been spent, unless earlier terminated.

3. Additional Services. There are no additional services included in this amendment. Professional services to be completed are detailed in **Attachment A** and by this reference incorporated into the Consulting Agreement.

4. Compensation. The Maximum Fee is hereby increased by Two Hundred Ninety Thousand One Hundred Fifty Dollars (\$290,150), reflecting a new total Maximum Fee of Eight Hundred Twenty One Thousand Six Hundred Forty-Five Dollars (\$821,645). All references to Maximum Fee in the Consulting Agreement shall refer to the increased amount set forth herein.

5. Binding Effect. This Amendment shall be binding upon and inure to the benefit of the Parties' permitted successors and assigns. The Parties acknowledge and agree that except to the extent specifically provided in this Amendment, the Consulting Agreement shall continue in full force and effect as previously written.

6. No Other Modifications. The Parties acknowledge that this Amendment evidences the entire agreement between the Parties with respect to the amendment to the Consulting Agreement and supersedes all previous negotiations and discussions related thereto.

7. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereby execute this Amendment as of the date first set forth above.

DISTRICT:

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

By: Heather Dyer Digitally signed by
Heather Dyer, MS, MBA
Date: 2024.03.26 10:14:37
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MS, MBA

Name: Heather Dyer

Its: CEO/General Manager

Date: 3/26/2024

CONSULTANT:

Santa Ana Watershed Association

By: 

Name: Brian Brady

Its: Executive Director

Date: 4/10/24

Attachment A

Scope of Work

Riparian Bird Surveys for the 2024 Nesting Season

San Bernardino Valley Municipal Water District on behalf of the
Upper Santa Ana River Habitat Conservation Plan



¹ Hamilton, Robert. Macaulay Library. California, May 16, 2017.
https://www.allaboutbirds.org/guide/Bells_Vireo/id#

1. INTRODUCTION

In the process of developing the Upper Santa Ana River Habitat Conservation Plan (HCP or Plan) the San Bernardino Valley Municipal Water District (Valley District), in cooperation with eleven other HCP Permittees, has the need to collect baseline data for the purposes of acquiring federal and potentially State incidental take permits. The HCP Conservation Strategy will include a comprehensive package of stream restoration, enhancement and preservation, threats management, and population augmentation through captive propagation and translocation, where appropriate.

The HCP will be required to monitor for effects to covered species and their habitats resulting from construction and operations of proposed covered activities. Effects monitoring for riparian migratory bird species will occur in the mainstem of the Santa Ana River generally between the Rialto Channel and Prado Dam. Additionally, the HCP proposes to restore or enhance multiple tributaries to the Santa Ana River located in the Riverside area. These restoration sites will have specific success criteria outlined in the HCP and associated mitigation documents that will need monitoring and reporting activities on a regular basis.

The tributaries restoration projects are scheduled to begin construction in the 2024. Therefore, quality monitoring data are needed in order to conduct comparative analyses between the current condition of the riparian bird community and altered future conditions (post-covered activity, post-restoration). The products derived from the Scope of Services in this Scope of Work (SOW) are intended to provide baseline information for riparian bird species covered by the HCP. The contract that will result from this SOW process will cover the 2023 nesting season.

2. CONSULTING TEAM

Proposer (Consultant) is responsible for assembling a team which meets all requirements outlined in this SOW.

3. REQUIRED EXPERIENCE AND QUALIFICATIONS

Consultant shall demonstrate the qualifications and experience necessary to successfully complete all aspects of Scope of Services detailed below.

4. SCOPE OF SERVICES

Valley District, on behalf of the HCP, is soliciting proposals from qualified firms with demonstrated technical expertise in surveying for riparian bird species covered by the HCP. Riparian associated bird species covered by the HCP (covered species) include:

- Least Bell's vireo (*Vireo bellii pusillus*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Yellow-breasted chat (*Icteria virens*)
- Western yellow-billed cuckoo (*Coccyzus americanus*)

Several other bird species are covered by the HCP. Recordation of incidental observations of these other bird species are also of interest. Therefore, firms should also have expertise conducting surveys for the following bird species:

- Tricolored blackbird (*Agelaius tricolor*)

- Burrowing owl (*Athene cunicularia*)
- Coastal California gnatcatcher (*Poliophtila californica californica*)
- Cactus wren (*Campylorhynchus brunneicapillus*)

a. ***Baseline Monitoring of Riparian Birds for Effects from HCP Covered Activities:***

