

## REIMBURSEMENT AGREEMENT

**THIS REIMBURSEMENT AGREEMENT** (“*Agreement*”) is entered into and effective as of \_\_\_\_\_, 2024 (“*Effective Date*”), by and between EAST VALLEY WATER DISTRICT, a county water district organized and operating pursuant to California Water Code section 30000 *et seq.* (“*EVWD*”), and SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, a municipal water district organized and operating pursuant to California Water Code section 71000 *et seq.* (“*SAN BERNARDINO VALLEY*”). EVWD and SAN BERNARDINO VALLEY are sometimes referred to herein individually as “*Party*” and collectively as “*Parties*”.

### RECITALS

A. On March 9, 2017, the United States Fish and Wildlife Service (“*USFWS*”) issued a biological opinion (“*2017 BiOp*” [attached as *Attachment A* hereto]) (FWS-SB-16B0182-17F0387) for the construction and operation of the Sterling Natural Resources Center (“*SNRC*”) in accordance with section 7 of the Federal Endangered Species Act. The 2017 BiOp concluded that the proposed construction and operation of the SNRC is not likely to jeopardize the continued existence of or adversely modify the critical habitat of the San Bernardino kangaroo rat (“*SBKR*”) or Santa Ana Sucker (“*SAS*”). The biological opinion also concluded that the SNRC should be included as a covered activity of the Upper Santa Ana River Habitat Conservation Plan (“*HCP*”).

B. On April 28, 2017, the State Water Board’s Division of Water Rights issued an order approving the Petition in Order WW0095 (“*Order WW0095*” [attached as *Attachment B* hereto]). The State Water Board included a Mitigation Monitoring and Reporting Program (“*Order MMRP*” as part of Order WW0095. The Order MMRP recites mitigation measures in the Final Environmental Impact Report (“*EIR*” [State Clearinghouse Number 2015101058]) for SNRC, and specifies implementation and monitoring responsibilities, including SAN BERNARDINO VALLEY being signatory to the HCP and the inclusion of the SNRC as a covered activity.

C. On August 11, 2017, the USFWS issued an amendment to the 2017 BiOp (“*Amended 2017 BiOp*” [attached as *Attachment C* hereto]) (FWS-SB-16B0182-17F0387-R001). The Amended 2017 BiOp addressed the roles and responsibilities of both the United States Environmental Protection Agency and State Water Board associated with implementation of the 2017 BiOp conservation measures.

D. On June 20, 2018, the San Bernardino County Local Agency Formation Commission approved the activation of EVWD’s latent wastewater treatment authority conditioned on SAN BERNARDINO VALLEY assigning to EVWD SAN BERNARDINO VALLEY’s obligations as lead agency arising under the SNRC Final EIR and associated MMRP.

E. In October 2018, the Parties executed a written assignment agreement (“*Assignment Agreement*” [attached as *Attachment D* hereto]) whereby San Bernardino Valley assigned all obligations and responsibilities, express and implied, arising from and/or related to the SNRC Final EIR and associated MMRP, to EVWD, and EVWD accepted, assumed, and agreed to perform, fulfill, and comply with all obligations and responsibilities, express and implied,

arising from and/or related to the SNRC Final EIR and associated MMRP, and the CDFW- and USFWS-approved Habitat Mitigation and Monitoring Plan (“**HMMP**”).

F. In July 2019, EVWD, as the lead agency under CEQA, adopted an addendum to the Final EIR (“**Addendum No. 1**”) which evaluated specified operational changes to the SNRC facility that included emergency operations and recycled water detention ponds, use of an adjacent parcel, and food waste facilities. Addendum No.1 did not create new or increased environmental impacts beyond those analyzed and mitigated in the Final EIR.

G. On January 27, 2021, EVWD, as the lead agency under CEQA, adopted a second addendum to the Final EIR (“**Addendum No. 2**”), with project modifications. Addendum No. 2 allowed for the recharge of SNRC-treated water into an alternative groundwater recharge site (“**Weaver Basins**”) and extension of the Final EIR treated water conveyance pipeline system (“**Regional Recycled Water Pipeline**”) to the alternative groundwater recharge site. Modifications to the SNRC Project in Addendum No. 2 reduced impacts to the SBKR.

