

**SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS**

**REGULAR BOARD MEETING
AGENDA**

June 9, 2010 - 1:30 p.m.

Location--1630 West Redlands Boulevard, Suite A, Redlands, California

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the District offices and are available for public review during normal District business hours. New information relating to agenda topics listed, received, or generated by the District after the posting of this agenda, but before the meeting, will be made available upon request at the District offices.

**CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL**

1. PUBLIC PARTICIPATION

Members of the public may address the Board of Directors on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) Section 54954.2 of the Government Code.

2. ADDITIONS/DELETIONS TO AGENDA

Section 54954.2 provides that a legislative body may take action on items of business not appearing on the posted agenda under the following conditions: (1) an emergency situation exists, as defined in Section 54956.5; (2) a need to take immediate action and the need for action came to the attention of the District subsequent to the agenda being posted; and (3) the item was posted for a prior meeting occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

3. CONSENT CALENDAR

- Approval of the Board Minutes, May 26, 2010

4. REPORTS AND INFORMATION ITEMS:

- A. Monthly Activity Reports, and/or Comments by Board Members
- B. Board Committee Reports

It is the intention of the San Bernardino Valley Water Conservation District to comply with the Americans with Disabilities Act (ADA) in all respects. If you need special assistance with respect to the agenda or other written materials forwarded to the members of the Board for consideration at the public meeting, or if as an attendee or a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Ms. Shanae Smith (909-793-2503) at least 48 hours prior to the meeting to inform her of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

- C. Finance Supervisor's Report (Samantha Brown)
- D. Assistant General Manager's Report (Claud Seal)
- E. General Manager's Report (Robert Neufeld)
- F. Information Items
 - Mentone Property Update (Robert Neufeld & Staff)
- G. Future Agenda Items and Staff Tasks
- H. Revenue Producing Activities

5. **ACTION ITEMS, NEW BUSINESS**

A. **CONSIDER ADOPTION OF PROPOSED FY 2010-2011 BUDGET**

Recommendation: Approve and adopt proposed FY 2010-2011 budget, as recommended by the Administrative Committee

B. **CONSIDER APPROVAL OF AUDIT PROPOSAL FOR FISCAL YEAR ENDING JUNE 30, 2010**

Recommendation: Approve proposal for FY 2009-2010 audit from Rogers Anderson Malody & Scott, LLP, for an amount not to exceed \$18,000

C. **CONSIDER PARTICIPATION IN SANTA ANA SUCKER TASK FORCE**

Recommendation: Approve expenditure for the District's share for participation in the Santa Ana Sucker Task Force, in the amount of \$31,000, not to exceed \$35,000

D. **CONSIDER APPROVAL OF MODIFIED JOB DESCRIPTION FOR EXISTING FIELD PERSONNEL**

Recommendation: Approve modified job description, *Field Operations Supervisor*, for Randy Carlisle

E. **CONSIDER APPROVAL OF MATERIALS CONTRACTS**

Recommendation: Review and approve service contracts with 1) JDM Excavators; and 2) Ranch Rock for aggregate mining on District property

6. **UPCOMING MEETINGS:**

- | | |
|----------------------|---|
| 1. June 10, 2010- | Upper Santa Ana Water Resources Association, District Office, 9:30 a.m. |
| 2. June 16-18, 2010- | 2010 WESTCAS Annual Conference, Catamaran Resort Hotel & Spa, San Diego |
| 3. June 21, 2010- | Association of San Bernardino County Special Districts, Silver Lakes Restaurant and Lounge, 6:00 p.m. |
| 4. June 22, 2010- | Big Bear Watermaster Committee, District Office, 10:00 a.m. |
| 5. June 23, 2010- | Board of Directors Meeting, District Office, 1:30 p.m. |
| 6. June 24, 2010- | Advisory Commission on Water Policy, San Bernardino Valley Municipal Water District, 7:00 p.m. |

7. **CLOSED SESSION**

Under the authority of Government Code Section 54957(b), the Board may recess to Closed Session regarding a personnel matter;

and/or

Under the authority of Government Code Section 54956.9(c), the Board may recess to Closed Session to consider whether to initiate litigation;

and/or

Under the authority of Government Code Section 54956.9(b)(3)(a), and Section 54956.9(c), and Section 54956.9(b)(1), the Board may recess to Closed Session to confer with legal counsel regarding significant exposure to litigation in one case.

8. **ADJOURN MEETING.** The next regular Board meeting will be on June 23, 2010 at 1:30 p.m., at District Headquarters, 1630 W. Redlands Blvd., Redlands, CA.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS

MINUTES OF THE REGULAR BOARD MEETING

May 26, 2010

1:30 P.M.

President Clare Henry Day called the Board Meeting of the Board of Directors to order at 1:30 p.m. All present stood for the pledge of allegiance, led by President Day.

ROLL CALL:

BOARD MEMBERS PRESENT:

Clare Henry Day, President
Melody McDonald, Vice President
Manuel Aranda, Director
Arnold Wright, Director
Richard Corneille, Director
John Longville, Director (1:50 p.m.)
David E. Raley, Director

BOARD MEMBERS ABSENT:

None

GENERAL COUNSEL PRESENT:

David Cosgrove, Rutan & Tucker, LLP

STAFF PRESENT:

R. Robert Neufeld, General Manager
Claud Seal, Assistant General Manager/District Engineer
Samantha Brown, Finance Supervisor
Lisa Pierce, GIS Coordinator
Shanae Smith, Executive Assistant II

GUESTS PRESENT:

Kathleen Rollings-McDonald, Local Agency Formation Commission
Christine Goeyvarts, Robertson's Ready Mix
Greg Gage, City of San Bernardino Municipal Water Department
Bruce Cash, United Strategies, Inc.
Douglas Headrick, San Bernardino Valley Municipal Water District
T. Jarb Thaipejr, City of Loma Linda
Rosemary Hoerning, City of Redlands

Chris Diggs, City of Redlands
Larry Mainez, City of Highland
Kevin Milligan, City of Riverside Public Utilities
Charles Roberts, Highland Community News

1. PUBLIC PARTICIPATION

President Clare Henry Day announced this as the time for any persons present, who so desire, to make an oral presentation to the Board of Directors. Hearing none, the meeting proceeded with the published agenda items.

2. ADDITIONS/DELETIONS TO AGENDA

It was moved by Director McDonald and seconded by Director Wright to Add, *Hire Temporary Field Personnel*, as Item 6D to the Agenda. The motion carried 6-0, with Director Longville noted absent from the vote.

3. CONSENT CALENDAR

The minutes of the May 12, 2010 minutes were reviewed and discussed. Minor revisions were noted.

It was moved by Director Corneille and seconded by Director Wright to approve the Minutes of the May 12, 2010 Board meeting, as amended. The motion carried 6-0, with Director Longville noted absent from the vote.

Vice President McDonald led a discussion regarding the financial statements for the months of March and April. Samantha Brown, Finance Supervisor clarified line items and corresponding totals coded on the check detail report.

It was moved by Director Aranda and seconded by Director Raley to approve the un-Audited Financials, and Check Register for March, 2010. The motion carried 6-0, with Director Longville noted absent from the vote.

It was moved by Director Corneille and seconded by Director Aranda to approve the un-Audited Financials, and Check Register for April, 2010. The motion carried 6-0, with Director Longville noted absent from the vote.

Director Longville arrived at 1:50 p.m.

4. SPECIAL PRESENTATION

Robert Neufeld introduced Bruce Cash, President and CEO of United Strategies, Inc. Mr. Cash presented a potential funding opportunity regarding an environmental mitigation banking agreement. The agreement will allow the District to sell credit acres on the open market pursuant to demand placed on project proponents by resource

agencies. After the presentation, Mr. Cash answered questions from the Board. A discussion ensued regarding the differences between mitigation banking and conservation easements. Legal Counsel answered questions from the Board regarding the activation of the District's latent powers pursuant to its organic act, Local Agency Formation Commission (LAFCO) requirements and fees associated with federal permitting issues. Kathleen Rollings-McDonald, Executive Officer of LAFCO commented upon the viability of the elements of the proposal, as some of the activities are currently performed by the Inland Empire Resources Conservation District (IERCD). The Board directed staff to continue discussions with Mr. Cash regarding the potential opportunities summarized in the presentation.

6. B. APPROVE AND ADOPT PROPOSED STRATEGIC PLAN

This item was taken out of order.

It was moved by Director Aranda and seconded by Director McDonald to take Item 6B, *Approve and Adopt Proposed Strategic Plan*, out of order. The motion carried unanimously.

Robert Neufeld reported that the proposed strategic plan was brought forth to the Board for their consideration and approval at the April 7, 2010 Special Board meeting. Staff was directed to bring the plan back to the Board at the May 26, 2010 meeting, to allow staff to meet with various parties to discuss and address their concerns regarding the plan. Mr. Neufeld summarized those meetings. Mr. Neufeld also reported on meetings with the City of San Bernardino Municipal Water Department, the City of Highland, and SAWPA. Each agency indicated they understood the strategic plan and Celeste Cantu of SAWPA praised the District for understanding, "One Water One Watershed (OWOW)." Discussions focused primarily on the increase in the District's groundwater charge and whether the charge will fund the implementation of the plan.

Mr. Neufeld introduced Kevin Milligan, Assistant General Manager of the City of Riverside Public Utilities to recap issues addressed at the meeting between him and District staff. Mr. Milligan stated that the City of Riverside believes that the proposed plan should be funded through appropriate revenue sources, and requested that the District establish appropriate and auditable enterprise accounts to track the various activities funded by the groundwater charge. Mr. Neufeld answered questions from the Board. President Day requested comments from the public:

Kathleen Rollings-McDonald pointed out potential duplication of services between items set out in the Strategic Plan and activities undertaken by IERCD, and potential duplication regarding the trails system, currently a part of the regional parks system maintained by the SBCFCD. She also indicated activation of latent powers may be required for elements of the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan. Mr. Neufeld responded that staff has been in contact with the IERCD and will continue to work with them on resource issues.

T. Jarb Thaipejr, City Manager of the City of Loma Linda stated he is concerned that funds to implement the proposed plan will be taken from the groundwater charge.

Rosemary Hoerning, Director of Municipal Utilities and Public Works Engineering of the City of Redlands expressed concerns regarding the groundwater charge and the proposed plan at a previous Board meeting. Ms. Hoerning said she did not have an opportunity to meet with District staff to discuss how activities outlined in the plan will be funded. She said she would like to review a detailed financial plan on how the plan will be effectuated.

Larry Mainez, City Planner of the City of Highland reiterated the City's support of the plan, as previously stated in the May 12, 2010 letter of support from the mayor, formally supporting the proposed plan.

After public comments, President Day stated that the proposed strategic plan is representative of the District's effort to address concerns expressed during the LAFCO consolidation issue, and was conditioned solely on the District's ability to generate revenue to support the plan. Discussion continued regarding the Directors' intent that the activities undertaken under the strategic plan, which do not relate to the groundwater recharge should be funded through a mechanism other than the groundwater charge. Director Raley said he would not support the plan until funding sources were clearly defined.

It was moved by Director McDonald and seconded by Director Longville to approve and adopt the Strategic Plan. The motion carried 6-1, with Director Raley opposed.

5. REPORTS AND INFORMATION ITEMS

A. Monthly Activity Reports, and/or Comments by Board Members

Director Corneille reported attending the San Bernardino Valley Municipal Water District (SBVMWD) Advisory Commission on Water Policy meeting on May 13, 2010. East Valley Water District (EVWD) presented their water treatment plant and perchlorate treatment projects. Robert Tincher presented the Enhanced Recharge Project at the Santa Ana River Recharge Basins. The economic portion related to the costs and various scenarios for capturing 500 cfs of water has been completed. Director Corneille urged staff to request that the presentation be made to the District, as the study directly affects the District's facilities. The next Advisory Commission on Water Policy meeting is scheduled for June 24, 2010.

Director Raley reported attending the Administrative Committee meeting as a member of the public. He also attended a scoping meeting for the Redlands Conservancy discussing the Mill Creek spreading basins.

Director Aranda reported attending the Upper Santa Ana Water Resources Association (USAWRA) meeting; and the Association of San Bernardino County Special Districts (ASBCSD) dinner.

Director Longville reported attending the SBVMWD Board meeting on May 19, 2010, where Director McDonald made a special presentation to the SBVMWD Board. He also attended the ASBCSD dinner.

Director McDonald briefly summarized the special presentation of the May 19, 2010 SBVMWD Board meeting. On behalf of the District, she presented SBVMWD with a check in the amount of \$112,370; fifty percent of the total amount awarded the District from the AB 303 grant funding for the Santa Ana River Groundwater Recharge Facility Optimization Study. The Optimization Study is a joint effort undertaken by the District and the SBVMWD to evaluate the ability of the District's existing facilities to meet the recharge objective of 500 cfs, and provide recommendations on the operations and maintenance activities that will maximize recharge capacity. She also reported attending the ASBCSD dinner and a series of Administrative Committee meetings regarding the proposed FY 2010-2011 budget.

B. Board Committee Reports

Administrative Committee Report

Vice President McDonald reported the Administrative Committee (Committee) met on four separate occasions to discuss the proposed FY 2010-2011 budget options recommended by staff. The Committee will bring back a recommendation to the full Board at the regular Board meeting scheduled in June. Additionally, the Committee recommends staff's request to hire a part-time field staff, as the District is faced with a potential liability with only one man in the field. A discussion ensued regarding the number of personnel necessary to effectively manage the District's operations and the District's ability to continue to provide a safe work environment for District employees.

Resources Committee Report

Director Corneille reported that the Resources Committee (Committee) met on May 24, 2010 to discuss the Capital Improvements portion of the FY 2010-2011 budget. The Committee will bring forth a recommendation to the Board, in the amount of \$177,500 for Capital Expenditures. Claud Seal provided a list of projects required for the District to complete over a five year period. The Committee directed Mr. Seal to prioritize those projects by order of importance for consideration, should monies become available. Staff provided information regarding the environmental mitigation banking opportunity and it was determined that the District could utilize property not directly involved in spreading, as mitigation lands. The Committee directed staff to investigate those areas further. A discussion ensued regarding a deed restriction as part of the District's agreement with the City of Redlands regarding the use of the Mill Creek property.

C. Finance Supervisor's Report

Samantha Brown reported working on the proposed budget for FY 2010-2011. Ms. Brown updated the Board regarding the effectiveness of the installation of the security cameras at the Redlands Plaza. The cameras were used to evaluate claims of activities taking place outside the building in reviewing property management discrepancies. Director McDonald directed staff to provide additional background regarding the approval of the contract for the security system prior to the adoption of the Redlands Plaza budget, since being separated out from the General Administration fund.

D. Assistant General Manager's Report

Claud Seal reported that the total dam reservoir level is static at 2,300 feet elevation. He said there is 17,000 acre-feet of water stored behind the Seven Oaks Dam (SOD). Mr. Seal distributed a summary of the discussions at a meeting with the US Army Corps of Engineers (USACE), SBCFCD, U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) regarding concerns related to the SOD release testing and revised proposed SOD release and testing schedule. The federal agencies' are concerned whether the Santa Ana Sucker will be impacted by the testing. Mr. Neufeld stated that the federal agencies' are concerned that the testing could possibly flood the riparian habitat downstream of the SOD and within the Prado basin.

Mr. Seal reported that the water from the Santa Ana River (SAR) is 30 cfs; the Afterbay is flowing at 60-70 cfs due to the Southern California Edison (SCE) bypass; and 62 cfs from Mill Creek (MC). The SAR spreading water quantity is just under 6,000 acre feet for the water year and Mill creek is just over 6,000 acre feet. Mr. Seal reported meeting with Celeste Cantu, General Manager of the Santa Ana River Watershed Project Authority (SAWPA) regarding the strategic plan. Staff was encouraged to become more involved with SAWPA and its activities. He summarized a list of requirements for a project that will be judged and approved by SAWPA for Proposition 84 funding. It is clear that the District's proposed wetlands project would fit every category. The project would provide a new water source, involve multiple entities, utilize assets not currently used by the District and provide employment before and after implementation of the project. The submittal date is scheduled for the end of June. A discussion ensued regarding Proposition 84 funding requirements in relation to the Integrated Regional Water Management Plan (IRWMP).

Mr. Seal announced that he and Lisa Pierce met with Mandy Parks of the IERCD regarding mitigation land. Staff will be taking into consideration their recommendations regarding obtaining the necessary approval required by the USACE and other federal agencies. Legal counsel stated that staff has taken the initiative to establish a joint agency cooperative agreement that may be needed for the activation of latent powers under LAFCO.

E. General Manager's Report

Mr. Neufeld summarized an application he submitted to Senator Boxer's office regarding funds for the Water Resources Development Act (WRDA) for the wetlands project in the borrow pit. He distributed a letter of response from Senator Boxer's office.

With regard to the District's strategic plan, Mr. Neufeld reported on an article in the Highland Community News that misstated that the District had adopted the strategic plan prior to today's meeting.

Mr. Neufeld briefly discussed the Santa Ana Sucker. He said the delay in releases of water from behind the SOD will more than likely result in an algae problem, causing the water to be unsuitable for anything other than recharge and will have a significant impact on the entire region.

F. Wash Plan

Mr. Neufeld indicated that the Wash Plan Task Force should be convened to discuss the impacts of the Santa Ana Sucker and the involvement of the federal agencies. A discussion ensued regarding the USFWS' approval of the HCP permit for the Wash Plan.

G. Information Items

Consider Audit Services for Fiscal Year Ending June 30, 2010

Samantha Brown reported on the 2009-2010 audit for fiscal year ending June 30, 2010. Matthew Wilson of Rogers, Anderson, Malody and Scott, LLP (RAMS) met with staff to discuss their proposal to conduct the annual audit for an amount of \$18,000. Ms. Brown stated that Mr. Wilson said that due to her accounting background and the significant changes she has made to the District's accounting system; it is likely that the District will see a reduction in the cost. Ms. Brown stated that RAMS has conducted the District's audit for three consecutive years and that staff would benefit from their continued service this year. A discussion ensued regarding competitive bids and the timely submittal of the auditing services this year.

H. Future Agenda Items and Staff Tasks

The Board requested the following items be added to the June 9, 2010 Board meeting agenda for discussion:

1. Director Corneille requested that staff provide a copy of the newly adopted strategic plan to all members of the Board. He indicated a number of tasks within the plan that required Board direction to the General Manager for implementation that were not related to Capital Expenditures.

I. Revenue Producing Activities

Mr. Neufeld stated that the environmental mitigation banking opportunity presented earlier in the meeting by Bruce Cash is the only revenue producing activity to report to the Board at this time.

6. ACTION ITEMS, NEW BUSINESS

A. CONSIDER APPROVAL OF REGULAR BOARD MEETING DATE CHANGE

Due to conflicts in scheduling, the next regular Board meeting date will remain as previously scheduled for June 9, 2010.

B. APPROVE AND ADOPT PROPOSED STRATEGIC PLAN

This item was previously covered in the meeting.

C. CALIFORNIA DEPARTMENT OF WATER RESOURCES (DWR) GROUNDWATER ELEVATION MONITORING PROGRAM – SBX7 6

It was moved by Director Corneille and seconded by Director Aranda to table Item C, "California Department of Water Resources (DWR) Groundwater Elevation Monitoring Program," to the next regular Board meeting, on June 23, 2010 Board Meeting. The motion carried unanimously.

D. CONSIDER AND AUTHORIZE STAFF TO HIRE PART-TIME FIELD PERSONNEL

Mr. Neufeld stated that staff is recommending that the Board approve the immediate hire of a part-time field staff person, at an hourly rate of \$17.00-\$19.00 per hour, not to exceed 960 hours per year. A discussion ensued regarding the need for the position and required applicant screening based on ACWA/JPIA guidelines.

It was moved by Director McDonald and seconded Director Longville to authorize staff to hire part-time field personnel, at a rate of \$17.00- \$19.00/ per hour, not to exceed 960 hours/per year. The motion carried 6-1, with Director Raley opposed.

7. UPCOMING EVENTS

The upcoming events were reviewed and filed.

8. CLOSED SESSION

At 4:35 p.m., it was moved by Director Day and seconded by Director Aranda to adjourn to Closed Session, Government Code Section 54957(b), to discuss a personnel matter. The motion carried unanimously.

At 5:25 p.m., the meeting reconvened into Open Session, with no reportable action under Government Code 54957.1.

9. ADJOURN MEETING

At 5:25 p.m., the meeting adjourned to the Board meeting scheduled for June 9, 2010, at 1:30 p.m., at District Headquarters, 1630 W. Redlands Blvd., Suite A, Redlands, CA.

R. Robert Neufeld
Secretary of the Board



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

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To: Board of Directors
Prepared by: Samantha Brown, Finance Supervisor
Date: June 9th, 2010
Subject: 2010-2011 Budget

RECOMMENDATION

Administrative Committee recommends that the Board of Directors approve the attached Proposed Budget for the fiscal year 2010-2011.

BACKGROUND

The Administrative Committee has had 4 meetings to discuss the staff proposed budget options. The Committee moved on May 18th, 2010 unanimously to recommend the attached budget to the Board of Directors.

The Resources Committee recommended approval to the Administrative Committee of the Capital Expenditures portion of proposed budget on May 24th, 2010.