The objective of monitoring within the mainstem of the Santa Ana River is to capture data reflecting possible changes to the riparian community due to decreased baseflow or stormflow from future proposed covered activities, and to document baseline and ongoing trends within the Plan's Preserve Areas. The preserve area can be viewed on the HCP website: <https://www.uppersarhcp.com/map>. The mainstem survey work is intended to detect changes over time in the size, distribution, and/or long-term health of the native riparian bird populations, with emphasis on those threatened or endangered species covered by the Plan. Bird species associated with riparian habitats covered by the HCP that are the focus of this task include the least Bell's vireo, southwestern willow flycatcher, yellow-breasted chat, and the western yellow-billed cuckoo.

Monitoring results gathered prior to implementing covered activities are intended to establish baseline population numbers and distribution of covered species within the mainstem Santa Ana River. The area of potential effects from the HCP covered activities includes riparian areas in the mainstem of the Santa Ana River. The geographic focus area of this task is between the Riverside County line to the north and the Prado Basin to the south, as is shown in Figure 1, HCP Effects Monitoring Area, attached.

The Orange County Water District (OCWD) and the Santa Ana Watershed Association (SAWA) have and continue to conduct riparian bird monitoring within and around the Prado Basin and other locations within the HCP area of interest. Therefore, surveys executed as a part of the contract that will result from this SOW will be limited to areas that are not already being surveyed by HCP Partners or other entities. The Contractor shall coordinate with SAWA, OCWD, and other entities conducting least Bell's vireo, southwestern willow flycatcher, and other riparian bird surveys in the survey area to ensure double counting of birds and/or territories does not occur.

Results of these surveys will be shared with HCP Permittees and partners and will be consistent in methodology to those other survey efforts so that the data can be looked at together to enable regional analysis.

i. Least Bell's Vireo

Surveys for the least Bell's vireo should follow the Least Bell's Vireo Survey Guidelines (https://www.fws.gov/ventura/docs/species/protocols/lbv/leastbellsvireo_survey-guidelines.pdf) with the exceptions of deviations from that protocol detailed in this paragraph. Areas associated with Task 5(a) will be monitored at least three (3) times and up to eight (8) times during the breeding season in an attempt to document territory locations, numbers, densities, incidental reproductive data, and parasitism rates as well as the location and number of individuals that either do not pair or are migrating through the survey area.

ii. Southwestern Willow Flycatcher, Western Yellow-Billed Cuckoo, and Yellow-Breasted Chat

Presence monitoring of migratory willow flycatchers and for southwestern willow flycatcher occupancy in the Santa Ana Preserve Area has been conducted using informal surveys (without playback) from 2000 to 2020 (SAWA 2020) and involves marking the locations of willow

flycatchers observed during least Bell's vireo nest and territory monitoring, and then returning after the migratory period to see if southwestern willow flycatchers are present and nesting (SAWA 2020). To compare with monitoring conducted to date, this method will be used to survey for southwestern willow flycatcher and western yellow-billed cuckoo. If occupancy and nesting by southwestern willow flycatchers or western yellow-billed cuckoo is suspected, the Contractor shall coordinate with Valley District to determine if additional focused or protocol surveys should be conducted. If additional surveys are determined to be necessary, Valley District would contract that work separate from this scope of work via contract modification or other means.

The location and number of chat breeding territories have been monitored incidentally to least Bell's vireo annual territory mapping in locations within the Santa Ana River for many years by SAWA. The location of breeding territories shall also be marked utilizing GPS based on locations of singing male chat during repeat visits as has been conducted according to the incidental methodology SAWA has implemented in the past (2019; 2020).

iii. General Requirements

The Consultant is responsible for obtaining rights of entry on all lands where surveys are to be conducted prior to the start of surveys.

The Consultant shall also collect pertinent information like GPS coordinates, notes and photographs whenever any HCP covered species or species covered by the Federal or State Endangered Species Acts are observed. A list of species covered by the HCP can be found here: https://www.uppersarhcp.com/covered_species.

b. *Baseline Monitoring to Measure Success of Restored Tributaries and Management of other Conservation Areas:*

The objective of monitoring at the Tributary Restoration Project areas and other Preserve Areas is to establish a record of baseline conditions prior to restoration and to demonstrate functional habitat improvement over time. The functional lift associated with increased health and abundance of native riparian plants and perennial water supply in the streams (for the restored tributaries only) is expected to result in an increase in populations of native species and improved reproductive success. We are open to survey methodology recommendations from the Consultant to achieve this objective based on experience and expertise in the field.