H. On January 3, 2022, USFWS issued a second amendment to the 2017 BiOp (“**Second Amended 2017 BiOp**” [attached as **Attachment E** hereto]) (FWS-SB-16B0182-17F0387-R002). The Second Amended 2017 BiOp revised the conservation measures for the SBKR and Santa Ana River woolly-star based on changes to the SNRC project. These changes did not change project effects on SAS and the analysis in the 2017 biological opinion remains valid.

I. On December 1, 2023, the USFWS issued a third amendment to the 2017 BiOp. The third amendment (“**Third Amended 2017 BiOp**” [attached as **Attachment F** hereto]). The Third Amended 2017 BiOp provided flexibility for implementing SAS conservation measures and concluded that the proposed changes would not affect the SAS in any way that was not considered in the 2017 BiOp. The Third Amended BiOp required EVWD to prepare and submit to the USFWS for review and approval a Santa Ana Sucker Habitat Mitigation and Monitoring Plan (“**SAS HMMP**”).

J. On January 10, 2024, the California Department of Fish and Wildlife (“**CDFW**”) issued Streambed Alteration Agreement Number EPIMS-SBR-42496-R6 (“**SAA**” [attached as **Attachment G** hereto]) authorizing EVWD to reduce discharge to the Santa Ana River by 6 million gallons per day. The SAA required EVWD to conduct various baseline data collection, prepare multiple mitigation and monitoring plans, and conduct multiple compensatory mitigation measures. Baseline data collection and associated reporting and preparation of compensatory mitigation plans were required to be submitted to CDFW for review and approval prior a change in the quantity of discharge of EVWD’s treated wastewater to the Santa Ana River.

K. In 2023 SAN BERNARDINO VALLEY, on behalf of EVWD, pursuant to Conservation Measure 21 of the Third Amended BiOp and Mitigation Measure 3.6 of the SAA, prepared and submitted for approval to the USFWS and CDFW, a SAS HMMP (attached as **Attachment H** hereto) for the long-term implementation, management, and monitoring, of a suite of measures for the benefit of SAS. The Third Amended BiOp and/or the SAA specified that the SAS HMMP include Habitat Node Creation, an Aquatic Predator Control Program, an Exotic Weed Management Program, High Flow Pulse Events, Upper Watershed SAS Population Establishment, and annual monitoring of the Santa Ana River.

L. On November 30, 2023, CDFW approved the SAS HMMP.

M. On December 1, 2023, USFWS approved the SAS HMMP.

N. EVWD desires SAN BERNARDINO VALLEY, on EVWD's behalf, to implement certain conservation/mitigation measures identified in the approved SAS HMMP and in the SAA. The conservation/mitigation measures consist of Habitat Nodes, Aquatic Predator Control, Exotic Weed Management, High Flow Pulse Events, Water Temperature, Translocation, Native Fish Surveys, Riparian Bird Monitoring, and Habitat Restoration.

O. On May 17, 2016, SAN BERNARDINO VALLEY executed a Consulting Services Agreement with the Riverside-Corona Resource Conservation District ("**RCRCD**"), attached as **Attachment I** hereto and incorporated herein by reference, for Native Fish Raceways and Refugia Facilities for the HCP. The facilities will be used as a component of SAS translocation. The costs of the RCRCD Consulting Services Agreement is Four Hundred Sixty Three Thousand Seven Hundred Thirty Six Dollars (\$463,736), as identified in Attachment I hereto.

P. In April 2024, SAN BERNARDINO VALLEY executed a Consulting Services Agreement with the Santa Ana Watershed Association ("**SAWA**"), attached as **Attachment J** hereto and incorporated herein by reference, for riparian bird surveys and reporting along the Santa Ana River. The cost of the riparian bird surveys and reporting for 2024 is Two Hundred Ninety Thousand One Hundred Fifty Dollars (\$290,150), as identified in Attachment A (Riparian Bird Surveys for the 2024 Nesting Season Scope of Work) to the SAWA Consulting Services Agreement attached as Attachment J.