General Fund 2010-2011 Proposed Budget with Descriptions

Account	Description	Proposed Balanced Budget 2010-2011	
INCOME	<u>Income</u>		
4010	Interest Income LAIF	\$ 40,000.00	4 Quarters at an estimated \$10,000 each Quarter
4020	Groundwater Assessment		
4021	14808 AF Ag Water @ \$2.18/AF	\$ 32,281.44	14808 AF Ag Water @ \$2.18/AF
4022	107179 AF Non-Ag @ 7.85/AF	\$ 841,355.15	107179 AF Non-Ag @ 7.85/AF
	Total Groundwater Assessment	\$ 873,636.59	
4030	Mining Income		
4031	Cemex Plant Site Rent	\$ 18,000.00	\$1,500 per month
4032	Cemex Mining	\$ 48,000.00	On average \$4,000 per month
4034	Redlands Aggregate 5% Royalty	\$ 36,000.00	\$9,000 per month, assuming Cemex is not mining
4036	Aggregate Mining	\$ 12,000.00	\$500 per month X 2 locations
	Total Mining Income	\$ 102,000.00	
4035	Deferred Income	\$ -	
4040	Miscellaneous Income	\$ 1,000.00	access permits, rebates, etc.
4050	Property Tax Income	\$ 75,000.00	estimated to receive for 10-11
4055	SBVWMD Easement Agreement	\$ 12,000.00	assuming SAR water is spread that estimate same as 08-09
4060	Property Income		
4062	Mentone Property	\$ 60,000.00	rental of property at \$5,000 per month
4064	Spreading Basins Usage	\$ 12,000.00	\$500 per month X 2 locations
4063	Redlands Plaza	\$ -	
	Total Property Income	\$ 72,000.00	
4080	Exchange Plan	\$ 48,000.00	Quarterly billing estimate \$12,000 per quarter
	Total Income	\$ 1,223,636.59	

General Fund 2010-2011 Proposed Budget with Descriptions

Expenses Operating Expenses

5000 **Regional Programs**

5080	Lafco Contribution	\$ 3,500.00	new proportion from lafco
5081	Wash Plan	\$ 36,000.00	estimated amount based on new invoices
	Total Regional Programs	\$ 39,500.00	

5100 **Professional Services**

5120	Misc. Professional Services	\$ 57,500.00	\$7500 Big Bear Watermaster, \$50,000 Sphere of Influence
5125	Engineering Services	\$ 25,000.00	Bondaiman - design/develop projects, moving basins
5130	Aerial Photography & Surveying	\$ 10,000.00	surveying work for projects
5140	Legislative Services	\$ -	Cancel Washington DC Lobbyist, Hicks contract
5145	Environmental Services	\$ 20,000.00	design/develop projects, moving basins
5160	Computer Services	\$ 30,000.00	Computer Options - \$125 per hr * 10 hrs per month
5170	Audit & Accounting Services	\$ 18,000.00	09-10 Audit
5180	Legal	\$ 100,000.00	Cosgrove - \$250*30 hrs/month X 6 months; \$300*30 hrs/month X 6 months
5185	Special Counsel		
5185	Financial Analyst-Consolidation		
	Total Professional Expense	\$ 260,500.00	

5200 **Field Operations**

5210	Equipment Maintenance	\$ 3,000.00	estimate
5215	Property Maintenance	\$ 5,000.00	estimate
	Total Field Operations	\$ 8,000.00	

5300 **Vehicle Operations**

5310	Vehicle Maintenance	\$ 4,500.00	estimate
5320	Fuel	\$ 9,000.00	\$750 per month
	Total Vehicle Operations	\$ 13,500.00	

5400 **Utilities**

5410	Alarm Service	\$ 600.00	\$50 per month for district office
5420	Electricity	\$ 900.00	\$75 per month mentone property
5430	Mobile Phones	\$ 4,200.00	\$350 per month
5440	Telephone	\$ 9,600.00	\$650 per month (district)+ \$150 per month (mentone)
5450	Natural Gas	\$ 180.00	\$15 per month (mentone)
5460	Water	\$ 800.00	\$200 per quarter
5470	Internet Services		
	Total Utilities	\$ 16,280.00	

General Fund 2010-2011 Proposed Budget with Descriptions

6000 General Administration			
6001	Other	\$ 1,000.00	Misc
6004	Meeting Expenses	\$ 5,000.00	food, beverage, coffee, water provided for meetings
6002	Web Site	\$ 1,000.00	maintenance estimate
6003	Property Tax	\$ 250.00	mentone property
6006	Permits	\$ 50.00	for groundwater charge
6009	Licenses	\$ 500.00	Water Rights fee
6010	Surety Bonds	\$ 1,800.00	
6015	Mentone House Maintenance	\$ 2,400.00	Landscaping @ \$200 per month
6018	Janitorial Service & Supplies	\$ 8,300.00	\$650 per month + supplies
6030	Office Supplies/ Maintenance	\$ 5,000.00	estimate based on prior year
6033	Office Equipment (Copier) Rental	\$ 8,400.00	\$700 per month (depends on paper usage)
6036	Printing	\$ 1,500.00	business cards, letterheads
6039	Postage & Overnight Delivery	\$ 2,000.00	postage, overnight: estimate prior year
6042	Payroll Processing	\$ 2,200.00	\$150 per month, \$100 per quarter
6045	Bank Service Charges	\$ 200.00	annual credit charges
6051	Uniforms	\$ 2,000.00	estimate based on prior year
6060	Outreach	\$ -	no outreach
6087	Educational Reimbursement	\$ 5,000.00	Employee Manual states \$2500 per employee per year
6090	Subscriptions/Publications	\$ 5,000.00	newspapers, law & water code updates
6091	Public Notices	\$ 1,200.00	GW production
6093	Memberships	\$ 12,000.00	ACWA, CSDA, Chamber of Commerce
Total General Administration		\$ 64,800.00	
6100 Benefits			
6110	Vision Insurance	\$ 1,100.00	based on 50% decrease in personnel
6120	Workers Comp. Insurance	\$ 7,000.00	based on 50% decrease in personnel
6130	Dental Insurance	\$ 4,400.00	based on 50% decrease in personnel
6140	State Unemployment Insurance	\$ 1,200.00	
6150	Medical Insurance	\$ 58,800.00	based on 50% decrease in personnel
6160	Social Security/Medicare Taxes	\$ 24,500.00	based on 50% decrease in personnel
6170	PERS Retirement	\$ 87,500.00	based on 50% decrease in personnel
6190	Life Insurance	\$ 4,600.00	General Manager contract
Total Benefits		\$ 189,100.00	
6200 Salaries			
6210	Overtime	\$ 5,000.00	estimate
6220	Temporary Assistance	\$ -	
6230	Regular Salaries	\$ 350,000.00	50% decrease in personnel
Total Salaries		\$ 355,000.00	

General Fund 2010-2011 Proposed Budget with Descriptions

6300	Insurance			
6310	Property Insurance	\$	3,500.00	added dump truck and excavator to last years total
6320	General Liability Insurance	\$	26,500.00	estimate based on prior year
	Total Insurance	\$	30,000.00	
6400	Directors Fees			
6401	Directors Fees \$197/Day of Service	\$	80,000.00	3 directors @ 9 mtgs, 4 directors @ 5 mtgs, all @ \$197
6410	Mileage	\$	2,400.00	\$200 per month
6415	Air Fare	\$	4,000.00	25 flights @ \$300
6420	Other Travel	\$	1,000.00	parking, tips, baggage, misc
6425	Meals	\$	3,250.00	50 per diem days @ \$65
6430	Lodging	\$	4,000.00	8 ACWA hotel stays @ \$700, \$1400 misc
6440	Election Expense	\$	-	no re-elections in 2010
6435	Conferences/Seminars Registration	\$	6,000.00	8 ACWA attendances, \$1000 misc events
	Total Directors Expenses	\$	100,650.00	
6500	Administrative Staff Expenses			
6510	Mileage	\$	1,500.00	
6515	Air Fare	\$	1,500.00	10 flights @ \$300
6520	Travel, Other (Rental Car, Taxi, Bus)	\$	500.00	parking, tips, baggage, misc
6525	Meals	\$	1,000.00	30 per diem days @ \$65
6530	Lodging	\$	2,000.00	2 hotel stays @ \$700, \$600 misc
6535	Conference/Seminar Registration	\$	5,000.00	4 ACWA attendances, misc.
	Total Administrative Staff Expense	\$	11,500.00	
Account	Total Operating Expenses	\$	1,088,830.00	

General Fund 2010-2011 Proposed Budget with Descriptions

Expense	<u>Capital Expenses</u>		
7000	Construction		
7010	Materials	\$ 100,000.00	
7020	Protective Fencing		
7030	Concrete Structures		
7040	Canals & Pipelines		
7050	Basins		
	Total Construction	\$ 100,000.00	
7100	Land & Buildings		
7110	Buildings	\$ 10,500.00	Seven Oaks Dam Building
7120	Land	\$ -	
7130	Mentone Property (House)	\$ 25,000.00	for improvements
7140	Mentone Property (Shop)	\$ 10,000.00	for improvements
	Total Land & Buildings	\$ 45,500.00	
7200	Equipment & Vehicles		
7210	Computer Hardware	\$ 3,000.00	
7220	Computer Software	\$ 7,000.00	ESRI \$4600, misc
7230	Field Equipment	\$ 5,000.00	tools, equip, materials
7240	Office Equipment	\$ 5,000.00	furnitures & fixtures for office
7250	New Vehicles	\$ -	
	Total Equipment & Vehicles	\$ 20,000.00	
7300	Professional Services		
7314	Legal - Water Rights	\$ 12,000.00	40 hrs @ \$300
7336	Engineering Services - AB 303	\$ -	
7338	Engineering Services - Other	\$ -	
	Total Professional Services	\$ 12,000.00	
	Total Capital Expenses	\$ 177,500.00	

General Fund 2010-2011 Proposed Budget with Descriptions

Total Capital Expenses	\$ 177,500.00
Total Operating Expenses	<u>\$ 1,088,830.00</u>
TOTAL BUDGET EXPENSES	<u><u>\$ 1,266,330.00</u></u>

TOTAL INCOME	\$ 1,223,636.59
TOTAL BUDGET EXPENSES	<u>\$ 1,266,330.00</u>
Difference	<u><u>\$ (42,693.41)</u></u>

LAIF Transfer to Balance Budget \$ 42,693.41

Balance in LAIF \$ 1,557,306.59

Assuming Beginning Balance of LAIF is \$1,600,000 on July 1, 2010



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
(909) 793-2503
Fax: (909) 793-0188

P.O. Box 1839
Redlands, CA 92373-0581
Email: info@sbvwcd.dst.ca.us
www.sbvwd.dst.ca.us

To: Board of Directors

Prepared by: Samantha Brown, Finance Supervisor

Date: June 9th, 2010

Subject: Proposal from Rogers, Anderson, Malody & Scott, LLP for the 2009-2010 Audit

RECOMMENDATION

Staff is recommending the Board of Directors approves the attached Proposal from Rogers, Anderson, Malody & Scott, LLP (RAMS) for the 2009-2010 Audit to not exceed \$18,000.

BACKGROUND

The following is a background on Rogers, Anderson, Malody & Scott, LLP from their website:

Established in 1948, *Rogers, Anderson, Malody & Scott, LLP*, Certified Public Accountants, has been providing quality accounting and related services to our clients. The firm has grown to serve the Inland Empire and beyond in California, Arizona, Nevada, and Oregon.

Simply stated, we are a full service firm committed to providing the highest standards of quality and professionalism to our clients.

Our goal is to provide the highest quality services at the most reasonable rates. We provide services to various industries including, but not limited to:

- Small and Large Businesses
- Homeowners' Associations
- Professional Services
- Government / Non-Profits
- Construction / Real Estate
- Manufacturing
- Healthcare
- Retail / Wholesale

Above all, we place a premium on timeliness, thoroughness, and accuracy.

Our commitment to excellence is evidenced by the selection of our staff, continuing education programs, research resources and emphasis on quality control. To advance these efforts, we

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voluntarily participate in the Quality Review Program sponsored by the American Institute of Certified Public Accountants. Membership is open to all accounting firms, though not all firms volunteer to join. We joined because we believe that anything we can do to improve and maintain quality service should be done. In the program, our quality control, audit, and review work is evaluated every three years by our peers -- specially trained CPA's from other firms. The results of the evaluation are available to the public. That public disclosure is a serious commitment to excellence, and it accurately reflects our degree of commitment. Our firm has always received an unmodified report with no letter of comments on the review - *highest* rating awarded. Our quality is important to us because we know it is important to you.

DISCUSSION

Rogers, Anderson, Malody & Scott, LLP has done the Districts audit for the last three consecutive years.



ROGERS, ANDERSON, MALODY & SCOTT, LLP

CERTIFIED PUBLIC ACCOUNTANTS

ROBERT B. MEMORY, C.P.A. (1945-2009)

OF COUNSEL
JAY H. ZERCHER, C.P.A.

April 21, 2010

Board of Directors
San Bernardino Valley Water Conservation District
1630 W. Redlands Blvd., Suite A
Redlands, California 92373

We are pleased to confirm our understanding of the services we are to provide San Bernardino Valley Water Conservation District (District) for the year ended June 30, 2010. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the District's basic financial statements as of and for the year ended June 30, 2010. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany the District's basic financial statements. As part of our engagement, we will apply certain limited procedures to the District's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Budgetary Comparison Schedule
2. Management's Discussion and Analysis
3. GASB required supplementary pension information

Supplementary information other than RSI also accompanies San Bernardino Valley Water Conservation District's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on it in relation to the basic financial statements:

1. Organizational Information

Audit Objective

The objective of our audit is the expression of an opinion as to whether your basic financial statements are fairly presented, in all material respects, in conformity with United States generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of the accounting records and other procedures we consider necessary to enable us to express such an opinion. If our opinion on the financial statements is other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

PHILLIP H. WALLER, C.P.A.
BRENDA L. ODLE, C.P.A.
TERRY P. SHEA, C.P.A.
KIRK A. FRANKS, C.P.A.
MATTHEW B. WILSON, C.P.A.
SCOTT W. MANNO, C.P.A.
LEENA SHANBHAG, C.P.A.

NANCY O'RAFFERTY, C.P.A.
BRADFORD A. WELEBIR, C.P.A.
JENNY LIU, C.P.A.
TIMOTHY P. HORN, C.P.A.
KATIE L. MILLSOM, C.P.A.
JOHN J. BADIA, C.P.A.
JONATHAN R. KUHN, C.P.A.
BRADFORD L. ROCKABRAND, C.P.A.
PAPA MATAR THIAW, C.P.A.
KATHERINE J. MUIR, C.P.A.

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CERTIFIED PUBLIC ACCOUNTANTS

VANIR TOWER • 290 NORTH "D" STREET • SUITE 300
SAN BERNARDINO, CA 92401
(909) 889-0871 • (909) 824-6736 • FAX (909) 889-5361
Website: www.ramscpa.net

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You are also responsible for making all management decisions and performing all management functions; for designating an individual with suitable skill, knowledge, or experience to oversee our financial statement preparation services and any other nonattest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the District and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

Audit Procedures — General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

Audit Procedures — Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the District's compliance with applicable laws and regulations and the provisions of contracts and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Audit Procedures — Internal Control

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

Audit Administration, Fees, and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

We expect to begin our audit during July, 2010 and to issue our reports no later than September, 2010. Matthew Wilson is the engagement partner and is responsible for supervising the engagement and signing the report.

Our fee for these services will not exceed \$18,000. We will prepare the State Controller's Reports, as needed. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to San Bernardino Valley Water Conservation District and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

ROGERS, ANDERSON, MALODY & SCOTT, LLP

Matthew Wilson

RESPONSE:

This letter correctly sets forth the understanding of San Bernardino Valley Water Conservation District.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Santa Ana Sucker Critical Habitat Designation Proposed Scopes of Work (Consolidated)

May 19, 2010

The following table summarizes the proposed scopes of work and costs for the Santa Ana Sucker Critical Habitat Designation Task Force through December 31, 2010.

Discipline	Scope	Task Cost	Total
Biology (PBS&J Roy Leidy, Camm Swift, Jonathan Baskin, Kerwin Russell)	Task 1 – General Assistance	\$38,100	
	Task 2 – Meeting Participation	\$25,200	
	Task 3 - SAS Enhancement Plan and Project Implementation	\$104,600	
	Task 4 – Alternative Streams Investigation	\$26,400	
	Task 5 – Responses to USFWS Economic Study	<u>\$5,800</u>	\$200,100
Legal (BB&K and Downey Brand)	Task 1 – General Coordination	\$39,600	
	Task 2 – Preparation of Comments on Economic Analysis	\$38,703	
	Task 3 – Preparation of Enhancement Project	\$79,361	
	Task 4- Review and Advice on Final Rule	<u>\$13,200</u>	\$170,864
Advocacy (Richard Katz)	Task 1 – Coordination of Advocacy Efforts	<u>\$36,000</u>	<u>\$36,000</u>
		Grand Total	\$406,964

Notes:

1. All costs associated with the preparation of the Economic Analysis performed by John Husing are covered by Valley District under an existing contract.
2. It is anticipated that implementation costs associated with development of SAS habitat at RCRCO or Cal Poly Pomona, in addition to costs for additional studies (i.e. genetics study) would be covered by the mitigation fund established and supported by Valley District and Western Municipal Water District.

Allocation Options

As of May 19, 13 agencies have committed to providing initial funding of \$5,000. All of those funds (\$65,000) will be applied to the costs shown in the table. If we assume that the same number of agencies agree to participate in the project through the end of the year, the total cost per agency would be \$31,300. As more agencies choose to join, the cost per agency would be reduced accordingly, or vice versa.

REVISED SCOPE OF WORK AND BUDGET

22 April 2010

ACTIVITIES ASSOCIATED WITH RESPONDING TO THE PROPOSED RESEIGNATION OF CRITICAL HABITAT FOR THE SANTA ANA SUCKER

Task 1. General Consulting Assistance

PBS&J (Leidy and colleagues) will assist the Santa Ana Sucker (SAS) Task Force, as requested, with assignments not included in other tasks. Budgeting for this task assumes that this task covers two time periods: 1 April through 30 June 2010 and 1 July through 31 December 2010. The period from 1 April through 30 June 2010, a period of 13 weeks, assumes an average labor commitment of 4 hours per week (\$11,700 labor). Other direct costs are estimated at \$1,000 for this same period (air fare, rental car, etc.). Total budget through 30 June 2010: \$12,700. Post 30 June through 31 December 2010 labor budget (26 weeks) with the same assumptions: \$23,400. Other direct costs: \$2,000. Total budget from July through December: \$25,400. Grand total budget (Labor and other direct costs) for this task from 1 April through 31 December 2010: \$38,100.

Task 2. Attendance as SAS Conservation Team and Other Relevant Meetings

This task has been consolidated into this scope of work and budget from PBS&J Project No. 100012843 which was initiated on 1 March 2010. Leidy will attend up to 10 meetings of the SAWPA Santa Ana Sucker Conservation Team (including the Restoration Working Group) and the Southern California Native Aquatic Fauna Working Group between 1 March 2010 and 31 December 2010 for the purpose of providing input to the interested parties on the introduction of the SAS in the Santa Ana River watershed, and to gather information on the proposed activities of these groups. Each attendance is expected to be a one-day event. Leidy will summarize in writing the content of each meeting related to SAS issues along with any recommendations for actions on the part of the SAS Task Force. Each meeting is expected to require up to 8 hours in travel and meeting time, plus travel expenses (airfare, rental car and gas, one meal, and personal vehicle mileage). Labor budget (meetings plus write-ups) at 9 hours per meeting plus 0.5 hours administrative time per meeting: \$20,900 (Before 30 June 2010: \$5,225; Post 30 June 2010: \$15,675). Other direct costs: \$4,300 (Before 30 June: \$1,075; Post 30 June 2010: \$3,225). Total labor and other direct before 30 June: \$6,300. Total labor and other direct costs post 30 June 2010: \$18,900. Total labor and other direct costs from 1 March through 31 December 2010: \$25,200.

Task 3. SAS Enhancement Plan and Project Implementation

There are two phases to this task.

Phase 1

Leidy, working closely with Sam Fuller, is charged with developing a plan to enhance the survival of the SAS population within its existing range in the Santa Ana River basin. The focus geographically will be from the Rialto Drain downstream to the Imperial Highway. This is the reach of the Santa Ana River that currently supports or recently supported the SAS and the reach that will have the greatest probability of implementing a successful project. The plan may include upland sites within this general river reach. The plan will contain appropriate adaptive management elements focused in the short-term on stabilizing the SAS population in the Santa Ana River. The goal is to have one on-the-ground project in place by the end of September 2010. Specific constraints and milestones of the plan are:

- The project must be completed by 30 September 2010;
- The project design must avoid any permitting requirements (other than permission from the USFWS to capture, move, rear, and reintroduce SAS) to meet the schedule (i.e., no 404, 401, 1602, or other permits);
- The project should focus on improving spawning and/or juvenile rearing habitat for the SAS, if feasible;
- Leidy et al. will meet with the USFWS (Ren Lohoefer, Pacific Southwest Regional Director) to present the plan and request approval to move SAS to the project site, if necessary;
- Leidy et al. will request concurrence from the California Department of Fish and Game (Curt Taucher, Regional Manager), and will also request that CDFG release up to \$200,000 in funding already provided by San Bernardino Valley Municipal Water District and Western Municipal Water District to CDFG under the terms of the water rights settlement with CDFG; and
- Post-project monitoring and O&M will be required.

To assist with Phase I, Leidy will engage the expert services of Dr. Camm Swift (ENTRIX, Inc.), Dr. Jonathan Baskin (San Marino Environmental Associates), and Kerwin Russell (Riverside-Corona Resource Conservation District), as necessary, to design the project. Phase 1 has substantial unknowns at this time relative to the difficulty of implementing a project. If the process goes smoothly (for example, the project can make use of existing facilities at the RCRCDD), then the cost will be less than the cost estimated herein. Leidy has budgeted a moderate level-of-effort, but by no means a highly complicated or expensive scenario. Planning

for Task 3, Phase 1, is to be completed prior to 30 June 2010. The budget is based on all activities undertaken prior to 1 July 2010 and does not include Phase 1 construction-related planning or construction implementation. The budget breakdown is presented in the attached table. The total budget prior to 1 July 2010: \$39,120. The total budget for the period from July through December 2010: \$65,480. Total Task 3, Phase 1 budget for 2010: \$104,600.

Phase 2

Phase 2 is a longer term continuation of Phase 1 that will occur over a two to three-year schedule at a funding level of approximately \$100,000 to \$150,000 per year. Phase 2 will develop additional projects that enhance and stabilize the SAS population within its existing range in the Santa Ana River basin. Project undertaken during this phase may require permitting and may focus on any activity that enhances SAS survival or improves habitat. Phase 2 is not budgeted at this time and will not be budgeted until Phase 1 is completed and we know better the level-of-effort required to continue with additional projects.

Task 4. Alternative Streams Investigation

This task will focus on evaluating the feasibility of establishing SAS populations elsewhere in the Santa Ana River basin outside of the current range of the species. New refugia for the SAS will be evaluated taking into consideration the following:

- Location relative to the parent population and existing infrastructure;
- Selection criteria for evaluating the suitability of specific locations to support viable populations of the SAS over time, including a risk analysis of potential threats; and
- Financial and institutional requirements to create, maintain, and monitor SAS populations at selected locations.

Leidy et al. will evaluate a select number of tributaries to the Santa Ana River that may contain the PCEs necessary to support an introduced SAS population in the future. This investigation will be at the reconnaissance level and the product will be a report presenting the results. Task 4 will be initiated prior to 30 June 2010, and will be completed prior to the end of calendar year 2010. Leidy will use experienced, mid-level fish biologists from PBS&J to assist with this task to contain costs. Approximately 25 streams will be evaluated. The evaluation will also include site visits to confirm environmental conditions. A records search of resource agency files may also be required.

The labor costs incurred prior to 1 July 2010 will be for information gathering and site visits. This cost is estimated at \$11,200. Other direct costs prior to 1 July: \$3,500. Total budget prior to

1 July: \$14,700. Completion of the report following 30 June 2010 is estimated at \$11,200. Other direct costs after 30 June: \$500. Total budget after 30 June: \$11,700. Total budget for task: \$26,400.

Task 5. Additional Responses to the Economic Study

Leidy will provide additional comments, if necessary, on the draft economic study issued by the USFWS. This effort is estimated at 24 hours labor (\$5,400) plus other direct costs (\$400), for a total budget of \$5,800.

Budget Summary for the Proposed Scope of Work

Task	1 March-30 June (\$)	1 July-31 December (\$)	Total (\$)
1	12,700	25,400	38,100
2	6,300	18,900	25,200
3	39,120	65,480	104,600
4	14,700	11,700	26,400
5	5,800	0	5,800
Total	78,620	121,480	200,100

Legal Budget/Scope

Santa Ana Sucker Critical Habitat Designation

Task 1 – General Coordination

This task involves general coordination efforts with the Santa Ana sucker task force and attendance at the monthly task force meetings. For purposes of the budget/scope, we have assumed that the task force will meet monthly from April through September and then meet in either October or November.

Task 2 Preparation of Comments on Economic Analysis

Task 2.1 involves legal coordination with John Husing as he prepares his comments based on the project descriptions submitted by participating agencies. We anticipate that most of those comments will focus on the economic impacts of critical habitat designation, but we anticipate some need to work with Husing to establish the legal framework for his analysis.

Task 2.2 involves the attendance at the Fish & Wildlife Service hearing on the economic analysis.

Task 3. Preparation of Enhancement Project

Task 3.1 involves legal coordination with Roy Leidy as he works with Camm Swift and John Baskin to develop the proposed Santa Ana sucker enhancement project.