In order to meet this monitoring objective, the Consultant is expected to conduct at least 8 visits through the entirety of habitat suitable to each of the riparian bird species that are the focus of this SOW (least Bell's vireo, southwestern willow flycatcher, yellow-breasted chat, and western yellow-billed cuckoo) at each of the tributary restoration sites listed below and shown on Figure 2, Tributary Restoration Sites, attached. The Consultant is responsible for obtaining rights of entry on all lands where surveys are to be conducted prior to the start of surveys. There are 6 tributary restoration sites shown on Figure 2:

1. Hidden Valley Wetlands (112 acres)
2. Lower Hole Creek (18 acres)
3. Anza Creek (114 acres)
4. Old Ranch Creek (208 acres)
5. Sunnyslope Creek & Vicinity (300 acres)

For least Bell's vireo, the Consultant shall follow the Least Bell's Vireo Survey Guidelines

(https://www.fws.gov/ventura/docs/species/protocols/lbv/leastbellsvireo_survey-guidelines.pdf) with the exception of deviations detailed in the paragraphs of this section of this SOW. Delineate the territory boundary of each vireo territory observed and collect points for each unpaired vireo observed. Intensive nest monitoring shall also occur on as many pairs as possible, but no less than 30% of the observed pairs unless otherwise coordinated with Valley District biologists. Data to be collected at the nest shall include the following parameters:

- Date vireo arrived
- Date paired
- Date of first nest
- Date of first eggs
- Number of eggs
- Number and age of nestlings
- Follow nest through fledging process to document success/failure
- If applicable, reason for failure
- Collect nest placement data (e.g. height above ground, type of plant, placement in plant, etc.)
- Date vireo last observed

Repeat this for every nesting attempt. The Consultant shall analyze and document nesting success, reproductive success, productivity values, parasitism, and depredation rates at each site and across all sites. This analysis shall then extend to a comparison to the rest of the watershed for a given year and across years at each location and watershed wide.

For all other covered species or other T&E species, GPS points, notes and photos shall be taken to document the species and habitat it was observed in. Notes shall be taken on habitat type, structure, behavior of the species, reproductive success, and any other information that can help meet the objective of establishing a baseline understanding of covered species to analyze potential impacts of HCP covered activities in the future.

If nesting is suspected by the southwestern willow flycatcher or western yellow-billed cuckoo, the Contractor shall coordinate with Valley District to determine if additional survey effort is required. Any additional survey effort to monitor nests of southwestern willow flycatcher or western yellow-billed cuckoo would be contracted separately from this scope of work through contract modification or other means.

The Contractor shall coordinate with SAWA, OCWD, and other entities conducting least Bell's vireo, southwestern willow flycatcher, and other riparian bird surveys in the survey area to ensure double counting of birds and/or territories does not occur.

c. *Meetings*

The Consultant shall participate in an annual meeting. The purpose of the annual meeting is to provide the Valley District Board of Directors and stakeholders with a summary of observations made during the year. It is assumed that this annual meeting will include a PowerPoint presentation or similar format that summarizes information presented in the annual report, as described in 9. Deliverables, below.

6. COWBIRD TRAPPING

a. *Provide and Operate and Maintain 11 Cowbird Traps:*

The Consultant shall provide and operate and maintain 11 cowbird traps within the survey area during the 2023 survey season, unless otherwise coordinated and approved by Valley District. The Consultant shall coordinate the location of these traps with Valley District and other stakeholders to ensure traps are in locations that complement, rather than duplicate, other trapping efforts in the area. The Consultant shall obtain all rights of entry and permits necessary to place and operate and maintain the cowbird traps.

7. IMPACT CONSIDERATIONS

The Contractor shall provide a narrative on disturbances (i.e. fires, unhouses encampments, dumping, etc.) that were observed throughout the survey effort that could have had an impact on riparian bird presence, absence, or productivity. This analysis should include relevant maps, photographs, or other means to help visualize the potential impacts. Recommendations on how to avoid or minimize those potential impacts in the future and restore impacted areas shall also be included.