Q. On May 14, 2024, SAN BERNARDINO VALLEY executed a second Consulting Services Agreement with SAWA, attached as **Attachment K** hereto and incorporated herein by reference, for habitat management actions on multiple projects/properties, including EVWD's obligation to conduct exotic weed management along no less than 1.4 miles of the Santa Ana River in San Bernardino and/or Riverside County. The cost of habitat enhancement actions along EVWD's 1.4-mile stretch of the Santa Ana River over the next 12 months is One Hundred Forty Six Thousand Four Hundred Eighteen Dollars and Seventy-Five Cents (\$146,418.75), as identified in Exhibit "A" (Nonnative Plant Management Spring 2024 Project Scope of Work) to the SAWA Consulting Services Agreement attached as Attachment K hereto.

R. On August 26, 2024, SAN BERNARDINO VALLEY executed a Purchase Order with the Riverside-Corona Resource Conservation District ("**RCRCD**"), attached as **Attachment L** hereto and incorporated herein by reference, for water sampling, and annual native fish surveys in the Santa Ana River, among other actions. The cost of water sampling, annual native fish surveys, and administrative overhead over the next 12 months is Thirty Three Thousand Six Hundred Sixty Two Dollars and Eighty Cents (\$33,662.80), as identified in Exhibit "B" (Proposed Operational Budgets for the Upper SAR HCP Native Fish Monitoring Program) to the RCRCD Purchase Order attached as Attachment L hereto.

S. In August 2024, SAN BERNARDINO VALLEY received a Scope of Work from the Southwest Resource Management Association ("**SRMA**") for Nonnative Aquatic Species Control in the Santa Ana River. The cost of the nonnative aquatic species control and

administrative overhead over the next 12 months is Seven Thousand Dollars (\$7,000), as identified in Exhibit “C” (Proposed Operational Budgets for the Upper SAR HCP Native Fish Monitoring Program), attached as **Attachment M** hereto and incorporated herein by reference.

T. On September 5, 2024, SAN BERNARDINO VALLEY executed a Joint Funding Agreement with the United States Geological Survey California Water Science Center (“**USGS**”), attached as **Attachment N** hereto and incorporated by reference, for native fish surveys, and the development of a water temperature model. The cost of the native fish surveys and water temperature model is One Hundred Seventy Two Three Hundred Thirty Two Dollars (\$172,332), as identified in the Joint Funding Agreement attached as Attachment N hereto.

U. SAN BERNARDINO VALLEY estimates that the 2024 costs for habitat node creation, associated water quality sampling, data analysis and reporting will be approximately Twenty Thousand Dollars (\$20,000).

V. SAN BERNARDINO VALLEY estimates that cost of implementation of conservation/mitigation measures in the SAS HMMP and SAA for 2024 is Two Hundred Seventy Three Seven Hundred Eighty Seven Dollars (\$273,787) (“**Maximum Reimbursement**”), as identified in **Attachment O** attached hereto (SNRC Projected 2024 Costs).

W. EVWD wishes to establish and agree to a framework and reimburse San Bernardino Valley for expenses incurred in implementing conservation/mitigation measures identified in the SAS HMMP, and in the SAA, as identified in Attachment O attached hereto.

**NOW THEREFORE**, in consideration of the matters recited and the mutual promises, covenants, and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **OPERATIVE PROVISIONS**

1. Incorporation of Recitals. Each and every one of the Recitals set forth above is a material part of this Agreement and is hereby incorporated by reference into and made part of this Agreement by this reference.

2. SAA and SAS HMMP Management and Implementation. Except as expressly provided herein, EVWD shall perform all obligations to be performed by EVWD under the SAA and the SAS HMMP. Subject to the terms and conditions of this Agreement, SAN BERNARDINO VALLEY will manage and implement, on behalf of EVWD, the conservation/mitigation measures in the approved SAS HMMP and SAA, as set forth in Attachments H and G hereto.

3. Term. The term of this Agreement shall commence as of the Effective Date and shall terminate on the earlier of: (a) March 31, 2025; or (b) SAN BERNARDINO VALLEY incurs total approved costs equaling the Maximum Reimbursement.