Task 3.2 involves preparing for and meeting with officials at the Fish & Wildlife Service to obtain their consent to the implementation of the project(s) developed by Leidy, Swift and Baskin.

Task 3.3 involves the negotiation of a safe harbor agreement, a 10(j) population designation, or other legal/regulatory means to ensure that the Santa Ana task force parties' projects are fully protected from limits caused by the enhancement efforts.

Task 4. Review and Client Advice on Final Rule

This task involves review of the final critical habitat designation rule once it is issued by the Fish & Wildlife Service and advising the Santa Ana sucker task force about potential avenues in light of that designation.

Santa Ana Sucker Critical Habitat Designation -- Legal Budget

Task	April 1 to June 30, 2010		July 1 to December 31, 2010		Contingency (10%)	Total
	Hours	Fees/Costs	Hours	Fees/Costs		
Task 1 -- General Coordination	50	\$15,000	70	\$21,000	\$3,600	\$39,600
Task 2 -- Preparation of Comments on Economic Impacts of Designation						
Task 2.1 Coordination with John Husing	30	\$9,000	70	\$21,000	\$2,103	\$32,103
Task 2.2 Attendance at FWS Hearing	0	\$0	20	\$6,000	\$600	\$6,600
Task 3 -- Preparation of Enhancement Project						
Task 3.1 Coordination with Roy Leidy	50	\$15,000	25	\$7,500	\$755	\$23,255
Task 3.2 Meetings with FWS	25	\$7,500	20	\$6,000	\$603	\$14,103
Task 3.3 Negotiation of Safe Harbor Agreement	30	\$9,000	100	\$30,000	\$3,003	\$42,003
Task 4 Review and advice on Final Rule	0	\$0	40	\$12,000	\$1,200	\$13,200
Total	185	\$55,500	345	\$103,500	\$11,864	\$170,864

DRAFT

April 21, 2010

The purpose of this letter is to summarize and confirm the term and conditions of the agreement by Richard Katz Consulting Inc, ("Consultant") and **XXXXX** ("Client").

SCOPE OF SERVICES

The Client retains Consultant to provide strategic advice as it relates to the Federal Governments effort on the Santa Ana Sucker Critical Habitat Designation. Consultant shall offer a critical political overlay to the efforts of the government relations team representing **XXXXXXXXXX** in Washington, DC. Efforts shall include but not be limited to review of current strategy, assistance in developing new and innovative strategy going forward, and coordination of efforts with federal, state and local entities.

PROFESSIONAL FEES

In compensation for the services performed by Consultant on behalf of Client, as outlined above, Client agrees to pay Consultant a monthly retainer of \$5,000 per month for 90-days and then \$3,500 per month until the issue is resolved.

REIMBURSEMENT OF EXPENSES INCURRED

Client will reimburse Consultant on a monthly basis for any out-of-pocket expenses reasonably incurred by Consultant on its behalf including, but not limited to, document reproduction charges, facsimile charges, long distant telephone calls, travel expenses and messenger fees. Consultant will send a statement of expenses incurred each month. No expenditure in excess of Three Hundred Dollars (\$300.00) per month will be made without prior written consent from Client.

TERMINATION

Either party upon thirty (30) days written notice to the other party may terminate this agreement. In the event of such termination, Consultant shall bill Client for all professional services, independent contractor expenses and other costs incurred up to the date of termination.

NO REPRESENTATION THAT PERMITS OR SERVICES WILL BE APPROVED OR SUCCESSFUL

It is impossible to predict the approval or non-approval of any action, which requires discretionary government action. Consequently, while consultant will conscientiously perform all of its responsibilities outlined above, we cannot and do not make any representation to Client that any of the services discussed herein will be granted, acknowledged or approved by any governmental or public jurisdiction. Client acknowledges that none of its obligations under this letter agreement is dependent or conditioned upon approval of any service.

Consultant, its employees and associates, shall not be individually or collectively liable to client, or any party claiming through Client, for any damages resulting from the denial of any discretionary permits or from errors or omissions in connection with any services provided hereunder for any reason other than willful misconduct.

Consultant shall not be liable to Client, or any party claiming through Client, for any damages resulting from the denial of the application of any governmental approval or service.

ATTORNEY'S FEES

In the event that any litigation is commenced concerning any provision of this letter agreement, the prevailing party will be entitled to recover, in addition to any other relief granted by the court, a reasonable sum for its attorney's fees incurred in the litigation.

CONCLUSION

We believe that the above terms and conditions accurately summarize our agreement for the performance of services related to the project. If you concur, please indicate your approval and acceptance by dating, signing and returning this letter agreement. We have enclosed a signed copy of this letter for your records.

We are very pleased that we are able to be of service to you and look forward to working with you.

All the Best,

Richard Katz

AGREED AND ACCEPTED;

By: _____
XXXXXXXXXXXXXXXXXXXX Date



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
(909) 793-2503
Fax: (909) 793-0188

P.O. Box 1839
Redlands, CA 92373-0581
Email: info@sbvwcd.dst.ca.us
www.sbvwcd.dst.ca.us

To: Board of Directors

From: Claud Seal, Jr., AGM/District Engineer

Date: June 9, 2010

Subject: Modified Field Operations Supervisor's Position

RECOMMENDATION

Staff recommends the Board of Directors approve the modified Field Operations Supervisor's job description for Randy Carlisle. The significant changes to the job description are that the Field Operations Supervisor position only oversees the Field Operations; they do no physical work related to the Field.

BACKGROUND

Randy Carlisle has been an employee of the District's for nearly 30 years. Due to work related injury and resulting repair surgery and therapy, Randy has been on disability since January, 2010. He has been given a modified duty release, effective June 15, 2010.

FISCAL IMPACT

There will be no change in Mr. Carlisle's salary with the modified job description.

AMPLIFYING INFORMATION

Mr. Carlisle's hours are chargeable to our Exchange Agreement that we receive reimbursements from area program participants.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

FIELD OPERATIONS SUPERVISOR

Salary Range 16

DEFINITION

Under general direction of the General Manager and direct supervision of the Assistant General Manager, oversee operations and maintenance of the District's groundwater recharge facilities; to manage and oversee coordination of water diversion activities, and account for water flow and production records.

SUPERVISION EXERCISED

Supervise field operations specialists/staff; and oversee contractors.

EXAMPLES OF ESSENTIAL DUTIES

Oversee District operations and maintenance activities related to groundwater recharge, including weed control, maintenance and repair of canals, basins, levees, roads, gates, weirs and other facilities, and procurement of parts and supplies.

Coordinate groundwater recharge activities and maintenance activities with other District departments, consultants, contractors, and outside agencies.

Supervise work by maintenance and repair contractors on District facilities, including laborers and earth moving equipment. Monitor activities of Consultants, Engineers and other agencies when on District property.

Plan daily itinerary; grade roads; clear weeds from structures; build, install, oversee maintenance of all Watergates, railings, road gates, catwalks, weir boxes, parshall flumes – includes painting, cleaning, greasing.

Oversee Installation and repair of all fencing; oversee all construction done by contractors; move material, make new roads.

Oversee placement of furniture, painting, fencing tools and parts, purchase of tools, lumber, steel, fencing to run the shop. Oversee maintenance of all equipment; tractor, dump truck, and power tools.

Oversee Installation of new and maintain old structures; security for all SBVWCD properties; measure wells and flow readings; spread water.

Maintain good relationship and communication with all water agencies, including all associated Utilities and Agencies within the San Bernardino Basin Area.

Be on call 24/7.

Knowledge of:

Supervise operation and maintenance of District's heavy equipment.

Direct water spreading in Santa Ana River Spreading Basins; Spreading of water from Redlands Aqueduct to Mill Creek Spreading Basins; and Mill Creek diversions into the Mill Creek Spreading Basins.

OTHER JOB RELATED DUTIES

Oversee, administer and coordinate performance of related duties and responsibilities as necessary.

JOB RELATED AND ESSENTIAL QUALIFICATIONS

Equipment, construction materials, and tools to be used in the operation and maintenance of the District's recharge facilities.

Project estimating and control for field operations.

Occupational hazards and safety practices necessary in the area of operation and maintenance activities.

Pertinent Federal, State and local laws, codes, and regulations, including applicable OSHA rules and regulations.

Skill to:

Supervise and train others in the safe and effective operation of a variety of field equipment and vehicles, including tractors, backhoes, dump trucks, and any other equipment necessary to maintain and operate the facilities of the District.

Operate automated field equipment, including computers, transmitters, receivers, and other specialized recording equipment.

Ability to:

Diagnose problems and to inspect, operate, perform preventive maintenance, and limited repair work on pumps, valves, compressors and other related equipment.

Read, interpret, and keep accurate records on a variety of charts and gauges.

Collect, compile and analyze information and data.

Exercise good judgment, supervision, disciplining and mentoring, flexibility, creativity, and sensitivity in response to changing situations.

Establish, maintain, and foster positive and harmonious working relationships with those contacted in the course of work.

Experience and Training Guidelines:

Any combination equivalent to experience and training that would provide the required knowledge, skills, and abilities would be qualifying. A typical way to obtain knowledge, skills, and abilities would be:

Education and Experience:

High School Diploma or GED required. AA Degree preferred. Minimum of five years experience in field work with water systems and water recharge systems is preferred.

Minimum of two years experience with backhoe and loader, dump truck, post driver, and other 4x4 vehicles is required.

Three – Five years experience with arc and/or gas welding is desired. Two years experience required.

Completion of certificate-awarding programs for water operations, heavy equipment operations, and welding may be substituted for up to one year of experience.

License:

Possession and retention of a valid, Class-A California driver's license, and maintain a driving record acceptable to the District's automobile insurance provider.

Special Requirements:

Ability to sit, stand, walk, crouch, stoop, and squat.

This position will do no lifting and/or moving of any kind.

See in the normal visual range with or without correction.

Hear in the normal range with or without correction.

Work in a variety of environmental conditions, indoors and out, including wide temperature variations, noise, vibrations, fumes, odors, dust, and electrical hazard.



SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

Established 1932

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Redlands, CA 92373-8032
(909) 793-2503
Fax: (909) 793-0188

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Redlands, CA 92373-0581
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To: Board of Directors

From: Claud Seal, Jr., AGM/District Engineer

Date: June 9, 2010

Subject: Approval of Materials Contracts with Ranch Rock and JDM Excavation

RECOMMENDATION

Approval of the Materials Contracts with Ranch Rock (working in the Borrow Pit) and JDM Excavation (working in the Mill Creek Spreading Grounds).

BACKGROUND

1. Both sets of contracts have been approved to form by the Board of Directors in a past meeting. Those same contracts have now been tailored to fit the particular maintenance requirements of each of the two District properties.
2. Both Contractors have reviewed their respective District Agreements.

FISCAL IMPACT

1. Spreading basin cleaning expenses will be paid by the District on a time and materials basis.
2. Materials removed from the basins will be crushed, screened, sized, delivered to offsite customers of the Contractors and the District will receive \$1.00 per ton royalty.
3. Money earned from royalties should pay the District 1.2 to 1.5 times the expense paid to clean the basins. Net gain for the District should amount to \$40,000 to \$50,000 per year from each Contractor.
4. No additional personnel or equipment expense will be incurred on the District's part.

AMPLIFYING INFORMATION

These agreements give the District more control of the basin cleaning and aggregate operations within two of its properties while generating new revenue.

BOARD
OF
DIRECTORS

Richard W. Corneille
Clare Henry Day

Arnold L. Wright
John Longville

David E. Raley
Melody McDonald
Manuel Aranda, Jr.

GENERAL
MANAGER

R. Robert Neufeld

EXCAVATION AND MAINTENANCE AGREEMENT

THIS EXCAVATION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of _____, 2010, by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT, a special governmental district formed and operating under the Water Conservation District Law of 1931, Water Code Section 74000, *et seq.* ("District"), and Ranch Rock, ("Contractor").

NOW THEREFORE, the parties hereto agree as follows:

SECTION ONE: EXCAVATION SERVICES

1.1 Content of the Work. During the term of this Agreement, Contractor shall provide the excavation and maintenance services set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "Work")

1.2 Scope of Services. Contractor shall equip itself with all necessary labor, equipment and materials to perform the Work and services specified in this Agreement. Contractor warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

1.3 Defective Work. All Work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to this Agreement, or does not meet the requirements of any inspection, test, or approval, is defective. If the Work or any part thereof is found to be defective, whether or not overlooked or accepted by the District, the Contractor shall, promptly and in accordance with the written instructions of the District, correct such defective Work. The Contractor shall bear all costs for the correction and all additional direct and indirect costs the District may incur on account of defective Work, including, but not limited to, the costs of additional administrative, professional, consultant, inspection, testing, and other services. If such additional costs are incurred by the District prior to the making of final payment, a Change Order will be issued to effect a reduction in the Contract price in the amount of the District's additional costs; otherwise, the Contractor shall pay the amount to the District. The Contractor shall also bear all costs of making good all Work and the work and property of separate contractors, the District, and others that is destroyed or damaged by the Contractor's correction or removal and replacement of its defective Work.

1.4 Warranty of Title. Upon completion of all Work, Contractor shall deliver the premises to the District free from and clear of any claims, liens, encumbrances or charges. Contractor further agrees that neither it nor any person, firm or corporation furnishing any material or labor for any Work covered by the Contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of such person furnishing materials or labor under any bond given by the Contractor for their protection of any right under any law permitting such persons to look to funds due the Contractor, in the hands of the District.

1.5 Work Hours. All excavation activities at the site of the Work shall be performed during regular working hours, and the Contractor shall not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without the written consent of the Engineer. Unless otherwise specified, the Contractor shall prosecute the Work only between the hours of 7:00 a.m. and 6:00 p.m. Should the Contractor choose to work outside normal working hours, upon the consent of the Engineer, all District inspections required by the Contractor on holidays, weekends or during hours requiring overtime shall be accomplished at the sole expense of the Contractor by issuance of a deductive Change Order.

SECTION TWO: COMMENCEMENT; SUBSTANTIAL COMPLETION

2.1 Commencement Date. This Agreement shall commence as of the later of (a) the date first written above, or (b) the date on which Contractor has furnished to the District the certificates and endorsements of insurance pursuant to Section 5 below ("Commencement Date").

2.2 Completion. Contractor shall prosecute the Work diligently to completion and in all events shall substantially complete the Work within the time provided in the Scope of Work, attached in Exhibit A. ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the District. Such schedules or milestones may be included as part of Exhibit "A" attached hereto, or may be provided separately in writing to the Contractor.

SECTION THREE: AUTHORITY OF THE ENGINEER.

3.1 District Engineer is hereby designated as the representative of the District (the "Engineer"). The Engineer shall decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the Work. The Engineer shall further decide all questions which may arise as to the acceptable fulfillment of this Agreement on the part of the Contractor; and all questions as to claims and compensations.

3.2 The Engineer's decisions shall be final, and the Engineer shall have authority to enforce and make effective such decisions and to order that the Contractor carry out such decisions promptly.

SECTION FOUR: COMPENSATION.

4.1 Compensation will be determined according to the schedule and/or amounts set forth in Exhibit "C," Schedule of Compensation.

4.2 The Contractor shall, on a regular basis, and no less frequently than monthly, provide the Engineer with a progress payment request describing in detail the services performed and materials supplied in connection with the construction of the Work.

4.3 Upon receipt of each monthly progress payment request and certification of such record by the Engineer, the District will, within thirty (30) days after receipt of such request, pay to the Contractor the certified sums in accordance with Exhibit "C."

4.4 Pursuant to Public Contract Code Section 20104.50, as may be amended, whenever the Contractor properly files a request for payment, and the validity of the claim is not disputed or has been settled or agreed upon, payment of the claim by the District shall include interest at the legal rate set forth pursuant to Section 685.010 of the Code of Civil Procedure if payment has not been made by the thirtieth (30th) day after the proper submission of the claim. If a request for payment has not been properly filed at an earlier date, then the request shall be deemed to be properly filed on the next business day after the Contractor provides written notification to the District or Engineer that the Contractor accepts the final estimate as prepared by the District.

SECTION FIVE: INSURANCE.

5.1 Without limiting Contractor's indemnification obligations, Contractor shall not enter or occupy the Premises until Contractor has obtained all of the insurance required herein from a company or companies acceptable to District, and Contractor shall maintain all such insurance in full force and effect at all times during the term of this License and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A:-VII or equivalent or as otherwise approved by District.

5.2 At all times this Agreement is in effect, Contractor shall take out and maintain the following insurance:

5.2.1. Workers' Compensation and Employer's Liability Insurance: Contractor shall cover or insure under the applicable laws relating to workers' compensation insurance all of its employees working on or about the Premises, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof, as may be amended. Contractor shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

5.2.2. Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of Two Million Dollars (\$2,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit.

5.2.3. Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

5.2.4. Builder's Risk Insurance: Until the completion and final acceptance by the District of all the work under and implied by this agreement, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by Contractor's activities hereunder. The Contractor shall provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work arising from, or attributable to, Contractor's performance or nonperformance of the Work specified in the General Conditions, to insure against such losses until final acceptance of the Work by the District. Such insurance shall insure at least against the perils of fire and extended coverage, theft, vandalism and malicious mischief, and collapse. The District, its directors, officers, employees, and authorized volunteers shall be named insureds on any such policy. The making of progress payments to the Contractor shall not be construed as creating an insurable interest by or for the District or be construed as relieving the contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

5.3 Endorsements: The policies of liability insurance provided for in Paragraphs 6.2.2 through 6.2.4 shall specify that this specific Agreement is insured and that coverage for injury to participants resulting from Contractor's activities is not excluded, and shall be in a form satisfactory to District and contain the following separate endorsements:

(a) "The San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and activities of the named insured at or from the premises of the San Bernardino Valley Water Conservation District. The coverage shall contain no special limitations on the scope of protection afforded to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) “This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage.”

(c) “This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the San Bernardino Valley Water Conservation District shall not be liable for the payment of premiums or assessments on this policy.”

(d) “Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives, or volunteers.”

(e) “This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.”

5.4 Evidence of Coverage: Contractor shall at the time of the execution of the Agreement present to District the original policies of insurance required by this Section 5 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein and copies of all endorsements signed by the insurer’s representative. All policies shall contain the Contractor’s name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with District. Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

5.5 Review of Coverage: District shall have the right at any time to review the coverage, form, and limits of insurance required under this Agreement. If, in the sole and absolute discretion of District, the insurance provisions in this Agreement do not provide adequate protection for District, District shall have the right to require Contractor to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Contractor shall promptly comply with any such requirement. District’s requirements shall not be unreasonable, but shall be adequate in the sole opinion of District to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

5.6 Deductibles: Any and all deductibles must be declared and approved by District prior to execution of this Agreement.

5.7 Agreement Contingent Upon Coverage: Notwithstanding any other provision of this Agreement, this Agreement shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with District.

5.8 Workers' Compensation Insurance. By his/her signature hereunder, Contractor certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, as may be amended, 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 he/she will comply with such provisions before commencing the performance of the work of this Agreement. Contractors and subcontractors will keep Workers' Compensation Insurance for their employees in effect during all work covered by this Agreement. In the event Contractor has no employees requiring Contractor to provide Workers' Compensation Insurance, Contractor shall so certify to the District in writing prior to the District's execution of this Agreement. The District shall not be responsible for any claims in law or equity occasioned by failure of the Contractor to comply with this section or with the provisions of law relating to Worker's Compensation.

SECTION SIX: LIABILITY AND INDEMNIFICATION.

6.1 District Not Liable. The District and District Personnel shall not be answerable or accountable in any manner, either individually or collectively, for any loss or damage that may happen to the Work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either workers, employees of Contractor or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work, except the sole active negligence or willful misconduct of District, its agents, servants or independent contractors who are directly responsible to District, or persons trespassing or otherwise accessing District's property illegally, or without permission of the District..

6.2 Contractor Indemnity. The Contractor shall indemnify, defend, and hold the District and District Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorneys' fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (hereinafter, collectively, "Claims") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of the Contractor, its employees, agents, representatives or subcontractors in the performance of any tasks or services for or on behalf of the District, whether or not there is concurrent active or passive negligence on the part of District and/or District Personnel, but excluding such Claims arising from the sole active negligence or willful misconduct of the District and/or District Personnel. In connection therewith:

6.2.1. The Contractor shall defend any action or actions filed in connection with any such Claims, and shall pay all costs and expenses, including attorneys' fees incurred in connection therewith.

6.2.2. The Contractor shall promptly pay any judgment rendered against the District and/or District Personnel for any such Claims.

6.2.3. In the event the District and/or District Personnel is made a party to any action or proceeding filed or prosecuted for any such Claims arising out of or in connection with

the negligent performance or a failure to perform the work or activities of the Contractor, the Contractor shall pay to the District any and all costs and expenses incurred by the District and/or District Personnel in such action or proceeding, including but not limited to reasonable attorneys' fees and expert witness fees.

SECTION SEVEN: LEGAL RELATIONS AND RESPONSIBILITIES.

7.1 Observing Laws and Ordinances. The Contractor shall keep itself fully informed of all existing and future state and federal laws and all city, county and District ordinances and regulations which in any manner affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over same. Unless otherwise specifically provided to the contrary in the description of the Work provided in Exhibit "A", Contractor shall pay prevailing wage for all construction activity undertaken hereunder, and shall assume full responsibility to assure subcontractors and all other persons working by or through Contractor do the same. If any discrepancy or inconsistency is discovered in this Agreement in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall at all times observe and comply with and shall cause all its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect, indemnify and defend the District and District Personnel, and all of their respective officers, employees, and representatives against any claim or assertion of liability, or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor or by its agents, representatives, employees, or Subcontractors.

7.2 Taxes. The Contractor shall pay all applicable payroll, business license, possessory, interest and sales and use and all other applicable taxes assessed by Federal, State and local authorities on materials furnished by Contractor or in any way connected with or arising out of Contractor's in performance of the Work. Changes in such taxes shall not be justification for an adjustment to the compensation due Contractor under this Agreement.

7.3 Assignment Prohibited. The Contractor shall not assign, hypothecate, or otherwise transfer this Agreement or any portion hereof, without first obtaining the written consent of the District. If any such assignment, hypothecation, or transfer is made or attempted by the Contractor, the assignment, hypothecation, or transfer shall be void; and the District, at its sole option, may terminate this Agreement upon written notice to the Contractor.

7.4 Performance. If the Contractor should neglect to prosecute the Work properly, or fail to perform any provision of this Agreement, the District, after five (5) days written notice to the Contractor, may without prejudice to any other remedy the District may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, provided, however, that the Engineer shall approve such action and certify the amount thereof to be charged to the Contractor.

7.5 Permits and Licenses. Unless otherwise specified in the Agreement, the Contractor shall procure all permits and licenses, pay all charges and fees, and give all notice necessary and incident to the due and lawful prosecution of the Work. The Contractor shall comply with all provisions of all permits whether obtained by the District or by the Contractor. Fines, fees or

penalties incurred by the Contractor due to violation of any permit shall not be justification for an adjustment to the Agreement.

7.6 Contractor is Independent Contractor. It is expressly understood and agreed that the Contractor herein named in the furnishing of all services, labor, materials and equipment and performing the work as provided in this Agreement is acting as an independent contractor and not as an agent, servant or employee of the District.

7.7 Non-liability of District Officers and Employees. No officer or employee of the District shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the District or for any amount that may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

7.8 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.9 Waiver. No delay or omission in the exercise of any right or remedy of a non defaulting party on any default shall impair such right or remedy or be construed as a waiver. District's consent or approval of any act by Contractor requiring District's consent or approval shall not be deemed to waive or render unnecessary District's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.10 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.11 Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

SECTION EIGHT: SAFETY.

