

FUNDING SUB-AGREEMENT
FOR WATER USE EFFICIENCY PROGRAM

THIS AGREEMENT is made this ____ day of _____, 202_, by and between THREE VALLEYS MUNICIPAL WATER DISTRICT, a public agency (hereinafter “the District”), and the CITY OF COVINA, a public agency (hereinafter “the City”). The District and the City are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

A. On or about December 7, 2023, the District entered into Funding Agreement No. 4600015585 with the State of California Department of Water Resources, a true and correct copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference (“DWR Agreement”), wherein the District was awarded grant funding in the amount of \$400,000 to assist in financing the Groundwater Reliability Project (“the GRP”).

B. The GRP includes a program designed to promote the preservation of groundwater supplies during drought conditions in the Main San Gabriel Groundwater Basin, particularly within the City, by increasing outreach, communication, and education of its public in accordance with “Task C.2.: Outreach” of the Work Plan attached as Exhibit A to the DWR Agreement (“the Project”).

C. The purpose of this Agreement is to set forth the terms and conditions under which the District will distribute certain funds it receives pursuant to the DWR Agreement to the City for the Project.

COVENANTS

NOW THEREFORE, in consideration of the preceding Recitals and the mutual Covenants contained herein, the parties hereto agree as follows:

Section 1. PROJECT

The City shall develop the Project and work plan to be approved by the District, including but not limited to the preparation of all planning and outreach materials for the Project, and the City shall perform such work in a manner fully consistent with the terms and conditions of the DWR Agreement, the applicable provisions of which are hereby expressly accepted by the City as a material part of the Project and incorporated herein as a material part of this Agreement. The City shall also furnish the District with all information, data, and materials necessary for the District to comply with its reporting and other requirements under the DWR Agreement. Additionally, the City shall comply with all directions and instructions of District staff in implementing this Agreement to the complete satisfaction of the District.

Section 2. DWR FUNDING

Subject to the terms and conditions of this Agreement, the District will distribute to the City such funds received by the District from DWR pursuant to the DWR Agreement that are specifically attributable to the Project, up to a maximum sum of \$100,000. The City shall maintain books, records, and other documents pertinent to their Project work in accordance with generally accepted accounting principles and practices. Under no circumstances shall the District be financially or legally responsible and/or liable, directly or indirectly, for any Project costs and/or expenses associated therewith.

The District shall reimburse the City for its eligible Project costs on a quarterly basis. The City shall submit quarterly progress reports consistent with the requirements of the DWR Agreement.

Section 3. LIABILITY FOR DAMAGES

The District shall not be held liable or responsible for any debts or claims that may arise from the operation of this Agreement and/or from any cause arising out of or in any way related to the City's obligations hereunder.

The City hereby expressly waives and releases the District and its agents, officers, directors, and employees from any and all liability for the claims, actions, and/or losses set forth above and for any costs and expenses incurred in connection therewith. Notwithstanding the provisions of California Civil Code ' 1542, which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party”

the City expressly waives and relinquishes all rights and benefits afforded to the City thereunder and under any and all similar laws of any state or territory of the United States with respect to the claims, actions, and/or losses referenced in the first paragraph of this section. This Agreement shall act as a release of future claims that may arise from the aforementioned whether such claims are currently known, unknown, foreseen, or unforeseen. The City understands and acknowledges the significance and consequences of such specific waiver of Civil Code ' 1542 and hereby assumes full responsibility for any injuries, damages, losses, or liability that may result from the claims identified above.

Section 4. HOLD HARMLESS

A. The Parties agree that the District, District's governing Board of Directors and District's elected and appointed officials, officers, employees, agents and volunteers

(hereinafter, the “District Indemnitees”) shall, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, attorneys’ fees, expert fees, litigation costs, or any other cost arising out of or in any way related to the Project and/or the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the District Indemnitees with the fullest protection possible under the law. The City acknowledges that the District would not enter into this Agreement in the absence of the City’s commitment to indemnify, defend and protect the District as set forth herein.

- B. To the fullest extent permitted by law, the City shall indemnify, hold harmless and defend the District Indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys’ fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with the City’s performance under this Agreement, including but not limited to the acts or omissions of the City or City’s officers, employees, agents, contractors, subcontractors or sub-consultants or the failure of the same to comply with any of the duties, obligations or standards of care set forth herein. The duty to indemnify, defend and hold harmless under this Section shall not encompass a duty to indemnify, defend or hold harmless for liability, loss, suit, damage, expense, cost caused by the sole negligence or willful misconduct of any or all of the District Indemnitees.
- C. The District shall have the right to offset against the amount of any payment due the City under this Agreement any amount due the District from the City as a result of the City’s failure to comply with this Agreement.
- D. The obligations of the City under this Section will not be limited by the provisions of any workers’ compensation act or similar act. The City expressly waives its statutory immunity under such statutes or laws as to the District Indemnitees.
- E. Both Parties shall name the State of California, the Parties, and their respective officers, agents, and employees as additional insureds on their respective liability insurance policies for each of their Project activities. Additionally, the City agrees to be fully responsible and indemnify, hold harmless and defend the District, the District’s governing Board of Directors and District’s elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of the City’s subcontractors or any other person or entity involved by, for, with or on behalf of the City in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys’ fees and costs incurred by counsel of the District’s choice.