4. Reimbursement. EVWD shall reimburse SAN BERNARDINO VALLEY for all costs incurred by SAN BERNARDINO VALLEY related to implementation of conservation/mitigation measures identified in the SAS HMMP and SAA; provided, however, that

the total reimbursement shall not exceed the Maximum Reimbursement without an amendment to this Agreement.

5. Payments. SAN BERNARDINO VALLEY shall prepare and submit to EVWD invoices, supported by appropriate and sufficient documentation of costs incurred herein. EVWD shall pay all invoices within thirty (30) days after receipt.

6. Indemnification.

a. *EVWD Indemnity.* Pursuant to Government Code section 895.4, EVWD shall indemnify, defend, and hold harmless SAN BERNARDINO VALLEY from and against any and all third-party claims, demands, losses, fines, penalties, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies of whatever nature (including reasonable attorneys' fees) (collectively, "***Claims***") arising out of or related to EVWD's performance of its obligations under this Agreement, except to the extent that such Claims are caused by the negligence or willful misconduct of SAN BERNARDINO VALLEY.

b. *SAN BERNARDINO VALLEY Indemnity.* Pursuant to Government Code section 895.4, SAN BERNARDINO VALLEY shall indemnify, defend, and hold harmless EVWD from and against any and all Claims arising out of or related to SAN BERNARDINO VALLEY's performance of its obligations under this Agreement, except to the extent that such Claims are caused by the negligence or willful misconduct of EVWD.

7. Miscellaneous.

a. *Notices.* Any notice to be given or to be served upon either Party hereto in connection with this Agreement must be in writing and shall be deemed to have been given and received: (a) when personally delivered; (b) two (2) days after it is sent by Federal Express or similar overnight courier, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; (c) three (3) days after it is sent by certified or registered United States mail, return receipt requested, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; or (d) as of the date of electronic mail transmission addressed to the Party for whom it is intended, at that Party's electronic mail address specified below, and provided that an original of such notice is also sent to the intended addressee by means described in clauses (a), (b), or (c) within two (2) business days after such transmission. Either Party may change the place for the giving of notice to it by thirty (30) days prior written notice to the other Party as provided herein.

If to SAN BERNARDINO VALLEY: San Bernardino Valley Municipal Water District  
Attn: Heather Dyer, CEO/General Manager  
380 East Vanderbilt Way  
San Bernardino, CA 92408  
Email: heatherd@sbtvmwd.com

with a copy to:

Varner & Brandt LLP  
Attn: Bradley E. Neufeld  
3750 University Avenue, 6<sup>th</sup> Floor  
Riverside, CA 92501-3323  
Email: bradley.neufeld@varnerbrandt.com

If to WVWD:

East Valley Water District  
Attn: Michael Moore  
31111 Greenspot Road  
Highland, CA 92346  
Email: mmoore@eastvalley.org

b. *Further Acts.* Each Party agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

c. *Modifications Must Be Made in Writing.* This Agreement may not be modified, altered, or changed in any manner whatsoever except by a written instrument duly executed by authorized representatives of both Parties.

d. *Governing Law; Venue.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provision that would apply the laws of any other jurisdiction. Any action taken to enforce this Agreement shall be maintained exclusively in the Superior Court of the State of California, San Bernardino County. Each Party expressly consents to the exclusive jurisdiction of said court and waives any right it may otherwise have to challenge the appropriateness of such forum, whether on the basis of the doctrine of forum *non conveniens* or otherwise.

e. *Entire Agreement.* This Agreement contains the entire understanding between the Parties, and supersedes any prior understanding and/or written or oral agreements between them, respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

f. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Signatures may be delivered electronically and shall be binding upon the Parties as if they were originals.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
Heather P. Dyer  
CEO/General Manager