8.1 The Contractor shall execute and maintain his/her work so as to avoid injury or damage to any person or property. The Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work.

8.2 In carrying out his/her work, the Contractor shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions

under which the work is to be performed, and be in compliance with all applicable federal, state and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act.

8.3 The Contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning any required grading, trenching, excavation, or digging work, the Contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The Contractor shall immediately notify the District and the utility owner if he/she disturbs, disconnects, or damages any utility.

8.4 In accordance with Section 6705 of the California Labor Code, as may be amended, the Contractor shall submit to the District specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by the District prior to starting excavation.

SECTION NINE: TERMINATION OF THE AGREEMENT.

9.1 Termination by District for Cause. If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with this Agreement, the District may give written notice that the District intends to terminate this Agreement. If the Contractor fails to correct the defaults, failure or neglect within seven (7) days after being given written notice, the District may then give a second written notice and, after an additional seven (7) days, the District may without prejudice to any other remedy make good such deficiencies and may deduct the cost thereof from the payment due the Contractor or, at the District's option, may terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon and finish the Work by whatever method the District may deem expedient. The District further may seek recourse against the Faithful Performance Bond issued by the Contractor and its surety.

9.2 Termination by District Without Cause. In addition to termination under Article 9.1, District may terminate this Agreement without cause upon thirty (30) days written notice to Contractor. Upon such termination, District shall reimburse the Contractor for any unpaid portions of the Contract Price due it under Section 4 for the Work to date of termination including all reasonable costs of demobilization. In addition, District shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the District, for any equipment retained.

SECTION TEN: LABOR CODE OF CALIFORNIA.

The Contractor's attention is directed to Division 2, Part 7, Chapter 1 of the Labor Code of the State of California and especially to Article 2 (Wages) and Article 3 (Working Hours) thereof. This work requires the payment of prevailing wages in accordance with Labor Code section 1720 *et seq.*, as may be amended.

SECTION ELEVEN: CHANGES IN THE PROJECT.

11.1 Change Orders. Any Work not contained in Exhibit "A," Scope of Work, shall be a change and shall be performed by Contractor only pursuant to a written Change Order to this Agreement, signed by the District and Contractor. Such a Change Order may increase or decrease the Work within the general scope of this Agreement. If this Change Order causes an increase in the cost of the Work, or of the time required for the performance of the Work, Contractor shall be paid a lump sum acceptable to both parties and/or granted an extension of the schedule.

11.2 In the event the District requests Contractor to develop information necessary for the consideration of a change in the Project, and such a change is not adopted, the District shall reimburse Contractor for the costs which Contractor incurs in connection with such efforts.

11.3 Differing Site Conditions. Pursuant to Section 7104 of the California Public Contract Code, as may be amended, the provisions of this paragraph shall apply whenever the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface.

11.3.1. The Contractor shall promptly, on the date of discovery (verbally) and within one (1) day (in writing), and before the following conditions are disturbed, notify the District, in writing, of any:

(a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;

(b) Subsurface or latent physical conditions at the site differing from those indicated; or

(c) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

11.3.2. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in this Agreement.

11.3.3. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under the Agreement. The Contractor shall retain any and all rights provided either by this Agreement or by law, which pertain to the resolution of disputes and protests between the contracting parties.

11.3.4. If the Contractor intends to assert a claim for equitable adjustment under this paragraph, it must, within twenty (20) days after receipt of a determination from the Engineer as to whether a differing site condition exists, submit a written statement setting forth the nature and monetary extent of such claim and all factual grounds. Failure to comply with the notice requirement shall be deemed waiver of claim by the Contractor. The Contractor shall, within forty five (45) days after overcoming the differing site condition, file with the Engineer its complete claim, including all costs and all time requested.

11.3.5. No claim of the Contractor under this section shall be allowed if asserted after final payment under this contract.

SECTION TWELVE: MISCELLANEOUS

12.1 Notices. Any notice, demand, request, consent, approval, communication either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch.

To District: San Bernardino Valley Water Conservation District
 Attention: District Engineer
 1630 West Redlands Blvd., Suite A
 P.O. Box 1839
 Redlands, California 92373

To Contractor: Ranch Rock Corporation
 355 North Sheridan Street, Unit 104
 Corona, CA 92880

12.2 Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way affect, impair, or invalidate any other term, covenant, or condition, or provision contained in this Agreement.

12.3 Integration; Amendment. This Agreement contains the entire understanding of the parties herein and supersedes any and all other written or oral understandings as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered thereby. No amendment, change or modification of this Agreement shall be valid unless in writing, stating that it amends, changes or modifies this Agreement, and signed by all the parties hereto.

12.4 Statutory References. All references in this Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of San Bernardino shall be deemed to include the same statute, regulation, ordinance or resolution

as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

12.5 Special Provisions. Any special provisions applicable to this Agreement are set forth in Exhibit "B", attached hereto and incorporated herein by this reference. In the event of any discrepancy between the provisions of this Agreement and the Special Provisions, Special Provisions shall take precedence and prevail.

[SIGNATURES BEGIN ON NEXT PAGE]

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

DISTRICT:

**SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT**

APPROVED AS TO FORM

By: _____

General Counsel, San Bernardino
Valley Water Conservation District

By: _____

President, Board of Directors

CONTRACTOR:

Ranch Rock

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT A

CONTENT OF THE WORK

Contractor shall excavate material from District's existing water spreading basins and stockpile severed mineral and aggregate deposits on areas within the Premises as follows:

Clean, remove, extract exposed native residue coated rock and sand mineral aggregates that line the surface of designated spreading basins to allow increased percolation of adjacent stream flows. Rock and sand materials shall be stockpiled adjacent to the spreading basin for handling by others at a later date. Basins shall be cleaned as directed by the District Engineer or District Manager.

Contractor's activities shall be limited to excavations within District's existing spreading basins, designated as follows:

[SEE ATTACHED MAP OF PROPERTY AREA: Borrow Pit., T1SR2W, SEC 7 Parcels 029705101, 029705106, 029705107, 029705108, 029705109, 029705110, 029705113, 029705114; SEC 8, Parcels 029706101, 029706103]

All of the Work performed by Contractor hereunder shall be consistent with District's specifications and maintenance program for such basins. The basins' surface dimensions shall not be enlarged or expanded, except as specifically authorized in writing by the District's Engineer, , although they may be deepened or otherwise contoured as a result of the removal of rock, silt, sediment, or other debris. Stockpile areas shall be subject to the prior written approval of District, and shall not impede or otherwise interfere with District's water conservation activities on the Premises. Contractor shall have the right of reasonable ingress or egress from the premises to perform its activities authorized hereunder, and to bring on such equipment as Licensee, in its reasonable discretion, determines is required for the effective and efficient accomplishment of same.

Contractor's Work shall be completed in accordance with the following Schedule:

Work shall commence no sooner than the final acceptance dates by both the District and the Contractor of all the District materials and property usage contracts. Work may continue as spreading basin cleaning needs are dictated by the District Representative until the termination date of this contract.

Unless otherwise provided in a "Material Processing License" between Contractor and District, District shall have and at all times retain title to, and full ownership of, all sand, gravel, rock, silt, and other material excavated as a result of the Work to be performed by Contractor pursuant to this Agreement. Only such material as is previously identified by District for disposal or removal shall be taken by Contractor from the areas of the Work. All other materials shall be stockpiled or otherwise placed on areas as designated by the District. Except for such materials designated by District for disposal by Contractor, in no event shall any material from the Work to be performed hereunder be processed, sold, bartered, traded for value, donated or given away, or otherwise taken by Contractor.

EXHIBIT B

SPECIAL PROVISIONS

1. Contractor shall at all times control the dust created during Contractor's use of the Premises. Dust control shall be by watering the area where dust is created and Contractor shall have a water truck on the Premises at all times to carry out the intent of this paragraph.

2. Contractor shall not deposit material or dirt on any public roadway(s) and shall be responsible for cleaning such roadway(s) of any such material or dirt. In the event that Contractor fails to comply with this paragraph and the responsible City or the County of San Bernardino requires the District to remove said material or dirt, a Change Order will be issued to effect a reduction in the Contract price in the amount of the cost incurred plus 10% for administrative cost; otherwise, the Contractor shall pay the amount to the District.

3. Unless otherwise provided in a "Material Processing License" between Contractor and District, excavated and stockpiled material on the Premises shall remain the property of District.

MATERIAL PROCESSING LICENSE

THIS MATERIAL PROCESSING LICENSE ("License") is made and entered into as of January 27, 2010 ("Effective Date"), by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT, a California water conservation district formed and operating under the Water Conservation District Law of 1931, Water Code Section 74000, *et seq.* ("District"), and Ranch Rock, (*a California corporation*).

SECTION ONE: FUNDAMENTAL LICENSE TERMS

1.1 **License:** District hereby issues to Licensee a License to enter upon real property located on the map included as Section 4 hereto and incorporated herein by this reference ("Premises"), for the purpose or activity specified in Paragraph 1.2.

1.2 **Use of Premises:** For and during the term of this License, and any extension or renewal thereof, Licensee shall use the Premises for the following purpose(s) or activity(ies): to process previously excavated and stockpiled material located on the Premises into various aggregates, including sand, gravel and rock.

1.3 **Term:** This License shall commence on **June 9, 2010** ("Commencement Date") and subject to the provisions of paragraph 1.4 below, shall continue to and terminate at 11:59 p.m. local time on **June 8, 2011** ("Expiration Date"). This License and the Licensee's rights hereunder may not be extended beyond the Expiration Date unless such extension is set forth in writing and signed by both District and the Licensee. Notwithstanding the foregoing or any other provision of this License, either District or Licensee may terminate this License with or without cause, or for any reason, at any time, by giving the other party a ten (10) days written notice of termination.

BY PLACING ITS INITIALS HERE, LICENSEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE PROVISIONS OF THIS LICENSE THAT ALLOW DISTRICT TO TERMINATE THIS LICENSE AT ANY TIME WITH OR WITHOUT CAUSE AS SET FORTH HEREINABOVE.

Licensee: _____

1.4 **License Consideration:** As consideration for the issuance of this License, Licensee shall pay to District the sum of _____ per month ("License Fee"), in accordance with Section Two (General Provisions).

1.5 **Notices and Payments:** All payments, notices and other writings required to be delivered under this License to either party shall be delivered in accordance with the provisions of Section Two ("General Provisions") to District at the address set forth in Section Two, and to Licensee at the address set forth in this Section One.

1.6 **Attachments:** This License incorporates by reference the following Attachments to this License:

Section One: Fundamental License Terms
Section Two: General License Provisions
Section Three: Special License Provisions
Section Four: Map of the Premises

1.7 **Integration:** This License represents the entire understanding of District and Licensee as to the License and all other matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this License. This License supersedes and cancels any and all previous negotiations, arrangements, agreements or understandings, if any, between the parties, and none shall be used to interpret this License.

IN WITNESS WHEREOF, the parties have executed and entered into this License as of the date first set forth above.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT By: _____ President, Board of Directors APPROVED AS TO FORM: RUTAN & TUCKER, LLP. _____ General Counsel, San Bernardino Valley Water Conservation District	RANCH ROCK By: _____ Name: _____ Title: _____ By: _____ Name: _____ Title: _____ Licensee Information: Address for Notices: P.O. Box 1556 Corona, CA 922878
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SECTION TWO:
GENERAL LICENSE PROVISIONS

2.1 Payment of License Fee

2.1.1. Transmittal of Payments: Licensee shall make all License Fee payments on a monthly basis, and pay all other sums due under this License, in lawful money of the United States, by check payable to "SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT," and shall personally deliver or mail all payments without any notice or demand to District at the address set forth in Paragraph 2.8.1 below. Licensee assumes all risk of loss or late payment if any payment is made by mail.

2.1.2. No Offsets: All License Fees and other sums due under this License shall be paid without offset or deduction, and shall be deemed payments on account. Neither the payment by Licensee nor the acceptance by District of any License Fee or other sum in an amount which is less than the amount due and payable pursuant to this License, nor the issuance of any statement showing as due and payable an amount less than is properly due and payable pursuant to the terms of this License, shall constitute an agreement by District modifying this License or a waiver of District's right to receive all sums provided for in this License. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord or satisfaction, and District shall accept all checks and payments from Licensee without prejudice to District's right to recover the balance of the amount due or to pursue any other remedy in this License or otherwise provided by law.

2.2 Charges for Delinquent Payment of License Fee

2.2.1. If any payment of any License Fee or any other sum due District is not received by District within ten (10) days after the due date, Licensee shall be deemed delinquent in its License Fee payment and a late charge of one and one-half percent (1.5%) of the delinquent amount, plus the sum of One Hundred Dollars (\$100.00), shall become immediately due and payable to District. An additional charge of one and one-half percent (1.5%) of such delinquent License Fee payment (excluding late charges) shall be added for each additional calendar month (or portion thereof) that the delinquent sum remains unpaid.

2.2.2. Licensee and District hereby acknowledge and agree that such late charges do not represent and shall not be deemed to be an interest payment, but that such late charges represent a fair and reasonable estimate of the costs and expenses that District will incur by reason of Licensee's late payment.

2.2.3. Acceptance by District of any delinquent License Fee payment or late charge shall in no way constitute a waiver of Licensee's default with respect to such overdue and delinquent payment, or in any way impair, prevent or restrict District from exercising any of its rights or remedies set forth in this License or otherwise provided at law.

2.3 Use of Premises

2.3.1. Conditions of Use: For and during the term of this License, and any extension or renewal thereof, Licensee's use of the Premises shall be subject to the following conditions, covenants and restrictions:

2.3.1.1 Except as provided in this License, the Premises shall be used only for the purposes specified in Paragraph 1.2 above, and the Premises shall not be used for any other use or purpose whatsoever, without the prior written consent of District.

2.3.1.2 Licensee shall not cause, permit or suffer any "hazardous material," "hazardous waste," or "hazardous chemicals" as those terms are used in CERCLA (42 U.S.C. § 9061(14)) or SARA (42 U.S.C. § 11021(E)) or any Federal, State or local environmental law, statute, ordinance, regulation or order, or otherwise determined by District, to be brought upon, left, used or abandoned on the Premises.

2.3.1.3 Licensee shall not maintain, commit or permit the maintenance or commission of any waste or any nuisance (as defined in California Civil Code section 3479) on the Premises, and Licensee shall not use or permit the use of the Premises for any unlawful purpose.

2.3.1.4 District or its authorized representative shall have the right at all reasonable times to enter upon the Premises and inspect the general condition of the Premises to determine if Licensee is complying with the terms, conditions, requirements and provisions of this License.

2.3.2. Utilities and Services: Licensee shall be solely responsible for obtaining all required utility service and for the payment of all utility charges, including but not limited to water and power, supplied to the Premises.

2.3.3. Permits and Approvals: Licensee shall obtain at its own sole cost and expense, any and all governmental permits, approvals, licenses or other authorizations which may be required in connection with the use of the Premises as set forth in this License, including but not limited to approvals for business licenses, use permits, or any approvals that may be required under the California Environmental Quality Act, Surface Mining Second Reclamation Act, any rules or restrictions relating to environmental protection or protection of endangered species, or other provision of law. No approval or consent given under this License by District shall affect or limit Licensee's obligations hereunder, nor shall any approvals or consents given by District, in its capacity as a party to this License, be deemed to be approval as to compliance or conformance with any applicable governmental codes, laws, orders, rules or regulations.

2.4 Insurance: Without limiting Licensee's indemnification obligations, Licensee shall not enter or occupy the Premises until Licensee has obtained all of the insurance required herein from a company or companies acceptable to District, and Licensee shall maintain all such insurance in full force and effect at all times during the term of this License and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by District.

2.4.1. Licensee shall take out and maintain the following insurance:

2.4.1.1 Workers' Compensation and Employer's Liability Insurance:

Licensee shall cover or insure under the applicable laws relating to workers' compensation insurance all of its employees working on or about the Premises, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Licensee shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

2.4.1.2 Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit.

2.4.1.3 Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

2.4.2. Endorsements: The policies of liability insurance provided for in Paragraphs 2.4.1.2 and 2.4.1.3 shall specify that this specific License is insured and that coverage for injury to participants resulting from Licensee's activities is not excluded, and shall be in a form satisfactory to District and contain the following separate endorsements:

(a) "The San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and activities of the named insured at or from the premises of the San Bernardino Valley Water Conservation District. The coverage shall contain no special limitations on the scope of protection afforded to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

(c) "This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the San Bernardino Valley Water Conservation District shall not be liable for the payment of premiums or assessments on this policy."

(d) "Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives, or volunteers."

(e) "This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."

2.4.3. Evidence of Coverage: Licensee shall at the time of the execution of the License present to District the original policies of insurance required by this Paragraph 2.4 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein and copies of all endorsements signed by the insurer's representative. All policies shall contain the Licensee's name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with District. Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2.4.4. Review of Coverage: District shall have the right at any time to review the coverage, form, and limits of insurance required under this License. If, in the sole and

absolute discretion of District, the insurance provisions in this License do not provide adequate protection for District, District shall have the right to require Licensee to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Licensee shall promptly comply with any such requirement. District's requirements shall not be unreasonable, but shall be adequate in the sole opinion of District to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

2.4.5. Deductibles: Any and all deductibles must be declared and approved by District prior to execution of this License.

2.4.6. License Contingent Upon Coverage: Notwithstanding any other provision of this License, this License shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with District.

2.5 Indemnification

2.5.1. District Not Liable: District shall not be liable at any time for any loss, damage or injury whatsoever to the person or property of any person or entity whatsoever, including but not limited to any employee, agent or contractor of Licensee, resulting from or arising out of any act or omission of Licensee or of any person or entity holding under Licensee, or the occupancy or use of the Premises or any part thereof by or under Licensee, or any act or omission in the exercise of any right or the performance of any obligation under this License, or directly or indirectly from any state or condition of the Premises, or any part thereof.

2.5.2. Indemnification: Irrespective of any insurance carried by Licensee for the benefit of District, and notwithstanding any other provision or statement of precedence of this License to the contrary, Licensee shall indemnify and hold District, its officers, directors, employees, representatives and volunteers (collectively "District Personnel") harmless from and against any and all actions, claims, demands, judgments, attorneys fees, costs, damages to persons or property, penalties, obligations, expenses or liabilities of any kind that may be asserted or claimed by any person or entity (including, but not limited to, any employee, agent or contractor of Licensee) in any way arising out of or in connection with this License, the operations carried on by Licensee on the Premises or any lands to which Licensee has access hereunder, or the occupation or use of the Premises by Licensee or any person or entity holding under Licensee (collectively, "Claims"), whether or not there is concurrent active or passive negligence on the part of District, and/or acts for which the District would be held strictly liable, but excluding the sole active negligence or willful misconduct of District. In connection therewith:

2.5.2.1 Licensee shall defend and hold District and District Personnel harmless from any and all Claims, whether caused in whole or in part by District's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding any Claim that results from the sole active negligence or willful misconduct of District or District Personnel; and Licensee shall pay all expenses and costs, including attorneys' fees, incurred in connection therewith.

2.5.2.2 Licensee shall promptly pay any judgment rendered against Licensee or District covering any Claim, and hold and save District and District Personnel harmless therefrom, whether such Claim was caused in whole or in part by District and/or District Personnel's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding the sole active negligence and willful misconduct of District and/or District Personnel.

2.5.2.3 In the event District is made a party to any action or proceeding filed or prosecuted for or arising out of or in connection with any Claim, Licensee shall pay to District any and all costs and expenses incurred by District in any such action or proceeding, together with reasonable attorneys' fees.

2.5.2.4 All of the indemnity obligations of Licensee under this Paragraph 2.5.2, or as otherwise set forth in this License, shall survive the expiration or earlier termination of this License.

2.6 Legal Relations and Responsibilities

2.6.1. Nature of Relationship: District and Licensee understand and agree that the only relationship between them created by this License is that of Licensor and Licensee, and that this License is a license and not a lease, profit a prendre, or any other interest in the Premises, and does not create, and shall not be construed to create, any agency, partnership, joint venture, landlord-tenant or other relationship between District and Licensee.

2.6.2. Compliance with Laws: Licensee shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect the activities of Licensee under this License, or the possession or use of the Premises by Licensee, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Licensee shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect and indemnify, as required herein, District, its officers, directors, employees and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Licensee or any person or entity holding under Licensee.

2.6.3. Assignment: The License granted hereby is personal to Licensee and any assignment of said License by Licensee, voluntarily or by operation of law, shall automatically terminate this License, unless Licensee has obtained the prior written consent of District, which may be withheld, in its sole and absolute discretion, for any reason or no reason at all.

2.6.4. Acknowledgment of District's Title: Licensee hereby acknowledges the title of District in and to the Premises, including the real property fixtures and improvements existing or erected thereon, and Licensee hereby covenants and promises never to assail, contest or resist District's title to the Premises.

2.6.5. Liens: Licensee shall maintain the Premises free from and clear of any claims, obligations, liabilities, liens, encumbrances and charges, including but not limited to any claims, liens or charges arising out of or in connection with the furnishing of materials or the performance of labor on the Premises. Licensee further shall protect and indemnify District and

the Premises from and hold them, and each of them, harmless against any and all such claims, obligations, liabilities, liens, encumbrances and charges.

2.6.6. Taxation: A possessory interest subject to property taxation may be created by this License. It is understood and agreed that if such a possessory interest is created, Licensee shall be responsible for the payment of all property taxes levied on such interest, and that District shall have no responsibility therefor. Licensee shall be solely responsible for any second allotted taxes or charges that may be revised or imposed on Licensee's activities taken hereunder, including any severance or other taxes.

2.6.7. Condemnation. In the event the Premises or any portion of the Premises is acquired under the power of eminent domain, or transferred by way of negotiated agreement in lieu of, or under threat of eminent domain, District shall receive and be entitled to all just compensation that may be awarded for the taking, including but not limited to just compensation for the property taken, any damage for injury to the remainder, and damage for any loss of business goodwill, excepting only damages or compensation specifically awarded for any relocation benefits that may be available to Licensee, and any compensation for tangible personal property losses or improvements pertaining to the realty owed by Licensee, all of which shall be recoverable by Licensee.

2.6.8. District's Reservations

2.6.8.1 District hereby reserves the right to grant easements and rights-of-way for pole or tower lines for transmission of electricity, and easements, leases and rights-of-way for telephone, telegraph, telecommunication facilities, gas, water, sewer and oil lines, for roads and highways, and for other similar uses over and across the Premises at any location or locations within the Premises. In the event Licensee determines that the granting or exercise of any such easement, lease, or right-of-way significantly interferes with Licensee's possession or use of the Premises, Licensee's only remedy shall be to terminate this License upon no less than ten (10) days written notice to District. Licensee shall not interfere with any easements or rights-of-way pertaining to or affecting the Premises.

2.6.8.2 District hereby reserves the right to sell, transfer or otherwise dispose of any portion of the Premises at any time. In the event of such sale, transfer or disposition, and notwithstanding any other provision of this License, this License shall, upon the close of escrow or the conveyance of title, terminate as to the portions of the Premises sold, transferred or disposed of, and Licensee shall release the same from the terms of this License and from any encumbrance which results from this License.