8. REPORTING

a. *Annual Reporting:*

An annual report shall be produced that documents the agreed upon methodologies that are utilized and survey results for each of the survey methods employed for each species, each site and across all sites. The annual report shall compare survey results from the current year to previous years and provide analysis on observed trends as well as provide recommendations for future monitoring and restoration efforts. The annual report shall also include cowbird trapping results for each trap. Cowbird trapping results shall be summarized in a spreadsheet that shows the number and species trapped for each trap along with other pertinent information, including but not limited to dates of capture and any mortality. This spreadsheet can be included as an appendix to the annual report. The annual report shall include pertinent maps and photographs to show relevant information including, but not limited to, areas surveyed, location of traps, location of observations and territories of least Bell's vireo, southwestern willow flycatcher, yellow-breasted chat, western yellow-billed cuckoo and any other species covered by the HCP or listed in the Federal or California Endangered Species Acts. The annual report shall also provide a narrative on disturbances encountered during the survey period as well as recommendations on how to avoid, minimize, or restore observed impacts as described in Section 7, above.

A draft report shall be provided to Valley District to review and comment on. The Contractor will incorporate comments from Valley District into a final report. This final report shall be provided to Valley District no later than January 31, 2024, unless otherwise coordinated with Valley District.

b. *Protocol Reports:*

If protocol surveys are triggered, the reports required by each of the triggered protocols shall be appended to the annual report. The annual report shall document analysis and discussion of observations of the field surveys.

9. DELIVERABLES

- a. Annual Reports: Annual reports to satisfy the Contractors' permit requirements (e.g. 10(a)1(a) permit or scientific collector's permit) shall be finalized and submitted to relevant agencies prior to deadlines required by those permits. A final annual report, as described in Section 9, above, and corresponding figures and maps shall be provided to Valley District no later than January 31, 2025, unless otherwise coordinated and approved by Valley District.
- b. Photographs: All photographs taken during surveys shall be provided to Valley District along with GPS points of where they were taken by January 31, 2025, or as requested by Valley District, unless otherwise coordinated and approved by Valley District.
- c. Mapping and GIS Data: All final iterations of spatial data created to support figures or analysis shall be provided to Valley District in ESRI ArcGIS formats by January 31, 2025, or as requested by Valley District, unless otherwise coordinated and approved by Valley District.

10. REFERENCES

- Hall, L.S. and A. Plesetz. 2020. Final report on bird counts on Nature Conservancy properties on the Santa Clara River. Unpublished report prepared for The Nature Conservancy, Ventura, CA.
- Hall, L.S., B.K. Orr, J.R. Hatten, A. Lambert, and T. Dudley. 2020. Final Report: Southwestern Willow Flycatcher (*Empidonax traillii extimus*) and Western Yellow-Billed Cuckoo (*Coccyzus americanus occidentalis*) surveys and habitat availability modeling on the Santa Clara River, California.
- Halterman, M.D., M.J. Johnson, J.A. Holmes, and S.A. Laymon. 2016. A Natural History Summary and Survey Protocol for the Western Distinct Population Segment of the Yellow-Billed Cuckoo: Draft. U.S. Fish and Wildlife Techniques and Methods.
- Hughes, J.M. 2020. Yellow-Billed Cuckoo (*Coccyzus americanus*), version 1.0. In Birds of the World (P.G. Rodewald, Editor). Cornell Lab of Ornithology, Ithaca, New York.
<https://doi.org/10.2173/bow.yebuc.01>
- McNeil, S.E., D. Tracy, J.R. Stanek, and J.E. Stanek. 2013. Yellow-Billed Cuckoo Distribution, Abundance and Habitat Use on the Lower Colorado River and Tributaries, 2008-2012 Summary Report. Unpublished report prepared for Lower Colorado River Multi-Species Conservation Program, Boulder City, Bureau of Reclamation.
- Ralph, C.J., Sauer, J.R., Droege, S., Technical Editors. 1995. Monitoring Bird Populations by Point Counts. General Technical Report PSW-GTR-149, Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture, Albany, California.
- Rourke, J.W., T.D. McCarthy, R.F. Davidson, and A.M. Santaniello. 1999. Southwestern Willow Flycatcher nest monitoring protocol: Nongame and Endangered Wildlife Program Technical Report 144, Arizona Game and Fish Department, Phoenix, Arizona.
- Santa Ana Watershed Association (SAWA). 2019. Status and Management of the Least Bell's Vireo and Southwestern Willow Flycatcher in the Santa Ana River Watershed, 2019, and Summary Data by Site and Watershed-Wide, 2000-2019. Prepared for U.S. Fish and Wildlife Service, U.S. Army Corp of Engineers,

San Bernardino Valley Municipal Water District, and Orange County Water District. December 2019.