- F. This Section and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the District may have at law or in equity.

Section 5. EXAMINATION OF RECORDS

All original drawings, specifications, reports, calculations, and other documents or electronic data developed by the City for the Project shall be furnished to the District. The City agrees that the District will have access to and the right to examine any directly pertinent books, documents, papers, and records of any and all of the transactions relating to this Agreement. The District shall not be limited in any way in its use of the work materials at any time. Records for the Project shall be maintained consistent with the requirements of the DWR Agreement, as included in Exhibit A Task C.2., particularly to be consistent with the State Audit Requirements and DWR's requirements of inspection of books, records and reports.

Section 6. TERMINATION/SUSPENSION

The District may terminate or suspend this Agreement at any time, at will, for any reason or no reason, after giving written notice thereof to the City.

Section 7. NON-DISCRIMINATION

During the performance of this Agreement, the City shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medical and family care leave or pregnancy disability leave. The City shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The City shall comply with the provisions of the California Fair Employment and Housing Act (Government Code Section 12990), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing are incorporated into this Agreement by reference. The City shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

Section 8. EFFECT OF DISTRICT'S WAIVER

Any failure by the District to enforce any provision of this Agreement, or any waiver thereof by the District, shall not constitute a waiver of its right to enforce subsequent violations of the same or any other terms or conditions herein.

Section 9. ATTORNEYS' FEES

If either the District or the City is the prevailing party in any legal dispute caused by the non-prevailing party, which said legal dispute arose out of, under, in connection with, or in relation to this Agreement, and any amendments thereto, or the breach thereof, the prevailing party shall be entitled to receive from the non-prevailing party all attorneys fees and costs actually incurred by the prevailing party in connection therewith. In any such action, arbitration, mediation, or other proceeding, the entitlement to recover attorneys fees and costs will be considered an element of costs and not of damages.

Section 10. NOTICE

All notices, demands, or other writing in this Agreement required to be given or made or sent, or which may be given or made or sent, by either Party hereto to the other, shall be deemed to have been fully given or made or sent when in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To the District: Three Valleys Municipal Water District
 1021 E. Miramar Avenue
 Claremont, CA 91711
 Attention: General Manager

To the City: City of Covina
 125 E. College Street
 Covina, CA 91723
 Attention: Chris Marcarello, City Manager

The address to which any notice, demand, or other writing may be given or made or sent to any Party as above provided may be changed by written notice given by such Party as above provided.

Section 11. SUCCESSORS AND ASSIGNS

The City shall not assign this Agreement, or any part thereof, or any right or privilege connected therewith, to any other person or entity, without first obtaining the written consent of the District. Any such consent by the District shall not constitute consent to any subsequent assignment by the City or other persons or entities. The City's unauthorized assignment shall be void and shall terminate this Agreement at the District's option. The City's interest in this Agreement is not assignable by operation of law, nor is any assignment of its interest herein, without the written consent of the District.

Section 12. INUREMENT

This Agreement and the covenants and conditions hereof apply to and are binding upon the heirs, successors, legal representatives, and assigns of the Parties hereto.

Section 13. INTEGRATION AND AMENDMENT

This Agreement constitutes the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, whether oral or written, between the Parties in connection therewith. This Agreement may not be amended unless in writing and signed by both Parties hereto.

Section 14. CAPTIONS

The captions of sections and subsections of this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

Section 15. INTERPRETATION AND ENFORCEMENT

This Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties jointly prepared this Agreement and any uncertainty or ambiguity contained herein shall not be interpreted against the Party responsible for the drafting thereof. This Agreement shall be enforced and governed by and under the laws of the State of California, and venue for any action brought to interpret and/or enforce any provision of this Agreement shall be in a state or federal court located in the County of Los Angeles, State of California, unless otherwise required by the DWR Agreement,

Section 16. TIME OF THE ESSENCE

Time is of the essence in this Agreement and each and every provision thereof.

Section 17. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original irrespective of the date of execution, and said counterparts shall together constitute one and the same Agreement. Further, facsimile or .PDF copies of signatures shall be as effective as original signatures for evidencing execution of this Agreement.

Section 18. AUTHORITY

The persons executing this Agreement represent and warrant that they are fully and duly authorized and empowered to so execute on behalf of each of the respective Parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers as of the date first above written.

THREE VALLEYS MUNICIPAL WATER
DISTRICT

By: _____
Jody Roberto, President
Board of Directors

CITY OF COVINA

By: _____
Chris Marcarello, City Manager