2.6.8.3 District reserves the right unto itself to perform any and all work involved in protecting, replenishing and/or conserving the basin groundwater supply and any other work necessary to the functions or purposes of District, as set forth in the Water Conservation District Law of 1931, as amended, Water Code Section 74000, *et seq.*, upon any portion or all of the Premises at any time. Such work may be performed without incurring any liability of any nature whatsoever to Licensee and Licensee hereby releases District from, and covenants not to sue District for, any such liability. District further reserves unto itself the rights of ingress and egress over all or any portion of the Premises.

2.6.8.4 This License is nonexclusive. A portion or all of the Premises may be subject to preexisting licenses and the District hereby reserves the right to issue licenses to third parties for joint usage of any portion of the Premises for any period of time during the term of this License. The District may issue such licenses without incurring any liability of any nature whatsoever to Licensee and Licensee hereby releases District from, and covenants not to sue District for, any such liability. In the event Licensee determines that the granting or exercise of any said license significantly interferes with Licensee's possession or use of the Premises, Licensee's only remedy shall be to terminate this License upon no less than ten (10) days written notice to District.

2.6.9. Surrender of Possession: At the expiration or termination of this License, whether with or without cause, Licensee shall promptly quit and surrender the Premises in a good state of repair, and shall remove any and all fixtures, structures, equipment, or fixtures placed on the Premises by Licensee, at Licensee's sole cost and expense.

2.6.10. Disposition of Abandoned Property: If Licensee abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property left on the Premises for fifteen (15) or more days after such event shall at District's option, be deemed to have been abandoned and transferred to District. District shall have the right to remove and dispose of any and all such property without liability therefor to Licensee or to any person or entity claiming under Licensee, and District shall have no duty to account for such property. Licensee agrees to reimburse District for any and all costs associated with District transferring or disposing of Licensee's personal property pursuant to this Section.

2.6.11. Premises "As-Is": Licensee acknowledges that the Premises are being provided to Licensee on an "as-is" basis, and Licensee takes and occupies the Premises without reliance upon any representation by District, or any of its officers, employees, agents or representatives, or any other person, concerning the Premises, their fitness for Licensee's intended use or any other particular purpose of use, their income-producing history, potential or capabilities, their value, or any other promise, representation or inducement not expressly set forth in this License.

2.6.12. Disputes: In the event that any action is commenced by a party to this License against the other to enforce its rights or obligations arising from this License or seeking to interpret this License, the prevailing party in such action, in addition to any other relief and recovery ordered by the court, shall be entitled to recover all statutory costs, plus reasonable attorneys' fees. Should District be named in any suit brought by any third party against Licensee in connection with or in any way arising out of Licensee's occupancy or use of the Premises under this License, Licensee shall pay to District its costs and expenses incurred in such suit, including reasonable attorneys' fees.

2.6.13. No Obligation to Third Parties: Execution and issuance of this License shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, nor obligate either of the parties hereto to, any person or entity other than District and Licensee.

2.6.14. Waiver: Any waiver by any party of a breach of any provision of this License shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision hereof.

2.6.15. District's Liability on Termination: Licensee hereby waives all damages or claims for damage that may be caused by any action of District in terminating this License (either with or without cause), or taking possession of the Premises as provided in this License or at law, and Licensee waives all claims for damages to or loss of such property of Licensee as may be in or upon the Premises upon the termination of this License.

2.7 Miscellaneous

2.7.1. Notices: Any notice, payment or instrument required or permitted to be given or delivered by this License may be given or delivered by personal delivery or by depositing the same in any United States mail depository, first class postage prepaid, and addressed as follows:

If to District: SAN BERNARDINO VALLEY WATER
 CONSERVATION DISTRICT
 1630 West Redlands Blvd., Suite A
 P.O. Box 1839
 Redlands, California 92373
 Attn: General Manager

If to Licensee: To such name and address set forth for Licensee in Part I of
 this License,

or such other person or address as either party may direct in writing to the other; provided, however, that such new or different person or address shall not become effective until acknowledged in writing by the party to who directed. Except where service is by personal delivery or by registered or certified mail, return receipt requested, service of any instrument or writing shall be deemed completed forty-eight (48) hours after deposit in a United States mail depository.

2.7.2. Warranty of Authority: Each officer of District and Licensee affixing his or her signature to this License warrants and represents by such signature that he or she has the full legal authority to bind his or her respective party to all of the terms, conditions and provisions of this License, that his or her respective party has the full legal right, power, capacity and authority to enter into this License and perform all of its provisions and obligations, and that no other approvals or consents are necessary in connection therewith.

2.7.3. Headings: The titles and headings of Sections and Paragraphs of this License, as herein set forth, have been inserted for the sake of convenience only, and are not to be taken, deemed or construed to be any part of the terms, covenants or conditions of this License, or to control, limit or modify any of the terms, covenants or conditions hereof.

2.7.4. Time of Essence: Time is of the essence of this License. Failure to comply with any requirement, including but not limited to any time requirement, of this License shall constitute a material breach of this License.

2.7.5. Construction and Amendment: This License shall be construed, interpreted, governed and enforced in all respects according to the laws of the State of California and as if drafted by both District and Licensee. No amendment, change or modification of this document shall be valid unless in writing, stating that it amends, changes or modifies this License, and signed by all of the parties hereto.

2.7.6. Successors: Subject to the provisions of Paragraph 2.6.3 above, this License, and all of the terms, conditions and provisions herein, shall inure to the benefit of, and be binding upon, District, Licensee, and their respective successors and assigns.

2.7.7. Partial Invalidity: If any term, covenant, condition or provision of this License is held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way affect, impair, or invalidate any other term, covenant, condition or provision contained in this License.

2.7.8. Further Assurances: Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

2.7.9. Precedence: In the event of any conflict between Parts of this License, Part I shall prevail over Parts II, III and IV, and Part III shall prevail over Part II.

[END GENERAL LICENSE PROVISIONS]

SECTION THREE:
SPECIAL LICENSE PROVISIONS

3.1 Processed material and/or aggregate on the Premises shall remain the property of District until such time as it is purchased pursuant to a separate agreement.

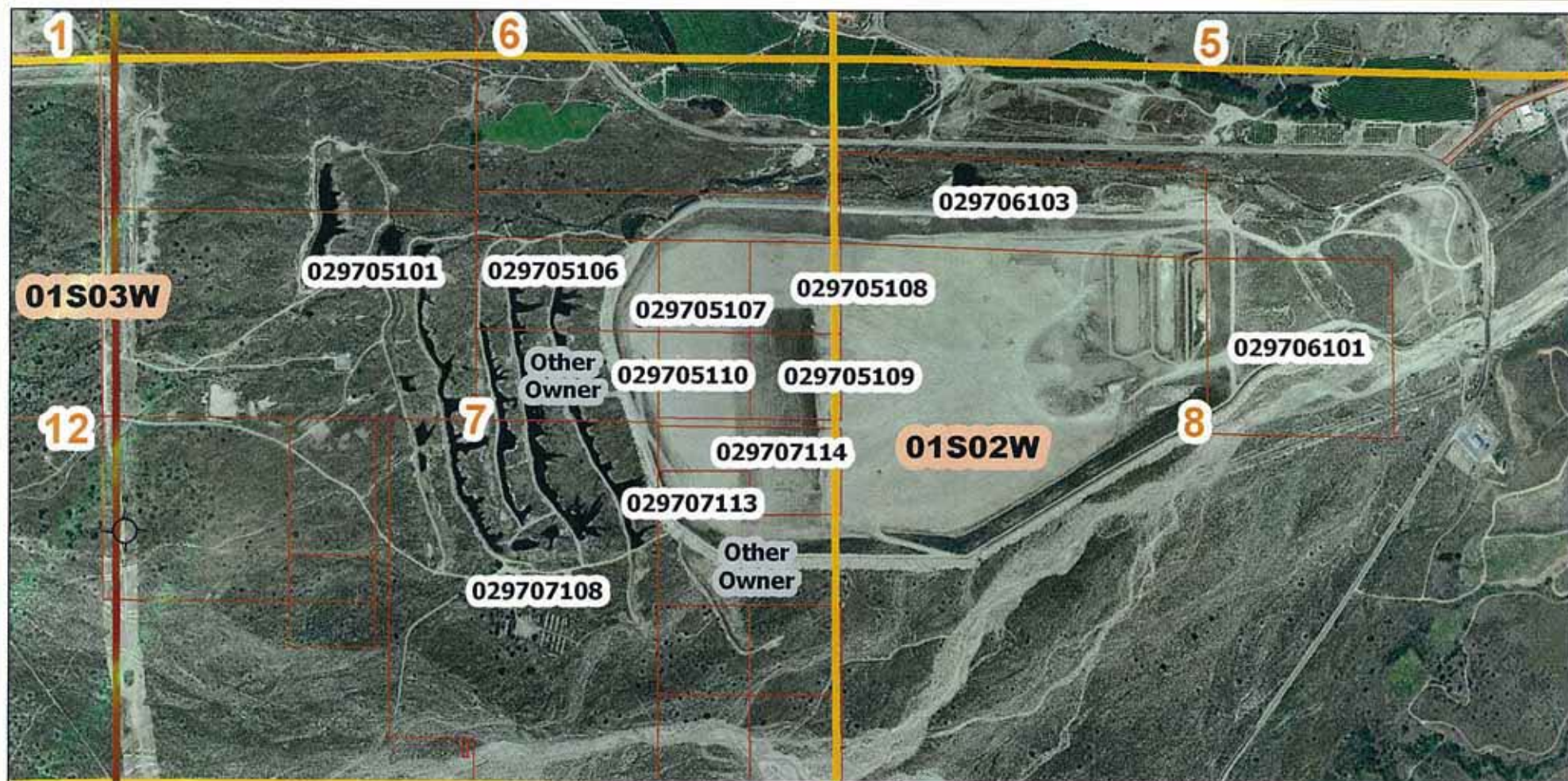
3.2 Licensee shall furnish its own equipment for the processing of material from the basins on the Premises.

3.3 Licensee shall at all times control the dust created during Licensee's use of the Premises. Dust control shall be by watering the area where dust is created and Licensee shall have a water truck on the Premises at all times to carry out the intent of this paragraph. Licensee is responsible for obtaining its own water supply at its own cost and expense.

3.4 Licensee shall not deposit material or aggregates, including sand gravel and rock, on any public roadway(s) and shall be responsible for cleaning such roadway(s) of any such material or aggregates. In the event that Licensee fails to comply with this paragraph and the responsible City or the County of San Bernardino requires the District to remove said material or aggregates, District shall invoice Licensee for any cost incurred plus 10% for administrative cost.

3.5 Licensee may only process material between the hours of 6:00 a.m. to 6 p.m., Monday through Friday, excluding holidays.

3.6 Licensee shall only process excavated and stockpiled materials from designated areas at surface grade level. Licensee shall not enter the basins to process any materials.



0 500 1,000 2,000 3,000 4,000 Feet

Key

- 12 Section Numbers within District
- District Parcels with APN for Mill Creek Area

Water Conservation District Properties near Borrow Pit Area

Data Source:
Existing Land Ownership March 2010
March 2010 Wash Plan data sources: SBVWCD
ESRI On-line Imagery Service 2009

APN's of interest:
029705101, 029705106,
029705107, 029705108,
029705109, 029705110,
029705113, 029705114,
029706101, 029705103,
029707108



TEMPORARY ACCESS LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is made and entered into as of June 9, 2010, by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT, a special governmental district formed and operating under the Water Conservation District Law of 1931, Water Code Section 74000, *et seq.* ("District"), and Ranch Rock Corporation, a (*California Corporation*).

FUNDAMENTAL LICENSE TERMS

1.1 **License:** District hereby issues to Licensee a License to enter upon real property located at **Borrow Pit Santa Ana River Spreading Grounds**, as shown on the map attached hereto as Section Four and incorporated herein by this reference ("Premises"), for the purpose or activity specified in Paragraph 1.2.

1.2 **Use of Premises:** For and during the term of this License, and any extension or renewal thereof, Licensee shall use the Premises solely and exclusively for the following purpose(s) or activity (ies) as described and delineated in Section Five hereto and incorporated herein by this reference ("Scope of Work") and for ingress and egress to the Premises from the closest public street for such activities.

1.3 **Term:** This License shall commence on **June 9, 2010** ("Commencement Date") and shall continue to and terminate at 11:59 p.m. local time on **June 8, 2011** ("Expiration Date"). This License and the Licensee's rights hereunder may not be extended beyond the Expiration Date unless such extension is set forth in writing and signed by both District and the Licensee. Notwithstanding the foregoing or any other provision of this License, either District or Licensee may terminate this License with or without cause, or for any reason, at any time, by giving the other party a ten (10) days written notice of termination.

BY PLACING ITS INITIALS HERE, LICENSEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE PROVISIONS OF THIS LICENSE THAT ALLOW DISTRICT TO TERMINATE THIS LICENSE AT ANY TIME WITH OR WITHOUT CAUSE AS SET FORTH HEREINABOVE.

Licensee: Ranch Rock Corporation

1.4 **License Consideration:** As consideration for the issuance of this License, Licensee shall pay to District a License Fee specified in Section Six hereunder, in accordance with the procedures set out in Section Two (General Provisions).

1.5 **Notices and Payments:** All payments, notices and other writings required to be delivered under this License to either party shall be delivered in accordance with the provisions of Section Two ("General Provisions"), to District at the address set forth in Section Two, and to Licensee at the address set forth in this Section One.

1.6 **Attachments:** This License incorporates by reference the following Attachments to this License:

Section One: Fundamental License Terms
Section Two: General License Provisions
Section Three: Special License Provisions
Section Four: Map of the Premises
Section Five: Scope of Work
Section Six: License Fee Schedule

1.7 **Integration:** This License represents the entire understanding of District and Licensee as to the License and all other matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this License. This License supersedes and cancels any and all previous negotiations, arrangements, agreements or understandings, if any, between the parties, and none shall be used to interpret this License.

IN WITNESS WHEREOF, the parties have executed and entered into this License as of the date first set forth above.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT	RANCH ROCK , CORPORATION
By: _____	By: _____
President, Board of Directors	Name: _____
	Title: _____
APPROVED AS TO FORM: RUTAN & TUCKER, LLP.	By: _____
	Name: _____
	Title: _____
General Counsel, San Bernardino Valley Water Conservation District	Licensee Information: Ranch Rock Corporation
	Address for Notices:
	Ranch Rock Corporation
	355 North Sheridan Street, Unit 201
	Corona, CA 92880

SECTION TWO:
GENERAL LICENSE PROVISIONS

2.1 Payment of License Fee

2.1.1. Transmittal of Payments: Licensee shall make all License Fee payments, and pay all other sums due under this License, in lawful money of the United States, by check payable to "SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT," and shall personally deliver or mail all payments without any notice or demand to District at the address set forth in Paragraph 2.8.1 below. Licensee assumes all risk of loss or late payment if any payment is made by mail.

2.1.2. No Offsets: All License Fees and other sums due under this License shall be paid without offset or deduction, and shall be deemed payments on account. Neither the payment by Licensee nor the acceptance by District of any License Fee or other sum in an amount which is less than the amount due and payable pursuant to this License, nor the issuance of any statement showing as due and payable an amount less than is properly due and payable pursuant to the terms of this License, shall constitute an agreement by District modifying this License or a waiver of District's right to receive all sums provided for in this License. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord or satisfaction, and District shall accept all checks and payments from Licensee without prejudice to District's right to recover the balance of the amount due or to pursue any other remedy in this License or otherwise provided by law.

2.2 Charges for Delinquent Payment of License Fee

2.2.1. If any payment of any License Fee or any other sum due District is not received by District within ten (10) days after the due date, Licensee shall be deemed delinquent in its License Fee payment and a late charge of one and one-half percent (1.5%) of the delinquent amount, plus the sum of One Hundred Dollars (\$100.00), shall become immediately due and payable to District. An additional charge of one and one-half percent (1.5%) of such delinquent License Fee payment (excluding late charges) shall be added for each additional calendar month (or portion thereof) that the delinquent sum remains unpaid.

2.2.2. Licensee and District hereby acknowledge and agree that such late charges do not represent and shall not be deemed to be an interest payment, but that such late charges represent a fair and reasonable estimate of the costs and expenses that District will incur by reason of Licensee's late payment.

2.2.3. Acceptance by District of any delinquent License Fee payment or late charge shall in no way constitute a waiver of Licensee's default with respect to such overdue and delinquent payment, or in any way impair, prevent or restrict District from exercising any of its rights or remedies set forth in this License or otherwise provided at law.

2.3 Use of Premises

2.3.1. Conditions of Use: For and during the term of this License, and any extension or renewal thereof, Licensee's use of the Premises shall be subject to the following conditions, covenants and restrictions:

2.3.1.1 Except as provided in this License, the Premises shall be used only for the purposes specified in Paragraph 1.2 above and Section Five hereunder, and the Premises shall not be used for any other use or purpose whatsoever, without the prior written consent of District.

2.3.1.2 Lessee shall not cause, permit or suffer any Hazardous Material to be brought upon, left, used or abandoned on the Premises. For purposes of this paragraph, the term "Hazardous Material" shall mean: (i) any chemical, pollutant, contaminant, pesticide, petroleum or petroleum product or by product, radioactive substance, solid waste (hazardous or extremely hazardous), special, dangerous or toxic waste, hazardous or toxic substance, chemical or material regulated, listed, referred to, limited or prohibited under any Environmental Law, including without limitation: (i) friable or damaged asbestos, asbestos-containing material, polychlorinated biphenyls ("PCBs"), chlorinated solvents and waste oil; (ii) any "hazardous substance" or "hazardous waste" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended ("CERCLA"); or the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), as amended ("RCRA") or any Environmental Law of the State of California; and (iii) even if not prohibited, listed, limited or regulated by an Environmental Law, all pollutants, contaminants, hazardous, dangerous or toxic chemical materials, wastes or any other substances, including without limitation, any petroleum material or fractions thereof or additives thereto, any industrial process or pollution control waste (whether or not hazardous within the meaning of RCRA) which pose a hazard to the environment, or the health and safety of any person or impair the use or value of any portion of the Property. The term "Environmental Law" shall mean all applicable past, present or future federal, state and local statutes, regulations, directives, ordinances, rules, court orders, judicial and administrative decrees, arbitration awards and the common law, which pertain to environmental matters, contamination of any type whatsoever, or health and safety matters, as such have been amended, modified or supplemented from time to time (including any present and future amendments thereto and re-authorizations thereof), including, without limitation, those relating to: (i) the manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Materials; (ii) air, soil, surface, subsurface, surface water and groundwater; (iii) Releases; (iv) protection of wildlife, endangered species, wetlands or natural resources; (v) the operation and closure of underground storage tanks; (vi) health and safety of employees and other persons; and (vii) notification and record keeping requirements relating to the foregoing. Without limiting the above, Environmental Laws also include the following: (i) CERCLA; (ii) RCRA; (iii) the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended; (v) the Clean Water Act (33 U.S.C. §§1251 et seq.), as amended; (vi) the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended; (ix) the Federal Safe

Drinking Water Act (42 U.S.C. §§ 300f et seq.), as amended; (x) the Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.); (xi) the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as amended; and (xii) any state, county, municipal or local statutes, laws or ordinances similar or analogous to (including counterparts of) any of the statutes listed above.

2.3.1.3 Licensee shall not maintain, commit or permit the maintenance or commission of any waste or any nuisance (as defined in California Civil Code section 3479) on the Premises, and Licensee shall not use or permit the use of the Premises for any unlawful purpose.

2.3.1.4 District or its authorized representative shall have the right at all reasonable times to enter upon the Premises and inspect the general condition of the Premises to determine if Licensee is complying with the terms, conditions, requirements and provisions of this License.

2.3.2. Utilities and Services: Licensee shall be solely responsible for obtaining all utility service and for the payment of all utility charges, including but not limited to water and power, supplied to the Premises.

2.3.3. Permits and Approvals: Licensee shall obtain at its own sole cost and expense, any and all governmental permits, approvals, licenses or other authorizations which may be required in connection with the use of the Premises as set forth in this License, including but not limited to approvals for business licenses, zoning or use permits, or any approvals that may be required under the California Environmental Quality Act, Surface Mining Second Reclamation Act, any rules or restrictions relating to environmental protection or protection of endangered species, or other provisions of law. No approval or consent given under this License by District shall affect or limit Licensee's obligations hereunder, nor shall any approvals or consents given by District, in its capacity as a party to this License, be deemed to be approval as to compliance or conformance with any applicable governmental codes, laws, orders, rules or regulations.

2.4 Insurance: Without limiting Licensee's indemnification obligations, Licensee shall not enter or occupy the Premises until Licensee has obtained all of the insurance required herein from a company or companies acceptable to District, and Licensee shall maintain all such insurance in full force and effect at all times during the term of this License and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by District.

2.4.1. Licensee shall take out and maintain the following insurance:

2.4.1.1 Workers' Compensation and Employer's Liability Insurance: Licensee shall cover or insure under the applicable laws relating to workers' compensation insurance all of its employees working on or about the Premises, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Licensee shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars

(\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

2.4.1.2 Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of Two Million Dollars (\$2,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit.

2.4.1.3 Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

2.4.2. Endorsements: The policies of liability insurance provided for in Paragraphs 2.4.1.2 and 2.4.1.3 shall specify that this specific License is insured and that coverage for injury to participants resulting from Licensee's activities is not excluded, and shall be in a form satisfactory to District and contain the following separate endorsements:

(a) "The San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and

activities of the named insured at or from the premises of the San Bernardino Valley Water Conservation District. The coverage shall contain no special limitations on the scope of protection afforded to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers.”

(b) “This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage.”

(c) “This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the San Bernardino Valley Water Conservation District shall not be liable for the payment of premiums or assessments on this policy.”

(d) “Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives, or volunteers.”

(e) “This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.”

2.4.3. Evidence of Coverage: Licensee shall at the time of the execution of the License present to District the original policies of insurance required by this Paragraph 2.4 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein and copies of all endorsements signed by the insurer’s representative. All policies shall contain the Licensee’s name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with District. Licensee’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

2.4.4. Review of Coverage: District shall have the right at any time to review the coverage, form, and limits of insurance required under this License. If, in the sole and absolute discretion of District, the insurance provisions in this License do not provide adequate protection for District, District shall have the right to require Licensee to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Licensee shall promptly comply with any such requirement. District’s requirements shall not be unreasonable, but shall be adequate in the sole opinion of District to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

2.4.5. Deductibles: Any and all deductibles must be declared and approved by District prior to execution of this License.

2.4.6. License Contingent Upon Coverage: Notwithstanding any other provision of this License, this License shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with District.

2.5 Indemnification

2.5.1. District Not Liable: District shall not be liable at any time for any loss, damage or injury whatsoever to the person or property of any person or entity whatsoever, including but not limited to any employee, agent or contractor of Licensee, resulting from or arising out of any act or omission of Licensee or of any person or entity holding under Licensee, the physical condition or state of the Premises, or the occupancy or use of the Premises or any part thereof by or under Licensee, or any act or omission in the exercise of any right or the performance of any obligation under this License, or directly or indirectly from any state or condition of the Premises, or any part thereof.