SAWA. 2020. Status and Management of the Least Bell's Vireo and Southwestern Willow Flycatcher in the Santa Ana Watershed, 2020, and Summary Data by Site and Watershed-Wide, 2000-2020. Prepared for U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, San Bernardino Valley Municipal Water District, Orange County Water District.

Sogge, M.K., D. Ahlers, and S.J. Sferra. 2010. A natural history summary and survey protocol for the southwestern willow flycatcher: U.S. Geological Survey Techniques and Methods 2A-10.

Stillwater Sciences and ICF. 2021. Upper Santa Ana River Habitat Conservation Plan Comprehensive Adaptive Management and Monitoring Program: A Living Document – Version 1. September. Prepared by Stillwater Sciences, Los Angeles, CA and ICF, San Diego, CA for San Bernardino Valley Municipal Water District, San Bernardino, CA.

Upper SAR HCP 2024 Riparian Bird Monitoring and Cowbird Trapping Costs						
Task	Staff	Hourly Rate	Hours	Costs	Costs by Task	Total Costs
Baseline Monitoring for effects from HCP Covered Activities (Sec. I.a-d)	Vireo-permitted Biologist-JC	94.91	110	\$10,440.10		
Baseline Monitoring for effects from HCP Covered Activities (Sec. I.a-d)	Vireo-permitted Biologist-JB	94.02	100	\$9,402.00		
Baseline Monitoring for effects from HCP Covered Activities (Sec. I.a-d)	Vireo-permitted Biologist-LS	83.02	272	\$22,581.44		
Baseline Monitoring for effects from HCP Covered Activities (Sec. I.a-d)	Vireo-permitted Biologist-NW	83.02	300	\$24,906.00	\$67,329.54	
Baseline Monitoring to Measure Success of Restored Tributaries (Sec. II)	Vireo-permitted Biologist-LS	83.02	210	\$17,434.20		
Baseline Monitoring to Measure Success of Restored Tributaries (Sec. II)	Vireo-permitted Biologist-AB	144.92	128	\$18,549.76		
Baseline Monitoring to Measure Success in Sunnyslope Creek and adjacent habitat (Sec. II)	Vireo-permitted Biologist-EG	76.83	120	\$9,219.60	\$45,203.56	
Reporting (Sec. VIII.a and IX)	WHMS Manager	199.19	50	\$9,959.50		
	WHMS Supervisor	144.92	200	\$28,984.00		
	Vireo-permitted Biologist	90.00	650	\$58,500.00	\$97,443.50	
Total Annual Hours			2140			
Administration	WHMS Manager	199.19	35	\$6,971.65		
Monthly reports, annual meeting	WHMS Supervisor	144.92	20	\$2,898.40		
	Vireo-permitted Biologist	90.00	45	\$4,050.00	\$13,920.05	
Mileage Reimbursement			5300	\$3,816.00	\$3,816.00	
Total Avian Monitoring						\$227,712.65
Cowbird Trapping (11 traps) - (Sec. V)	WHMS Manager	199.19	10	\$1,991.90		
	WHMS Supervisor	144.92	45	\$6,521.40		
	Biologist Assistant	50.16	125.5	\$6,295.08		
	Seasonal Trap Assistant	31.45	350	\$11,007.50		
	Permitted Biologist	86.00	90	\$7,740.00		
Reporting (Sec. V and IX)	Permitted Biologist	90.00	91	\$8,190.00		
Total Annual Hours			711.5			
Supplies (seed, bowls, locks, etc)				\$411.18		
Mileage Reimbursement			7000	\$4,690.00		
Total Cowbird Trapping (Sec. V)						\$46,847.06
Overall Total (Avian Monitoring/Cowbird Trapping in Upper SAR)						\$274,559.71
Optional Tasks (Sec. VII)						
d. Sub-contract Security for High Risk Locations	Personal detail (estimate)	100.00	150	\$15,000.00		
Mileage Reimbursement			900	\$589.50	\$15,589.50	
Total Optional Task Costs (Sec VII.d)						\$15,589.50
2024 Total Costs (with one optional task)						\$290,149.21