**EAST VALLEY WATER DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT A**

**UNITED STATES FISH AND WILDLIFE SERVICE  
FORMAL SECTION 7 OPINION FOR THE PROPOSED  
STERLING NATURAL SOURCE CENTER**

**DATED MARCH 9, 2017**



**ATTACHMENT B**

**STATE WATER RESOURCES CONTROL BOARD**

**WASTEWATER PETITION ORDER WW0095**

**DATED APRIL 28, 2017**

**ATTACHMENT C**

**UNITED STATES FISH AND WILDLIFE SERVICE**

**REINITIATION OF FORMAL SECTION 7 CONSULTATION ON THE PROPOSED  
STERLING NATURAL SOURCE CENTER**

**DATED AUGUST 11, 2017**

**ATTACHMENT D**

**ASSIGNMENT AND ASSUMPTION OF EIR OBLIGATIONS AND  
IMPLEMENTATION, MONITORING, AND REPORTING RESPONSIBILITIES  
UNDER THE STERLING NATURAL SOURCE CENTER MITIGATION  
MONITORING AND REPORTING PROGRAM**

**DATED OCTOBER 2018**

**ATTACHMENT E**

**UNITED STATES FISH AND WILDLIFE SERVICE**

**REINITIATION OF FORMAL SECTION 7 CONSULTATION ON THE PROPOSED  
STERLING NATURAL SOURCE CENTER**

**DATED JANUARY 3, 2022**

**ATTACHMENT F**

**UNITED STATES FISH AND WILDLIFE SERVICE**

**AMENDMENT TO THE BIOLOGICAL OPINION FOR THE PROPOSED STERLING  
NATURAL SOURCE CENTER**

**DATED DECEMBER 1, 2023**

**ATTACHMENT G**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

**STREAMBED ALTERATION AGREEMENT NUMBER EPIMS-SBR-42496-R6 FOR  
THE STERLING NATURAL RESOURCES CENTER**

**DATED JANUARY 10, 2024**

**ATTACHMENT H**

**SANTA ANA SUCKER HABITAT MITIGATION AND MONITORING PLAN**

**DATED NOVEMBER 2023**

**ATTACHMENT I**

**CONSULTING SERVICES AGREEMENT WITH THE RIVERSIDE-CORONA  
RESOURCE CONSERVATION DISTRICT FOR THE NATIVE FISH RACEWAYS  
AND REFUGIA FACILITIES FOR THE UPPER SANTA ANA RIVER HABITAT  
CONSERVATION PLAN**

**DATED MAY 17, 2016**



**ATTACHMENT J**

**CONSULTING SERVICES AGREEMENT WITH THE SANTA ANA WATERSHED  
ASSOCIATION FOR RIPARIAN BIRD SURVEYS AND REPORTING FOR THE  
UPPER SANTA ANA RIVER HABITAT CONSERVATION PLAN**

**DATED APRIL 10, 2024**

**ATTACHMENT K**

**CONSULTING SERVICES AGREEMENT WITH THE SANTA ANA WATERSHED  
ASSOCIATION FOR NONNATIVE PLANT MANAGEMENT**

**DATED MAY 14, 2024**

**ATTACHMENT L**

**PURCHASE ORDER WITH THE RIVERSIDE-CORONA RESOURCE  
CONSERVATION DISTRICT FOR PROPOSED OPERATIONAL BUDGETS FOR THE  
UPPER SANTA ANA RIVER HCP NATIVE FISH MONITORING PROGRAM**

**DATED AUGUST 26, 2024**

**ATTACHMENT M**

**SCOPE OF WORK FROM SOUTHWEST RESOURCE MANAGEMENT  
ASSOCIATION FOR PROPOSED OPERATIONAL BUDGETS FOR THE UPPER SAR  
HCP NATIVE FISH MONITORING PROGRAM**

**DATED JULY 2024**

**ATTACHMENT N**

**JOINT FUNDING AGREEMENT WITH THE UNITED STATES GEOLOGICAL  
SURVEY CALIFORNIA WATER SCIENCE CENTER FOR NATIVE FISH SURVEYS,  
DATA ANALYSIS, AND REPORTING, AND DEVELOPMENT OF A WATER  
TEMPERATURE MODEL FOR THE SANTA ANA RIVER**

**DATED SEPTEMBER 6, 2024**

**ATTACHMENT O**

**SNRC PROJECTED 2024 COSTS FOR IMPLEMENTATION OF  
CONSERVATION/MITIGATION MEASURES IN THE SAS, HMMP, AND SAA**