2.5.2. Indemnification: Irrespective of any insurance carried by Licensee for the benefit of District, and notwithstanding any other provision or statement of precedence of this License to the contrary, Licensee shall indemnify and hold District, its officers, directors, employees, representatives and volunteers (collectively "District Personnel") harmless from and against any and all actions, claims, demands, judgments, attorneys fees, costs, damages to persons or property, penalties, obligations, expenses or liabilities of any kind that may be asserted or claimed by any person or entity (including, but not limited to, any employee, agent or contractor of Licensee) in any way arising out of or in connection with this License, the operations carried on by Licensee on the Premises or any lands to which Licensee has access hereunder, or the occupation or use of the Premises by Licensee or any person or entity holding under Licensee (collectively, "Claims"), whether or not there is concurrent active or passive negligence on the part of District, and/or acts for which the District would be held strictly liable, but excluding the sole active negligence or willful misconduct of District. In connection therewith:

2.5.2.1 Licensee shall defend and hold District and District Personnel harmless from any and all Claims, whether caused in whole or in part by District's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding any Claim that results from the sole active negligence or willful misconduct of District or District Personnel; and Licensee shall pay all expenses and costs, including attorneys' fees, incurred in connection therewith.

2.5.2.2 Licensee shall promptly pay any judgment rendered against Licensee or District covering any Claim, and hold and save District and District Personnel harmless therefrom, whether such Claim was caused in whole or in part by District and/or District Personnel's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding the sole active negligence and willful misconduct of District and/or District Personnel.

2.5.2.3 In the event District is made a party to any action or proceeding filed or prosecuted for or arising out of or in connection with any Claim, Licensee shall pay to District any and all costs and expenses incurred by District in any such action or proceeding, together with reasonable attorneys' fees.

2.5.2.4 All of the indemnity obligations of Licensee under this Paragraph 2.5.2, or as otherwise set forth in this License, shall survive the expiration or earlier termination of this License.

2.6 Legal Relations and Responsibilities

2.6.1. Nature of Relationship: District and Licensee understand and agree that the only relationship between them created by this License is that of Licensor and Licensee, and that this License is a license and not a lease, profit a prendre, or any other interest in the Premises, and does not create, and shall not be construed to create, any agency, partnership, joint venture, landlord-tenant or other relationship between District and Licensee.

2.6.2. Compliance with Laws: Licensee shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect the activities of Licensee under this License, or the possession or use of the Premises by Licensee, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Licensee shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect and indemnify, as required herein, District, its officers, directors, employees and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Licensee or any person or entity holding under Licensee.

2.6.3. Assignment: The License granted hereby is personal to Licensee and any assignment of said License by Licensee, voluntarily or by operation of law, shall automatically terminate this License, unless Licensee has obtained the prior written consent of District, which may be withheld, in its sole and absolute discretion, for any reason or no reason at all.

2.6.4. Acknowledgment of District's Title: Licensee hereby acknowledges the title of District in and to the Premises, including the real property fixtures and improvements existing or erected thereon, and Licensee hereby covenants and promises never to assail, contest or resist District's title to the Premises.

2.6.5. Liens: Licensee shall maintain the Premises free from and clear of any claims, obligations, liabilities, liens, encumbrances and charges, including but not limited to any claims, liens or charges arising out of or in connection with the furnishing of materials or the performance of labor on the Premises. Licensee further shall protect and indemnify District and the Premises from and hold them, and each of them, harmless against any and all such claims, obligations, liabilities, liens, encumbrances and charges.

2.6.6. Taxation: A possessory interest subject to property taxation may be created by this License. It is understood and agreed that if such a possessory interest is created, Licensee shall be responsible for the payment of all property taxes levied on such interest, and that District shall have no responsibility therefor. Licensee shall be solely responsible for any

second allotted taxes or charges that may be revised or imposed on Licensee's activities taken hereunder, including any severance or other taxes.

2.6.7. Condemnation. In the event the Premises or any portion of the Premises is acquired under the power of eminent domain, or transferred by way of negotiated agreement in lieu of, or under threat of eminent domain, District shall receive and be entitled to all just compensation that may be awarded for the taking, including but not limited to just compensation for the property taken, any damage for injury to the remainder, and damage for any loss of business goodwill, excepting only damages or compensation specifically awarded for any relocation benefits that may be available to Licensee, and any compensation for tangible personal property losses or improvements pertaining to the realty owned by Licensee, all of which shall be recoverable by Licensee.

2.6.8. District's Reservations

2.6.8.1 District hereby reserves the right to grant easements and rights-of-way for pole or tower lines for transmission of electricity, and easements, leases and rights-of-way for telephone, telegraph, telecommunication facilities, gas, water, sewer and oil lines, for roads and highways, and for other similar uses over and across the Premises at any location or locations within the Premises. In the event Licensee determines that the granting or exercise of any such easement, lease, or right-of-way significantly interferes with Licensee's possession or use of the Premises, Licensee's only remedy shall be to terminate this License upon thirty (30) days written notice to District. Licensee shall not interfere with any easements or rights-of-way pertaining to or affecting the Premises.

2.6.8.2 District hereby reserves the right to sell, transfer or otherwise dispose of any portion of the Premises at any time. In the event of such sale, transfer or disposition, and notwithstanding any other provision of this License, this License shall, upon the close of escrow or the conveyance of title, terminate as to the portions of the Premises sold, transferred or disposed of, and Licensee shall release the same from the terms of this License and from any encumbrance which results from this License, and shall promptly quit the Premises, in accordance with Sections 2.6.10 and 2.6.11 below.

2.6.8.3 District reserves the right unto itself to perform any and all work involved in protecting, replenishing and/or conserving the basin groundwater supply and any other work necessary to the functions or purposes of District, as set forth in the Water Conservation District Law of 1931, as amended, Water Code Section 74000, *et seq.*, upon any portion, or all, of the Premises, at any time. Such work may be performed without incurring any liability of any nature whatsoever to Licensee and Licensee hereby releases District from, and covenants not to sue District for, any such liability. District further reserves unto itself the rights of ingress and egress over all or any portion of the Premises.

2.6.9. Waiver of Claims: As a material part of the consideration to District under the License, Licensee hereby waives any and all claims that it may have against District during the term of this License, or any extension or renewal thereof, for any damage to goods, wares and merchandise upon or about the Premises, and for any injury to Licensee, its

employees, agents, invitees, or to third parties in or about the Premises, from any cause arising at any time.

2.6.10. Surrender of Possession: At the expiration or termination of this License, whether with or without cause, Licensee shall promptly quit and surrender the Premises in a good state of repair.

2.6.11. Disposition of Abandoned Property: If Licensee abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property left on the Premises for fifteen (15) or more days after such event shall at District's opinion, be deemed to have been abandoned and transferred to District. District shall have the right to remove and dispose of any and all such property without liability therefor to Licensee or to any person or entity claiming under Licensee, and District shall have no duty to account for such property. Licensee agrees to reimburse District for any and all costs associated with District transferring or disposing of Licensee's personal property pursuant to this Section.

2.6.12. Premises "As-Is": Licensee acknowledges that the Premises are being provided to Licensee on an "as-is" basis, and Licensee takes and occupies the Premises without reliance upon any representation by District, or any of its officers, employees, agents or representatives, or any other person, concerning the Premises, their fitness for Licensee's intended use or any other particular purpose of use, the Premises' state of title, their income-producing history, potential or capabilities, their value, or any other promise, representation or inducement not expressly set forth in this License.

2.6.13. No Representation or Warranty Concerning Premises: Licensee acknowledges that neither District, nor any of its officers, employees, agents or representatives, has made any written or oral representation, promise, or warranty, expressed or implied, concerning the Premises, their fitness for Licensee's intended use or any other purpose or use, their income producing history, potential or capabilities, their value, or any other matter not expressly set forth in this License.

2.6.14. Disputes: In the event that any action is commenced by a party to this License against the other to enforce its rights or obligations arising from this License or seeking to interpret this License, the prevailing party in such action, in addition to any other relief and recovery ordered by the court, shall be entitled to recover all statutory costs, plus reasonable attorneys' fees. Should District be named in any suit brought by any third party against Licensee in connection with or in any way arising out of Licensee's occupancy or use of the Premises under this License, Licensee shall pay to District its costs and expenses incurred in such suit, including reasonable attorneys' fees.

2.6.15. Security Measures: Licensee acknowledges that the Premises are licensed to and accepted by Licensee in an "as-is" condition, and that the License Payments and other sums payable from Licensee to District hereunder do not include the cost of any site preparation or security guard or any other security services or measures. Licensee further acknowledges that District makes no representation or warranty, express or implied, regarding the security of the Premises or the need for or propriety of any security measures at the Premises; and Licensee further acknowledges that District shall have no obligation whatsoever to provide guard service

or any other security measures. Licensee expressly assumes all responsibility for the protection and security of the Premises, Licensee, its agents, employees, invitees and property within the Premises from any and all acts of any third party.

2.6.16. No Obligation to Third Parties: Execution and issuance of this License shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, nor obligate either of the parties hereto to, any person or entity other than District and Licensee.

2.6.17. Waiver: Any waiver by any party of a breach of any provision of this License shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision hereof.

2.6.18. District's Liability on Termination: Licensee hereby waives all damages or claims for damage that may be caused by any action of District in terminating this License (either with or without cause), or taking possession of the Premises as provided in this License or at law, and Licensee waives all claims for damages to or loss of such property of Licensee as may be in or upon the Premises upon the termination of this License.

2.6.19. Copies of Reports. Licensee shall provide to District copies of all surveys, engineering information, analysis, environmental reports, tests and studies and any other information obtained or generated by Licensee in connection with Licensee's use of the Premises.

2.7 Maintenance and Repair of Premises

2.7.1. Licensee's Obligation to Maintain Premises: Licensee shall at all times during the term of this License, and any extension or renewal thereof, at its sole cost and expense, remove all trash and debris from the Premises. Licensee shall also keep and maintain in good condition and in substantial repair (all to the satisfaction of District in its sole discretion), the Premises and all appurtenances and every part thereof, including improvements of any kind erected, installed or made on or within the Premises. Licensee shall at all times in the maintenance and use of the Premises and the buildings, structures, facilities, improvements and equipment thereon, comply with all laws, ordinances and regulations pertaining thereto, and all conditions and restrictions set forth herein. Licensee expressly agrees to maintain the Premises in a safe, clean, wholesome, and sanitary condition and free of trash and debris, to the complete satisfaction of District and in compliance with all applicable laws.

2.7.2. Licensee's Default of its Maintenance Duties: In the event that Licensee fails, neglects or refuses to remove trash or debris deposited by Licensee or its invitees on the Premises or to maintain or make repairs or replacements as required by this License, District shall notify Licensee in writing of such failure or refusal. Should Licensee fail or refuse to correct such default within ten (10) days of receipt of such written notice from District, District may, but shall not be required to, itself or by contract, undertake the necessary maintenance, repair or replacements; and the cost thereof, including but not limited to the cost of labor, materials and equipment and procurement of insurance, plus an administrative fee in the amount of fifteen percent (15%) of the sum of such costs, shall be paid by Licensee to District within ten (10) days of Licensee's receipt of a statement of such costs from District. Any such

maintenance, repair or replacement by or on behalf of District shall not be deemed to be a waiver of Licensee's default under this License, and shall not in any way impair, prevent or restrict District from exercising any of its rights or remedies set forth in this License or otherwise provided at law.

2.8 Miscellaneous

2.8.1. Notices: Any notice, payment or instrument required or permitted to be given or delivered by this License may be given or delivered by personal delivery or by depositing the same in any United States mail depository, first class postage prepaid, and addressed as follows:

If to District: SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT
1630 West Redlands Blvd., Suite A
P.O. Box 1839
Redlands, California 92373
Attn: General Manager

If to Licensee: To such name and address set forth for Licensee in Section One of this License,

or such other person or address as either party may direct in writing to the other; provided, however, that such new or different person or address shall not become effective until acknowledged in writing by the party to who directed. Except where service is by personal delivery or by registered or certified mail, return receipt requested, service of any instrument or writing shall be deemed completed forty-eight (48) hours after deposit in a United States mail depository.

2.8.2. Warranty of Authority: Each officer of District and Licensee affixing his or her signature to this License warrants and represents by such signature that he or she has the full legal authority to bind his or her respective party to all of the terms, conditions and provisions of this License, that his or her respective party has the full legal right, power, capacity and authority to enter into this License and perform all of its provisions and obligations, and that no other approvals or consents are necessary in connection therewith.

2.8.3. Headings: The titles and headings of Sections and Paragraphs of this License, as herein set forth, have been inserted for the sake of convenience only, and are not to be taken, deemed or construed to be any part of the terms, covenants or conditions of this License, or to control, limit or modify any of the terms, covenants or conditions hereof.

2.8.4. Time of Essence: Time is of the essence of this License. Failure to comply with any requirement, including but not limited to any time requirement, of this License shall constitute a material breach of this License.

2.8.5. Construction and Amendment: This License shall be construed, interpreted, governed and enforced in all respects according to the laws of the State of California and as if drafted by both District and Licensee. No amendment, change or modification of this

document shall be valid unless in writing, stating that it amends, changes or modifies this License, and signed by all of the parties hereto.

2.8.6. Successors: Subject to the provisions of Paragraph 2.6.3 above, this License, and all of the terms, conditions and provisions herein, shall inure to the benefit of, and be binding upon, District, Licensee, and their respective successors and assigns.

2.8.7. Re-Entry: No entry or re-entry into the Premises by District shall be construed as an election to terminate this License, unless prior thereto or concurrently therewith written notice of intent to terminate is given by District to Licensee. District's entry into possession of the Premises without having elected to terminate shall not prevent District from making such an election and giving Licensee notice thereof.

2.8.8. Partial Invalidity: If any term, covenant, condition or provision of this License is held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way affect, impair, or invalidate any other term, covenant, condition or provision contained in this License.

2.8.9. Further Assurances: Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

2.8.10. Precedence: In the event of any conflict between Section of this License, Section One shall prevail over Sections Two, Three and Four, and Section Three shall prevail over Section Two.

2.8.11. Statutory References. All references in this Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of San Bernardino shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

[END GENERAL LICENSE PROVISIONS]

SECTION THREE:
SPECIAL LICENSE PROVISIONS

[END SPECIAL LICENSE PROVISIONS]

SECTION FOUR:
MAP OF THE PREMISES

[END MAP OF THE PREMISES]

SECTION FIVE:
SCOPE OF WORK

[TO BE INSERTED PRIOR TO AGREEMENTS ENDORSEMENTS]

[END SCOPE OF WORK]

SECTION SIX

LICENSE FEE SCHEDULE

[TO BE INSERTED PRIOR TO AGREEMENTS ENDORSEMENTS]

[END OF LICENSE FEE SCHEDULE]

MATERIAL PROCESSING LICENSE

THIS MATERIAL PROCESSING LICENSE ("License") is made and entered into as of January 27, 2010 ("Effective Date"), by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT, a California water conservation district formed and operating under the Water Conservation District Law of 1931, Water Code Section 74000, *et seq.* ("District"), and Terra-Cal Materials, Inc., (*a California corporation*) .

SECTION ONE: FUNDAMENTAL LICENSE TERMS

1.1 **License:** District hereby issues to Licensee a License to enter upon real property located on the map included as Section 4 hereto and incorporated herein by this reference ("Premises"), for the purpose or activity specified in Paragraph 1.2.

1.2 **Use of Premises:** For and during the term of this License, and any extension or renewal thereof, Licensee shall use the Premises for the following purpose(s) or activity(ies): to process previously excavated and stockpiled material located on the Premises into various aggregates, including sand, gravel and rock.

1.3 **Term:** This License shall commence on **June 9, 2010** ("Commencement Date") and subject to the provisions of paragraph 1.4 below, shall continue to and terminate at 11:59 p.m. local time on **June 8, 2011** ("Expiration Date"). This License and the Licensee's rights hereunder may not be extended beyond the Expiration Date unless such extension is set forth in writing and signed by both District and the Licensee. Notwithstanding the foregoing or any other provision of this License, either District or Licensee may terminate this License with or without cause, or for any reason, at any time, by giving the other party a ten (10) days written notice of termination.

BY PLACING ITS INITIALS HERE, LICENSEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE PROVISIONS OF THIS LICENSE THAT ALLOW DISTRICT TO TERMINATE THIS LICENSE AT ANY TIME WITH OR WITHOUT CAUSE AS SET FORTH HEREINABOVE.

Licensee: _____

1.4 **License Consideration:** As consideration for the issuance of this License, Licensee shall pay to District the sum of _____ per month ("License Fee"), in accordance with Section Two (General Provisions).

1.5 **Notices and Payments:** All payments, notices and other writings required to be delivered under this License to either party shall be delivered in accordance with the provisions of Section Two ("General Provisions") to District at the address set forth in Section Two, and to Licensee at the address set forth in this Section One.

1.6 **Attachments:** This License incorporates by reference the following Attachments to this License:

Section One: Fundamental License Terms
Section Two: General License Provisions
Section Three: Special License Provisions
Section Four: Map of the Premises

1.7 **Integration:** This License represents the entire understanding of District and Licensee as to the License and all other matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this License. This License supersedes and cancels any and all previous negotiations, arrangements, agreements or understandings, if any, between the parties, and none shall be used to interpret this License.

IN WITNESS WHEREOF, the parties have executed and entered into this License as of the date first set forth above.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT	TERRA-CAL MATERIALS, INC.
By: _____	By: _____
President, Board of Directors	Name: _____
	Title: _____
APPROVED AS TO FORM: RUTAN & TUCKER, LLP.	By: _____
	Name: _____
	Title: _____
_____ General Counsel, San Bernardino Valley Water Conservation District	Licensee Information:
	Address for Notices: 9365 Amethyst Street Mentone, CA 92359

SECTION TWO:
GENERAL LICENSE PROVISIONS

2.1 Payment of License Fee

2.1.1. Transmittal of Payments: Licensee shall make all License Fee payments on a monthly basis, and pay all other sums due under this License, in lawful money of the United States, by check payable to "SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT," and shall personally deliver or mail all payments without any notice or demand to District at the address set forth in Paragraph 2.8.1 below. Licensee assumes all risk of loss or late payment if any payment is made by mail.

2.1.2. No Offsets: All License Fees and other sums due under this License shall be paid without offset or deduction, and shall be deemed payments on account. Neither the payment by Licensee nor the acceptance by District of any License Fee or other sum in an amount which is less than the amount due and payable pursuant to this License, nor the issuance of any statement showing as due and payable an amount less than is properly due and payable pursuant to the terms of this License, shall constitute an agreement by District modifying this License or a waiver of District's right to receive all sums provided for in this License. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord or satisfaction, and District shall accept all checks and payments from Licensee without prejudice to District's right to recover the balance of the amount due or to pursue any other remedy in this License or otherwise provided by law.

2.2 Charges for Delinquent Payment of License Fee

2.2.1. If any payment of any License Fee or any other sum due District is not received by District within ten (10) days after the due date, Licensee shall be deemed delinquent in its License Fee payment and a late charge of one and one-half percent (1.5%) of the delinquent amount, plus the sum of One Hundred Dollars (\$100.00), shall become immediately due and payable to District. An additional charge of one and one-half percent (1.5%) of such delinquent License Fee payment (excluding late charges) shall be added for each additional calendar month (or portion thereof) that the delinquent sum remains unpaid.

2.2.2. Licensee and District hereby acknowledge and agree that such late charges do not represent and shall not be deemed to be an interest payment, but that such late charges represent a fair and reasonable estimate of the costs and expenses that District will incur by reason of Licensee's late payment.

2.2.3. Acceptance by District of any delinquent License Fee payment or late charge shall in no way constitute a waiver of Licensee's default with respect to such overdue and delinquent payment, or in any way impair, prevent or restrict District from exercising any of its rights or remedies set forth in this License or otherwise provided at law.

2.3 Use of Premises

2.3.1. Conditions of Use: For and during the term of this License, and any extension or renewal thereof, Licensee's use of the Premises shall be subject to the following conditions, covenants and restrictions:

2.3.1.1 Except as provided in this License, the Premises shall be used only for the purposes specified in Paragraph 1.2 above, and the Premises shall not be used for any other use or purpose whatsoever, without the prior written consent of District.

2.3.1.2 Licensee shall not cause, permit or suffer any "hazardous material," "hazardous waste," or "hazardous chemicals" as those terms are used in CERCLA (42 U.S.C. § 9601(14)) or SARA (42 U.S.C. § 11021(E)) or any Federal, State or local environmental law, statute, ordinance, regulation or order, or otherwise determined by District, to be brought upon, left, used or abandoned on the Premises.

2.3.1.3 Licensee shall not maintain, commit or permit the maintenance or commission of any waste or any nuisance (as defined in California Civil Code section 3479) on the Premises, and Licensee shall not use or permit the use of the Premises for any unlawful purpose.

2.3.1.4 District or its authorized representative shall have the right at all reasonable times to enter upon the Premises and inspect the general condition of the Premises to determine if Licensee is complying with the terms, conditions, requirements and provisions of this License.

2.3.2. Utilities and Services: Licensee shall be solely responsible for obtaining all required utility service and for the payment of all utility charges, including but not limited to water and power, supplied to the Premises.

2.3.3. Permits and Approvals: Licensee shall obtain at its own sole cost and expense, any and all governmental permits, approvals, licenses or other authorizations which may be required in connection with the use of the Premises as set forth in this License, including but not limited to approvals for business licenses, use permits, or any approvals that may be required under the California Environmental Quality Act, Surface Mining Second Reclamation Act, any rules or restrictions relating to environmental protection or protection of endangered species, or other provision of law. No approval or consent given under this License by District shall affect or limit Licensee's obligations hereunder, nor shall any approvals or consents given by District, in its capacity as a party to this License, be deemed to be approval as to compliance or conformance with any applicable governmental codes, laws, orders, rules or regulations.

2.4 Insurance: Without limiting Licensee's indemnification obligations, Licensee shall not enter or occupy the Premises until Licensee has obtained all of the insurance required herein from a company or companies acceptable to District, and Licensee shall maintain all such insurance in full force and effect at all times during the term of this License and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A-VII or equivalent or as otherwise approved by District.

2.4.1. Licensee shall take out and maintain the following insurance:

2.4.1.1 Workers' Compensation and Employer's Liability Insurance:

Licensee shall cover or insure under the applicable laws relating to workers' compensation insurance all of its employees working on or about the Premises, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Licensee shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

2.4.1.2 Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit.

2.4.1.3 Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

2.4.2. Endorsements: The policies of liability insurance provided for in Paragraphs 2.4.1.2 and 2.4.1.3 shall specify that this specific License is insured and that coverage for injury to participants resulting from Licensee's activities is not excluded, and shall be in a form satisfactory to District and contain the following separate endorsements:

(a) "The San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and activities of the named insured at or from the premises of the San Bernardino Valley Water Conservation District. The coverage shall contain no special limitations on the scope of protection afforded to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

(c) "This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the San Bernardino Valley Water Conservation District shall not be liable for the payment of premiums or assessments on this policy."

(d) "Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives, or volunteers."

(e) "This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."

2.4.3. Evidence of Coverage: Licensee shall at the time of the execution of the License present to District the original policies of insurance required by this Paragraph 2.4 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein and copies of all endorsements signed by the insurer's representative. All policies shall contain the Licensee's name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with District. Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2.4.4. Review of Coverage: District shall have the right at any time to review the coverage, form, and limits of insurance required under this License. If, in the sole and

absolute discretion of District, the insurance provisions in this License do not provide adequate protection for District, District shall have the right to require Licensee to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Licensee shall promptly comply with any such requirement. District's requirements shall not be unreasonable, but shall be adequate in the sole opinion of District to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

2.4.5. Deductibles: Any and all deductibles must be declared and approved by District prior to execution of this License.

2.4.6. License Contingent Upon Coverage: Notwithstanding any other provision of this License, this License shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with District.

2.5 Indemnification

2.5.1. District Not Liable: District shall not be liable at any time for any loss, damage or injury whatsoever to the person or property of any person or entity whatsoever, including but not limited to any employee, agent or contractor of Licensee, resulting from or arising out of any act or omission of Licensee or of any person or entity holding under Licensee, or the occupancy or use of the Premises or any part thereof by or under Licensee, or any act or omission in the exercise of any right or the performance of any obligation under this License, or directly or indirectly from any state or condition of the Premises, or any part thereof.

2.5.2. Indemnification: Irrespective of any insurance carried by Licensee for the benefit of District, and notwithstanding any other provision or statement of precedence of this License to the contrary, Licensee shall indemnify and hold District, its officers, directors, employees, representatives and volunteers (collectively "District Personnel") harmless from and against any and all actions, claims, demands, judgments, attorneys fees, costs, damages to persons or property, penalties, obligations, expenses or liabilities of any kind that may be asserted or claimed by any person or entity (including, but not limited to, any employee, agent or contractor of Licensee) in any way arising out of or in connection with this License, the operations carried on by Licensee on the Premises or any lands to which Licensee has access hereunder, or the occupation or use of the Premises by Licensee or any person or entity holding under Licensee (collectively, "Claims"), whether or not there is concurrent active or passive negligence on the part of District, and/or acts for which the District would be held strictly liable, but excluding the sole active negligence or willful misconduct of District. In connection therewith:

2.5.2.1 Licensee shall defend and hold District and District Personnel harmless from any and all Claims, whether caused in whole or in part by District's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding any Claim that results from the sole active negligence or willful misconduct of District or District Personnel; and Licensee shall pay all expenses and costs, including attorneys' fees, incurred in connection therewith.

2.5.2.2 Licensee shall promptly pay any judgment rendered against Licensee or District covering any Claim, and hold and save District and District Personnel harmless therefrom, whether such Claim was caused in whole or in part by District and/or District Personnel's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding the sole active negligence and willful misconduct of District and/or District Personnel.

2.5.2.3 In the event District is made a party to any action or proceeding filed or prosecuted for or arising out of or in connection with any Claim, Licensee shall pay to District any and all costs and expenses incurred by District in any such action or proceeding, together with reasonable attorneys' fees.

2.5.2.4 All of the indemnity obligations of Licensee under this Paragraph 2.5.2, or as otherwise set forth in this License, shall survive the expiration or earlier termination of this License.

2.6 Legal Relations and Responsibilities

2.6.1. Nature of Relationship: District and Licensee understand and agree that the only relationship between them created by this License is that of Licensors and Licensee, and that this License is a license and not a lease, profit a prendre, or any other interest in the Premises, and does not create, and shall not be construed to create, any agency, partnership, joint venture, landlord-tenant or other relationship between District and Licensee.

2.6.2. Compliance with Laws: Licensee shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect the activities of Licensee under this License, or the possession or use of the Premises by Licensee, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Licensee shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect and indemnify, as required herein, District, its officers, directors, employees and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Licensee or any person or entity holding under Licensee.

2.6.3. Assignment: The License granted hereby is personal to Licensee and any assignment of said License by Licensee, voluntarily or by operation of law, shall automatically terminate this License, unless Licensee has obtained the prior written consent of District, which may be withheld, in its sole and absolute discretion, for any reason or no reason at all.

2.6.4. Acknowledgment of District's Title: Licensee hereby acknowledges the title of District in and to the Premises, including the real property fixtures and improvements existing or erected thereon, and Licensee hereby covenants and promises never to assail, contest or resist District's title to the Premises.

2.6.5. Liens: Licensee shall maintain the Premises free from and clear of any claims, obligations, liabilities, liens, encumbrances and charges, including but not limited to any claims, liens or charges arising out of or in connection with the furnishing of materials or the performance of labor on the Premises. Licensee further shall protect and indemnify District and

the Premises from and hold them, and each of them, harmless against any and all such claims, obligations, liabilities, liens, encumbrances and charges.

2.6.6. Taxation: A possessory interest subject to property taxation may be created by this License. It is understood and agreed that if such a possessory interest is created, Licensee shall be responsible for the payment of all property taxes levied on such interest, and that District shall have no responsibility therefor. Licensee shall be solely responsible for any second allotted taxes or charges that may be revised or imposed on Licensee's activities taken hereunder, including any severance or other taxes.

2.6.7. Condemnation. In the event the Premises or any portion of the Premises is acquired under the power of eminent domain, or transferred by way of negotiated agreement in lieu of, or under threat of eminent domain, District shall receive and be entitled to all just compensation that may be awarded for the taking, including but not limited to just compensation for the property taken, any damage for injury to the remainder, and damage for any loss of business goodwill, excepting only damages or compensation specifically awarded for any relocation benefits that may be available to Licensee, and any compensation for tangible personal property losses or improvements pertaining to the realty owed by Licensee, all of which shall be recoverable by Licensee.

2.6.8. District's Reservations

2.6.8.1 District hereby reserves the right to grant easements and rights-of-way for pole or tower lines for transmission of electricity, and easements, leases and rights-of-way for telephone, telegraph, telecommunication facilities, gas, water, sewer and oil lines, for roads and highways, and for other similar uses over and across the Premises at any location or locations within the Premises. In the event Licensee determines that the granting or exercise of any such easement, lease, or right-of-way significantly interferes with Licensee's possession or use of the Premises, Licensee's only remedy shall be to terminate this License upon no less than ten (10) days written notice to District. Licensee shall not interfere with any easements or rights-of-way pertaining to or affecting the Premises.

2.6.8.2 District hereby reserves the right to sell, transfer or otherwise dispose of any portion of the Premises at any time. In the event of such sale, transfer or disposition, and notwithstanding any other provision of this License, this License shall, upon the close of escrow or the conveyance of title, terminate as to the portions of the Premises sold, transferred or disposed of, and Licensee shall release the same from the terms of this License and from any encumbrance which results from this License.

2.6.8.3 District reserves the right unto itself to perform any and all work involved in protecting, replenishing and/or conserving the basin groundwater supply and any other work necessary to the functions or purposes of District, as set forth in the Water Conservation District Law of 1931, as amended, Water Code Section 74000, *et seq.*, upon any portion or all of the Premises at any time. Such work may be performed without incurring any liability of any nature whatsoever to Licensee and Licensee hereby releases District from, and covenants not to sue District for, any such liability. District further reserves unto itself the rights of ingress and egress over all or any portion of the Premises.

2.6.8.4 This License is nonexclusive. A portion or all of the Premises may be subject to preexisting licenses and the District hereby reserves the right to issue licenses to third parties for joint usage of any portion of the Premises for any period of time during the term of this License. The District may issue such licenses without incurring any liability of any nature whatsoever to Licensee and Licensee hereby releases District from, and covenants not to sue District for, any such liability. In the event Licensee determines that the granting or exercise of any said license significantly interferes with Licensee's possession or use of the Premises, Licensee's only remedy shall be to terminate this License upon no less than ten (10) days written notice to District.

2.6.9. Surrender of Possession: At the expiration or termination of this License, whether with or without cause, Licensee shall promptly quit and surrender the Premises in a good state of repair, and shall remove any and all fixtures, structures, equipment, or fixtures placed on the Premises by Licensee, at Licensee's sole cost and expense.

2.6.10. Disposition of Abandoned Property: If Licensee abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property left on the Premises for fifteen (15) or more days after such event shall at District's option, be deemed to have been abandoned and transferred to District. District shall have the right to remove and dispose of any and all such property without liability therefor to Licensee or to any person or entity claiming under Licensee, and District shall have no duty to account for such property. Licensee agrees to reimburse District for any and all costs associated with District transferring or disposing of Licensee's personal property pursuant to this Section.

2.6.11. Premises "As-Is": Licensee acknowledges that the Premises are being provided to Licensee on an "as-is" basis, and Licensee takes and occupies the Premises without reliance upon any representation by District, or any of its officers, employees, agents or representatives, or any other person, concerning the Premises, their fitness for Licensee's intended use or any other particular purpose of use, their income-producing history, potential or capabilities, their value, or any other promise, representation or inducement not expressly set forth in this License.

2.6.12. Disputes: In the event that any action is commenced by a party to this License against the other to enforce its rights or obligations arising from this License or seeking to interpret this License, the prevailing party in such action, in addition to any other relief and recovery ordered by the court, shall be entitled to recover all statutory costs, plus reasonable attorneys' fees. Should District be named in any suit brought by any third party against Licensee in connection with or in any way arising out of Licensee's occupancy or use of the Premises under this License, Licensee shall pay to District its costs and expenses incurred in such suit, including reasonable attorneys' fees.

2.6.13. No Obligation to Third Parties: Execution and issuance of this License shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, nor obligate either of the parties hereto to, any person or entity other than District and Licensee.

2.6.14. Waiver: Any waiver by any party of a breach of any provision of this License shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision hereof.

2.6.15. District's Liability on Termination: Licensee hereby waives all damages or claims for damage that may be caused by any action of District in terminating this License (either with or without cause), or taking possession of the Premises as provided in this License or at law, and Licensee waives all claims for damages to or loss of such property of Licensee as may be in or upon the Premises upon the termination of this License.

2.7 Miscellaneous

2.7.1. Notices: Any notice, payment or instrument required or permitted to be given or delivered by this License may be given or delivered by personal delivery or by depositing the same in any United States mail depository, first class postage prepaid, and addressed as follows:

If to District: SAN BERNARDINO VALLEY WATER
 CONSERVATION DISTRICT
 1630 West Redlands Blvd., Suite A
 P.O. Box 1839
 Redlands, California 92373
 Attn: General Manager

If to Licensee: To such name and address set forth for Licensee in Part I of
 this License,

or such other person or address as either party may direct in writing to the other; provided, however, that such new or different person or address shall not become effective until acknowledged in writing by the party to who directed. Except where service is by personal delivery or by registered or certified mail, return receipt requested, service of any instrument or writing shall be deemed completed forty-eight (48) hours after deposit in a United States mail depository.

2.7.2. Warranty of Authority: Each officer of District and Licensee affixing his or her signature to this License warrants and represents by such signature that he or she has the full legal authority to bind his or her respective party to all of the terms, conditions and provisions of this License, that his or her respective party has the full legal right, power, capacity and authority to enter into this License and perform all of its provisions and obligations, and that no other approvals or consents are necessary in connection therewith.

2.7.3. Headings: The titles and headings of Sections and Paragraphs of this License, as herein set forth, have been inserted for the sake of convenience only, and are not to be taken, deemed or construed to be any part of the terms, covenants or conditions of this License, or to control, limit or modify any of the terms, covenants or conditions hereof.

2.7.4. Time of Essence: Time is of the essence of this License. Failure to comply with any requirement, including but not limited to any time requirement, of this License shall constitute a material breach of this License.

2.7.5. Construction and Amendment: This License shall be construed, interpreted, governed and enforced in all respects according to the laws of the State of California and as if drafted by both District and Licensee. No amendment, change or modification of this document shall be valid unless in writing, stating that it amends, changes or modifies this License, and signed by all of the parties hereto.

2.7.6. Successors: Subject to the provisions of Paragraph 2.6.3 above, this License, and all of the terms, conditions and provisions herein, shall inure to the benefit of, and be binding upon, District, Licensee, and their respective successors and assigns.

2.7.7. Partial Invalidity: If any term, covenant, condition or provision of this License is held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way affect, impair, or invalidate any other term, covenant, condition or provision contained in this License.

2.7.8. Further Assurances: Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

2.7.9. Precedence: In the event of any conflict between Parts of this License, Part I shall prevail over Parts II, III and IV, and Part III shall prevail over Part II.

[END GENERAL LICENSE PROVISIONS]

SECTION THREE:
SPECIAL LICENSE PROVISIONS

3.1 Processed material and/or aggregate on the Premises shall remain the property of District until such time as it is purchased pursuant to a separate agreement.

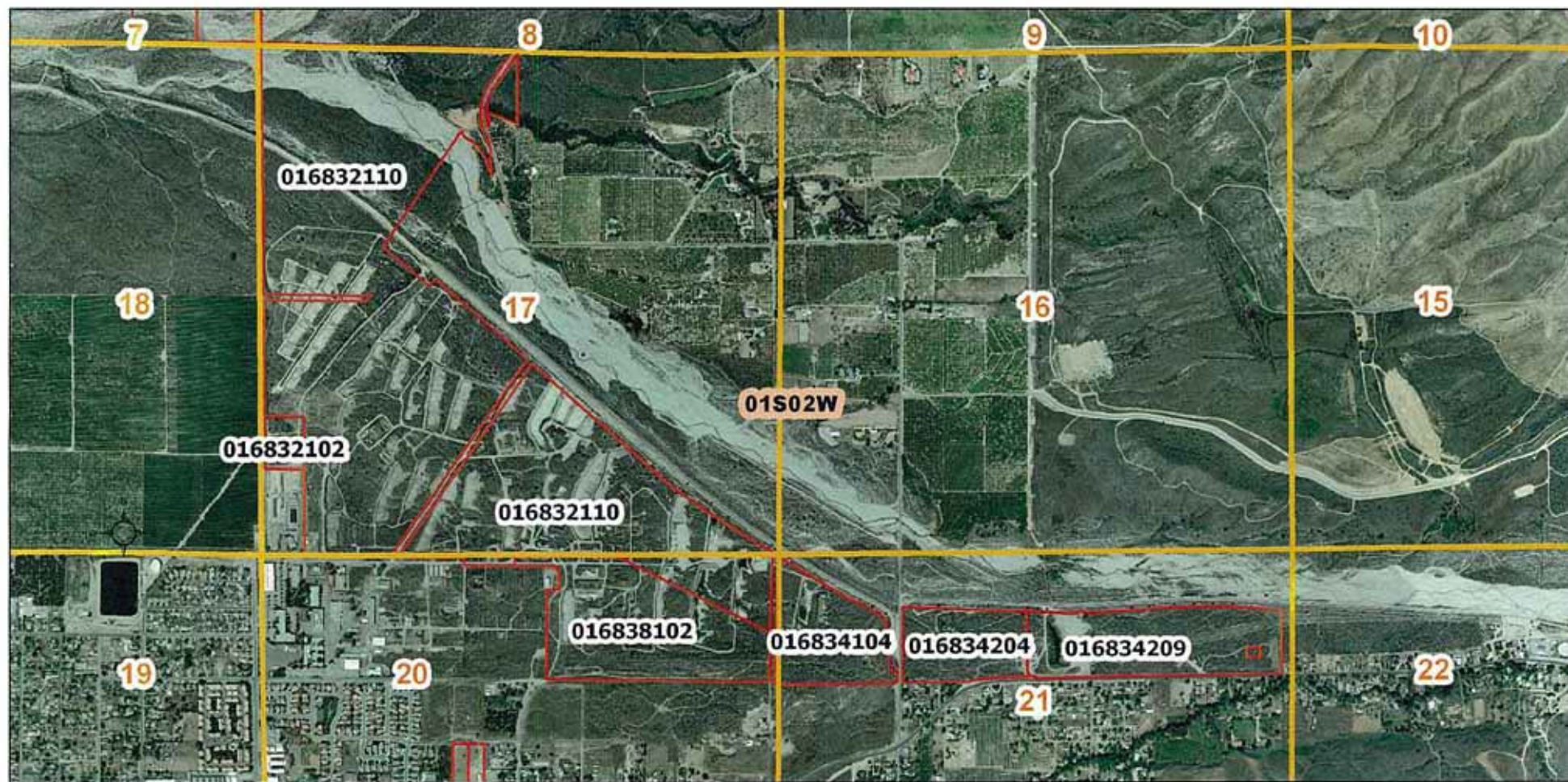
3.2 Licensee shall furnish its own equipment for the processing of material from the basins on the Premises.

3.3 Licensee shall at all times control the dust created during Licensee's use of the Premises. Dust control shall be by watering the area where dust is created and Licensee shall have a water truck on the Premises at all times to carry out the intent of this paragraph. Licensee is responsible for obtaining its own water supply at its own cost and expense.

3.4 Licensee shall not deposit material or aggregates, including sand gravel and rock, on any public roadway(s) and shall be responsible for cleaning such roadway(s) of any such material or aggregates. In the event that Licensee fails to comply with this paragraph and the responsible City or the County of San Bernardino requires the District to remove said material or aggregates, District shall invoice Licensee for any cost incurred plus 10% for administrative cost.

3.5 Licensee may only process material between the hours of 6:00 a.m. to 6 p.m., Monday through Friday, excluding holidays.

3.6 Licensee shall only process excavated and stockpiled materials from designated areas at surface grade level. Licensee shall not enter the basins to process any materials.



0 700 1,400 2,800 4,200 5,600 Feet

Data Source:
Existing Land Ownership March 2010
March 2010 Wash Plan data sources: SBVWCD
ESRI On-line Imagery Service 2009

Key

- Section Numbers within District
- District Parcels with APN for Mill Creek Area

Water Conservation District Properties near Mill Creek Recharge Area



M:\Projects\Washplan\GIS2010\LandOwnershipDistrictNearMillCreekSpreading.mxd

EXCAVATION AND MAINTENANCE AGREEMENT

THIS EXCAVATION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of _____, 2010, by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT, a special governmental district formed and operating under the Water Conservation District Law of 1931, Water Code Section 74000, *et seq.* ("District"), and Terra-Cal Materials Inc. ("Contractor").

NOW THEREFORE, the parties hereto agree as follows:

SECTION ONE: EXCAVATION SERVICES

1.1 Content of the Work. During the term of this Agreement, Contractor shall provide the excavation and maintenance services set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "Work")

1.2 Scope of Services. Contractor shall equip itself with all necessary labor, equipment and materials to perform the Work and services specified in this Agreement. Contractor warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

1.3 Defective Work. All Work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to this Agreement, or does not meet the requirements of any inspection, test, or approval, is defective. If the Work or any part thereof is found to be defective, whether or not overlooked or accepted by the District, the Contractor shall, promptly and in accordance with the written instructions of the District, correct such defective Work. The Contractor shall bear all costs for the correction and all additional direct and indirect costs the District may incur on account of defective Work, including, but not limited to, the costs of additional administrative, professional, consultant, inspection, testing, and other services. If such additional costs are incurred by the District prior to the making of final payment, a Change Order will be issued to effect a reduction in the Contract price in the amount of the District's additional costs; otherwise, the Contractor shall pay the amount to the District. The Contractor shall also bear all costs of making good all Work and the work and property of separate contractors, the District, and others that is destroyed or damaged by the Contractor's correction or removal and replacement of its defective Work.

1.4 Warranty of Title. Upon completion of all Work, Contractor shall deliver the premises to the District free from and clear of any claims, liens, encumbrances or charges. Contractor further agrees that neither it nor any person, firm or corporation furnishing any material or labor for any Work covered by the Contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of such person furnishing materials or labor under any bond given by the Contractor for their protection of any right under any law permitting such persons to look to funds due the Contractor, in the hands of the District.

1.5 Work Hours. All excavation activities at the site of the Work shall be performed during regular working hours, and the Contractor shall not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without the written consent of the Engineer. Unless otherwise specified, the Contractor shall prosecute the Work only between the hours of 7:00 a.m. and 6:00 p.m. Should the Contractor choose to work outside normal working hours, upon the consent of the Engineer, all District inspections required by the Contractor on holidays, weekends or during hours requiring overtime shall be accomplished at the sole expense of the Contractor by issuance of a deductive Change Order.

SECTION TWO: COMMENCEMENT; SUBSTANTIAL COMPLETION

2.1 Commencement Date. This Agreement shall commence as of the later of (a) the date first written above, or (b) the date on which Contractor has furnished to the District the certificates and endorsements of insurance pursuant to Section 5 below ("Commencement Date").

2.2 Completion. Contractor shall prosecute the Work diligently to completion and in all events shall substantially complete the Work within the time provided in the Scope of Work, attached in Exhibit A. ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the District. Such schedules or milestones may be included as part of Exhibit "A" attached hereto, or may be provided separately in writing to the Contractor.

SECTION THREE: AUTHORITY OF THE ENGINEER.

3.1 District Engineer is hereby designated as the representative of the District (the "Engineer"). The Engineer shall decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the Work. The Engineer shall further decide all questions which may arise as to the acceptable fulfillment of this Agreement on the part of the Contractor; and all questions as to claims and compensations.

3.2 The Engineer's decisions shall be final, and the Engineer shall have authority to enforce and make effective such decisions and to order that the Contractor carry out such decisions promptly.

SECTION FOUR: COMPENSATION.

4.1 Compensation will be determined according to the schedule and/or amounts set forth in Exhibit "C," Schedule of Compensation.

4.2 The Contractor shall, on a regular basis, and no less frequently than monthly, provide the Engineer with a progress payment request describing in detail the services performed and materials supplied in connection with the construction of the Work.

4.3 Upon receipt of each monthly progress payment request and certification of such record by the Engineer, the District will, within thirty (30) days after receipt of such request, pay to the Contractor the certified sums in accordance with Exhibit "C."

4.4 Pursuant to Public Contract Code Section 20104.50, as may be amended, whenever the Contractor properly files a request for payment, and the validity of the claim is not disputed or has been settled or agreed upon, payment of the claim by the District shall include interest at the legal rate set forth pursuant to Section 685.010 of the Code of Civil Procedure if payment has not been made by the thirtieth (30th) day after the proper submission of the claim. If a request for payment has not been properly filed at an earlier date, then the request shall be deemed to be properly filed on the next business day after the Contractor provides written notification to the District or Engineer that the Contractor accepts the final estimate as prepared by the District.

SECTION FIVE: INSURANCE.

5.1 Without limiting Contractor's indemnification obligations, Contractor shall not enter or occupy the Premises until Contractor has obtained all of the insurance required herein from a company or companies acceptable to District, and Contractor shall maintain all such insurance in full force and effect at all times during the term of this License and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A:VII or equivalent or as otherwise approved by District.

5.2 At all times this Agreement is in effect, Contractor shall take out and maintain the following insurance:

5.2.1. Workers' Compensation and Employer's Liability Insurance: Contractor shall cover or insure under the applicable laws relating to workers' compensation insurance all of its employees working on or about the Premises, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof, as may be amended. Contractor shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

5.2.2. Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of Two Million Dollars (\$2,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit.

5.2.3. Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

5.2.4. Builder's Risk Insurance: Until the completion and final acceptance by the District of all the work under and implied by this agreement, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by Contractor's activities hereunder. The Contractor shall provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work arising from, or attributable to, Contractor's performance or nonperformance of the Work specified in the General Conditions, to insure against such losses until final acceptance of the Work by the District. Such insurance shall insure at least against the perils of fire and extended coverage, theft, vandalism and malicious mischief, and collapse. The District, its directors, officers, employees, and authorized volunteers shall be named insureds on any such policy. The making of progress payments to the Contractor shall not be construed as creating an insurable interest by or for the District or be construed as relieving the contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

5.3 Endorsements: The policies of liability insurance provided for in Paragraphs 6.2.2 through 6.2.4 shall specify that this specific Agreement is insured and that coverage for injury to participants resulting from Contractor's activities is not excluded, and shall be in a form satisfactory to District and contain the following separate endorsements:

(a) "The San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and activities of the named insured at or from the premises of the San Bernardino Valley Water Conservation District. The coverage shall contain no special limitations on the scope of protection afforded to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) “This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage.”

(c) “This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the San Bernardino Valley Water Conservation District shall not be liable for the payment of premiums or assessments on this policy.”

(d) “Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives, or volunteers.”

(e) “This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.”

5.4 Evidence of Coverage: Contractor shall at the time of the execution of the Agreement present to District the original policies of insurance required by this Section 5 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein and copies of all endorsements signed by the insurer’s representative. All policies shall contain the Contractor’s name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with District. Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

5.5 Review of Coverage: District shall have the right at any time to review the coverage, form, and limits of insurance required under this Agreement. If, in the sole and absolute discretion of District, the insurance provisions in this Agreement do not provide adequate protection for District, District shall have the right to require Contractor to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Contractor shall promptly comply with any such requirement. District’s requirements shall not be unreasonable, but shall be adequate in the sole opinion of District to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

5.6 Deductibles: Any and all deductibles must be declared and approved by District prior to execution of this Agreement.

5.7 Agreement Contingent Upon Coverage: Notwithstanding any other provision of this Agreement, this Agreement shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with District.

5.8 Workers' Compensation Insurance. By his/her signature hereunder, Contractor certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, as may be amended, 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 he/she will comply with such provisions before commencing the performance of the work of this Agreement. Contractors and subcontractors will keep Workers' Compensation Insurance for their employees in effect during all work covered by this Agreement. In the event Contractor has no employees requiring Contractor to provide Workers' Compensation Insurance, Contractor shall so certify to the District in writing prior to the District's execution of this Agreement. The District shall not be responsible for any claims in law or equity occasioned by failure of the Contractor to comply with this section or with the provisions of law relating to Worker's Compensation.

SECTION SIX: LIABILITY AND INDEMNIFICATION.

6.1 District Not Liable. The District and District Personnel shall not be answerable or accountable in any manner, either individually or collectively, for any loss or damage that may happen to the Work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either workers, employees of Contractor or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Contractor shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work, except the sole active negligence or willful misconduct of District, its agents, servants or independent contractors who are directly responsible to District, or persons trespassing or otherwise accessing District's property illegally, or without permission of the District..

6.2 Contractor Indemnity. The Contractor shall indemnify, defend, and hold the District and District Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorneys' fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (hereinafter, collectively, "Claims") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of the Contractor, its employees, agents, representatives or subcontractors in the performance of any tasks or services for or on behalf of the District, whether or not there is concurrent active or passive negligence on the part of District and/or District Personnel, but excluding such Claims arising from the sole active negligence or willful misconduct of the District and/or District Personnel. In connection therewith:

6.2.1. The Contractor shall defend any action or actions filed in connection with any such Claims, and shall pay all costs and expenses, including attorneys' fees incurred in connection therewith.

6.2.2. The Contractor shall promptly pay any judgment rendered against the District and/or District Personnel for any such Claims.

6.2.3. In the event the District and/or District Personnel is made a party to any action or proceeding filed or prosecuted for any such Claims arising out of or in connection with

the negligent performance or a failure to perform the work or activities of the Contractor, the Contractor shall pay to the District any and all costs and expenses incurred by the District and/or District Personnel in such action or proceeding, including but not limited to reasonable attorneys' fees and expert witness fees.

SECTION SEVEN: LEGAL RELATIONS AND RESPONSIBILITIES.

7.1 Observing Laws and Ordinances. The Contractor shall keep itself fully informed of all existing and future state and federal laws and all city, county and District ordinances and regulations which in any manner affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over same. Unless otherwise specifically provided to the contrary in the description of the Work provided in Exhibit "A", Contractor shall pay prevailing wage for all construction activity undertaken hereunder, and shall assume full responsibility to assure subcontractors and all other persons working by or through Contractor do the same. If any discrepancy or inconsistency is discovered in this Agreement in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall at all times observe and comply with and shall cause all its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect, indemnify and defend the District and District Personnel, and all of their respective officers, employees, and representatives against any claim or assertion of liability, or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor or by its agents, representatives, employees, or Subcontractors.

7.2 Taxes. The Contractor shall pay all applicable payroll, business license, possessory, interest and sales and use and all other applicable taxes assessed by Federal, State and local authorities on materials furnished by Contractor or in any way connected with or arising out of Contractor's in performance of the Work. Changes in such taxes shall not be justification for an adjustment to the compensation due Contractor under this Agreement.

7.3 Assignment Prohibited. The Contractor shall not assign, hypothecate, or otherwise transfer this Agreement or any portion hereof, without first obtaining the written consent of the District. If any such assignment, hypothecation, or transfer is made or attempted by the Contractor, the assignment, hypothecation, or transfer shall be void; and the District, at its sole option, may terminate this Agreement upon written notice to the Contractor.

7.4 Performance. If the Contractor should neglect to prosecute the Work properly, or fail to perform any provision of this Agreement, the District, after five (5) days written notice to the Contractor, may without prejudice to any other remedy the District may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, provided, however, that the Engineer shall approve such action and certify the amount thereof to be charged to the Contractor.

7.5 Permits and Licenses. Unless otherwise specified in the Agreement, the Contractor shall procure all permits and licenses, pay all charges and fees, and give all notice necessary and incident to the due and lawful prosecution of the Work. The Contractor shall comply with all provisions of all permits whether obtained by the District or by the Contractor. Fines, fees or

penalties incurred by the Contractor due to violation of any permit shall not be justification for an adjustment to the Agreement.

7.6 Contractor is Independent Contractor. It is expressly understood and agreed that the Contractor herein named in the furnishing of all services, labor, materials and equipment and performing the work as provided in this Agreement is acting as an independent contractor and not as an agent, servant or employee of the District.

7.7 Non-liability of District Officers and Employees. No officer or employee of the District shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the District or for any amount that may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

7.8 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.9 Waiver. No delay or omission in the exercise of any right or remedy of a non defaulting party on any default shall impair such right or remedy or be construed as a waiver. District's consent or approval of any act by Contractor requiring District's consent or approval shall not be deemed to waive or render unnecessary District's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.10 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.11 Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

SECTION EIGHT: SAFETY.

8.1 The Contractor shall execute and maintain his/her work so as to avoid injury or damage to any person or property. The Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work.

8.2 In carrying out his/her work, the Contractor shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions

under which the work is to be performed, and be in compliance with all applicable federal, state and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act.

8.3 The Contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning any required grading, trenching, excavation, or digging work, the Contractor shall call the Underground Service Alert (USA) in order to determine the location of sub-structures. The Contractor shall immediately notify the District and the utility owner if he/she disturbs, disconnects, or damages any utility.

8.4 In accordance with Section 6705 of the California Labor Code, as may be amended, the Contractor shall submit to the District specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by the District prior to starting excavation.

SECTION NINE: TERMINATION OF THE AGREEMENT.

9.1 Termination by District for Cause. If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with this Agreement, the District may give written notice that the District intends to terminate this Agreement. If the Contractor fails to correct the defaults, failure or neglect within seven (7) days after being given written notice, the District may then give a second written notice and, after an additional seven (7) days, the District may without prejudice to any other remedy make good such deficiencies and may deduct the cost thereof from the payment due the Contractor or, at the District's option, may terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon and finish the Work by whatever method the District may deem expedient. The District further may seek recourse against the Faithful Performance Bond issued by the Contractor and its surety.

9.2 Termination by District Without Cause. In addition to termination under Article 9.1, District may terminate this Agreement without cause upon thirty (30) days written notice to Contractor. Upon such termination, District shall reimburse the Contractor for any unpaid portions of the Contract Price due it under Section 4 for the Work to date of termination including all reasonable costs of demobilization. In addition, District shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the District, for any equipment retained.

SECTION TEN: LABOR CODE OF CALIFORNIA.

The Contractor's attention is directed to Division 2, Part 7, Chapter 1 of the Labor Code of the State of California and especially to Article 2 (Wages) and Article 3 (Working Hours) thereof. This work requires the payment of prevailing wages in accordance with Labor Code section 1720 *et seq.*, as may be amended.

SECTION ELEVEN: CHANGES IN THE PROJECT.

11.1 Change Orders. Any Work not contained in Exhibit "A," Scope of Work, shall be a change and shall be performed by Contractor only pursuant to a written Change Order to this Agreement, signed by the District and Contractor. Such a Change Order may increase or decrease the Work within the general scope of this Agreement. If this Change Order causes an increase in the cost of the Work, or of the time required for the performance of the Work, Contractor shall be paid a lump sum acceptable to both parties and/or granted an extension of the schedule.

11.2 In the event the District requests Contractor to develop information necessary for the consideration of a change in the Project, and such a change is not adopted, the District shall reimburse Contractor for the costs which Contractor incurs in connection with such efforts.

11.3 Differing Site Conditions. Pursuant to Section 7104 of the California Public Contract Code, as may be amended, the provisions of this paragraph shall apply whenever the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface.

11.3.1. The Contractor shall promptly, on the date of discovery (verbally) and within one (1) day (in writing), and before the following conditions are disturbed, notify the District, in writing, of any:

(a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;

(b) Subsurface or latent physical conditions at the site differing from those indicated; or

(c) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

11.3.2. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in this Agreement.

11.3.3. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under the Agreement. The Contractor shall retain any and all rights provided either by this Agreement or by law, which pertain to the resolution of disputes and protests between the contracting parties.

11.3.4. If the Contractor intends to assert a claim for equitable adjustment under this paragraph, it must, within twenty (20) days after receipt of a determination from the Engineer as to whether a differing site condition exists, submit a written statement setting forth the nature and monetary extent of such claim and all factual grounds. Failure to comply with the notice requirement shall be deemed waiver of claim by the Contractor. The Contractor shall, within forty five (45) days after overcoming the differing site condition, file with the Engineer its complete claim, including all costs and all time requested.

11.3.5. No claim of the Contractor under this section shall be allowed if asserted after final payment under this contract.

SECTION TWELVE: MISCELLANEOUS

12.1 Notices. Any notice, demand, request, consent, approval, communication either party desires or is required to give the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch.

To District: San Bernardino Valley Water Conservation District
 Attention: District Engineer
 1630 West Redlands Blvd., Suite A
 P.O. Box 1839
 Redlands, California 92373

To Contractor: Terra-Cal Materials, Inc.
 9365 Amethyst
 Mentone, CA 92359

12.2 Severability. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way affect, impair, or invalidate any other term, covenant, or condition, or provision contained in this Agreement.

12.3 Integration; Amendment. This Agreement contains the entire understanding of the parties herein and supersedes any and all other written or oral understandings as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered thereby. No amendment, change or modification of this Agreement shall be valid unless in writing, stating that it amends, changes or modifies this Agreement, and signed by all the parties hereto.

12.4 Statutory References. All references in this Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of San Bernardino shall be deemed to include the same statute, regulation, ordinance or resolution

as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

12.5 Special Provisions. Any special provisions applicable to this Agreement are set forth in Exhibit "B", attached hereto and incorporated herein by this reference. In the event of any discrepancy between the provisions of this Agreement and the Special Provisions, Special Provisions shall take precedence and prevail.

[SIGNATURES BEGIN ON NEXT PAGE]

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

DISTRICT:

**SAN BERNARDINO VALLEY WATER
CONSERVATION DISTRICT**

APPROVED AS TO FORM

By: _____

General Counsel, San Bernardino
Valley Water Conservation District

By: _____

President, Board of Directors

CONTRACTOR:

Terra-Cal Materials, Inc.

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT A

CONTENT OF THE WORK

Contractor shall excavate material from District's existing water spreading basins and stockpile severed mineral and aggregate deposits on areas within the Premises as follows:

Clean, remove, extract exposed native residue coated rock and sand mineral aggregates that line the surface of designated spreading basins to allow increased percolation of adjacent stream flows. Rock and sand materials shall be stockpiled adjacent to the spreading basin for handling by others at a later date. Basins shall be cleaned as directed by the District Engineer or District Manager.

Contractor's activities shall be limited to excavations within District's existing spreading basins, designated as follows:

[SEE ATTACH MAP: MILL CREEK, T1SR2W, SEC 17, Parcels 016832102, 016832110; SEC 20, Parcel 016838102; SEC 21, Parcels 016834104, 016834204, 016834209]

All of the Work performed by Contractor hereunder shall be consistent with District's specifications and maintenance program for such basins. The basins' surface dimensions shall not be enlarged or expanded, except as specifically authorized in writing by the District's Engineer, , although they may be deepened or otherwise contoured as a result of the removal of rock, silt, sediment, or other debris. Stockpile areas shall be subject to the prior written approval of District, and shall not impede or otherwise interfere with District's water conservation activities on the Premises. Contractor shall have the right of reasonable ingress or egress from the premises to perform its activities authorized hereunder, and to bring on such equipment as Licensee, in its reasonable discretion, determines is required for the effective and efficient accomplishment of same.

Contractor's Work shall be completed in accordance with the following Schedule:

Work shall commence no sooner than the final acceptance dates by both the District and the Contractor of all the District materials and property usage contracts. Work may continue as spreading basin cleaning needs are dictated by the District Representative until the termination date of this contract.

Unless otherwise provided in a "Material Processing License" between Contractor and District, District shall have and at all times retain title to, and full ownership of, all sand, gravel, rock, silt, and other material excavated as a result of the Work to be performed by Contractor pursuant to this Agreement. Only such material as is previously identified by District for disposal or removal shall be taken by Contractor from the areas of the Work. All other materials shall be stockpiled or otherwise placed on areas as designated by the District. Except for such materials designated by District for disposal by Contractor, in no event shall any material from the Work to be performed hereunder be processed, sold, bartered, traded for value, donated or given away, or otherwise taken by Contractor.

EXHIBIT B

SPECIAL PROVISIONS

1. Contractor shall at all times control the dust created during Contractor's use of the Premises. Dust control shall be by watering the area where dust is created and Contractor shall have a water truck on the Premises at all times to carry out the intent of this paragraph.

2. Contractor shall not deposit material or dirt on any public roadway(s) and shall be responsible for cleaning such roadway(s) of any such material or dirt. In the event that Contractor fails to comply with this paragraph and the responsible City or the County of San Bernardino requires the District to remove said material or dirt, a Change Order will be issued to effect a reduction in the Contract price in the amount of the cost incurred plus 10% for administrative cost; otherwise, the Contractor shall pay the amount to the District.

3. Unless otherwise provided in a "Material Processing License" between Contractor and District, excavated and stockpiled material on the Premises shall remain the property of District.

TEMPORARY ACCESS LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is made and entered into as of June 9, 2010, by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT, a special governmental district formed and operating under the Water Conservation District Law of 1931, Water Code Section 74000, *et seq.* ("District"), and JDM Excavation, a (sole proprietorship) ("Licensee").

SECTION ONE: FUNDAMENTAL LICENSE TERMS

1.1 **License:** District hereby issues to Licensee a License to enter upon real property located at **Mill Creek Spreading Grounds**, as shown on the map attached hereto as Section Four and incorporated herein by this reference ("Premises"), for the purpose or activity specified in Paragraph 1.2.

1.2 **Use of Premises:** For and during the term of this License, and any extension or renewal thereof, Licensee shall use the Premises solely and exclusively for the following purpose(s) or activity (ies) as described and delineated in Section Five hereto and incorporated herein by this reference ("Scope of Work") and for ingress and egress to the Premises from the closest public street for such activities.

1.3 **Term:** This License shall commence on **June 9, 2010** ("Commencement Date") and shall continue to and terminate at 11:59 p.m. local time on **June 8, 2011** ("Expiration Date"). This License and the Licensee's rights hereunder may not be extended beyond the Expiration Date unless such extension is set forth in writing and signed by both District and the Licensee. Notwithstanding the foregoing or any other provision of this License, either District or Licensee may terminate this License with or without cause, or for any reason, at any time, by giving the other party a ten (10) days written notice of termination.

BY PLACING ITS INITIALS HERE, LICENSEE ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE PROVISIONS OF THIS LICENSE THAT ALLOW DISTRICT TO TERMINATE THIS LICENSE AT ANY TIME WITH OR WITHOUT CAUSE AS SET FORTH HEREINABOVE.

Licensee: TERRA-CAL EXCAVATION INC.

1.4 **License Consideration:** As consideration for the issuance of this License, Licensee shall pay to District a License Fee specified in Section Six hereunder, in accordance with the procedures set out in Section Two (General Provisions).

1.5 **Notices and Payments:** All payments, notices and other writings required to be delivered under this License to either party shall be delivered in accordance with the provisions of Section Two ("General Provisions"), to District at the address set forth in Section Two, and to Licensee at the address set forth in this Section One.

1.6 **Attachments:** This License incorporates by reference the following Attachments to this License:

Section One: Fundamental License Terms
Section Two: General License Provisions
Section Three: Special License Provisions
Section Four: Map of the Premises
Section Five: Scope of Work
Section Six: License Fee Schedule

1.7 **Integration:** This License represents the entire understanding of District and Licensee as to the License and all other matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this License. This License supersedes and cancels any and all previous negotiations, arrangements, agreements or understandings, if any, between the parties, and none shall be used to interpret this License.

IN WITNESS WHEREOF, the parties have executed and entered into this License as of the date first set forth above.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT	<i>TERRA-CAL Excavation, Inc.</i>
By: _____	By: _____
President, Board of Directors	Name: _____
	Title: _____
APPROVED AS TO FORM: RUTAN & TUCKER, LLP.	By: _____
	Name: _____
	Title: _____
	Licensee Information: JDM Excavation
General Counsel, San Bernardino Valley Water Conservation District	Address for Notices:
	Terra-Cal Excavation, Inc.
	9365 Amethyst
	Mentone, CA 92359

SECTION TWO:
GENERAL LICENSE PROVISIONS

2.1 Payment of License Fee

2.1.1. Transmittal of Payments: Licensee shall make all License Fee payments, and pay all other sums due under this License, in lawful money of the United States, by check payable to "SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT," and shall personally deliver or mail all payments without any notice or demand to District at the address set forth in Paragraph 2.8.1 below. Licensee assumes all risk of loss or late payment if any payment is made by mail.

2.1.2. No Offsets: All License Fees and other sums due under this License shall be paid without offset or deduction, and shall be deemed payments on account. Neither the payment by Licensee nor the acceptance by District of any License Fee or other sum in an amount which is less than the amount due and payable pursuant to this License, nor the issuance of any statement showing as due and payable an amount less than is properly due and payable pursuant to the terms of this License, shall constitute an agreement by District modifying this License or a waiver of District's right to receive all sums provided for in this License. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord or satisfaction, and District shall accept all checks and payments from Licensee without prejudice to District's right to recover the balance of the amount due or to pursue any other remedy in this License or otherwise provided by law.

2.2 Charges for Delinquent Payment of License Fee

2.2.1. If any payment of any License Fee or any other sum due District is not received by District within ten (10) days after the due date, Licensee shall be deemed delinquent in its License Fee payment and a late charge of one and one-half percent (1.5%) of the delinquent amount, plus the sum of One Hundred Dollars (\$100.00), shall become immediately due and payable to District. An additional charge of one and one-half percent (1.5%) of such delinquent License Fee payment (excluding late charges) shall be added for each additional calendar month (or portion thereof) that the delinquent sum remains unpaid.

2.2.2. Licensee and District hereby acknowledge and agree that such late charges do not represent and shall not be deemed to be an interest payment, but that such late charges represent a fair and reasonable estimate of the costs and expenses that District will incur by reason of Licensee's late payment.

2.2.3. Acceptance by District of any delinquent License Fee payment or late charge shall in no way constitute a waiver of Licensee's default with respect to such overdue and delinquent payment, or in any way impair, prevent or restrict District from exercising any of its rights or remedies set forth in this License or otherwise provided at law.

2.3 Use of Premises

2.3.1. Conditions of Use: For and during the term of this License, and any extension or renewal thereof, Licensee's use of the Premises shall be subject to the following conditions, covenants and restrictions:

2.3.1.1 Except as provided in this License, the Premises shall be used only for the purposes specified in Paragraph 1.2 above and Section Five hereunder, and the Premises shall not be used for any other use or purpose whatsoever, without the prior written consent of District.

2.3.1.2 Lessee shall not cause, permit or suffer any Hazardous Material to be brought upon, left, used or abandoned on the Premises. For purposes of this paragraph, the term "Hazardous Material" shall mean: (i) any chemical, pollutant, contaminant, pesticide, petroleum or petroleum product or by product, radioactive substance, solid waste (hazardous or extremely hazardous), special, dangerous or toxic waste, hazardous or toxic substance, chemical or material regulated, listed, referred to, limited or prohibited under any Environmental Law, including without limitation: (i) friable or damaged asbestos, asbestos-containing material, polychlorinated biphenyls ("PCBs"), chlorinated solvents and waste oil; (ii) any "hazardous substance" or "hazardous waste" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended ("CERCLA"); or the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), as amended ("RCRA") or any Environmental Law of the State of California; and (iii) even if not prohibited, listed, limited or regulated by an Environmental Law, all pollutants, contaminants, hazardous, dangerous or toxic chemical materials, wastes or any other substances, including without limitation, any petroleum material or fractions thereof or additives thereto, any industrial process or pollution control waste (whether or not hazardous within the meaning of RCRA) which pose a hazard to the environment, or the health and safety of any person or impair the use or value of any portion of the Property. The term "Environmental Law" shall mean all applicable past, present or future federal, state and local statutes, regulations, directives, ordinances, rules, court orders, judicial and administrative decrees, arbitration awards and the common law, which pertain to environmental matters, contamination of any type whatsoever, or health and safety matters, as such have been amended, modified or supplemented from time to time (including any present and future amendments thereto and re-authorizations thereof), including, without limitation, those relating to: (i) the manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Materials; (ii) air, soil, surface, subsurface, surface water and groundwater; (iii) Releases; (iv) protection of wildlife, endangered species, wetlands or natural resources; (v) the operation and closure of underground storage tanks; (vi) health and safety of employees and other persons; and (vii) notification and record keeping requirements relating to the foregoing. Without limiting the above, Environmental Laws also include the following: (i) CERCLA; (ii) RCRA; (iii) the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended; (v) the Clean Water Act (33 U.S.C. §§1251 et seq.), as amended; (vi) the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended; (ix) the Federal Safe

Drinking Water Act (42 U.S.C. §§ 300f et seq.), as amended; (x) the Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.); (xi) the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as amended; and (xii) any state, county, municipal or local statutes, laws or ordinances similar or analogous to (including counterparts of) any of the statutes listed above.

2.3.1.3 Licensee shall not maintain, commit or permit the maintenance or commission of any waste or any nuisance (as defined in California Civil Code section 3479) on the Premises, and Licensee shall not use or permit the use of the Premises for any unlawful purpose.

2.3.1.4 District or its authorized representative shall have the right at all reasonable times to enter upon the Premises and inspect the general condition of the Premises to determine if Licensee is complying with the terms, conditions, requirements and provisions of this License.

2.3.2. Utilities and Services: Licensee shall be solely responsible for obtaining all utility service and for the payment of all utility charges, including but not limited to water and power, supplied to the Premises.

2.3.3. Permits and Approvals: Licensee shall obtain at its own sole cost and expense, any and all governmental permits, approvals, licenses or other authorizations which may be required in connection with the use of the Premises as set forth in this License, including but not limited to approvals for business licenses, zoning or use permits, or any approvals that may be required under the California Environmental Quality Act, Surface Mining Second Reclamation Act, any rules or restrictions relating to environmental protection or protection of endangered species, or other provisions of law. No approval or consent given under this License by District shall affect or limit Licensee's obligations hereunder, nor shall any approvals or consents given by District, in its capacity as a party to this License, be deemed to be approval as to compliance or conformance with any applicable governmental codes, laws, orders, rules or regulations.

2.4 Insurance: Without limiting Licensee's indemnification obligations, Licensee shall not enter or occupy the Premises until Licensee has obtained all of the insurance required herein from a company or companies acceptable to District, and Licensee shall maintain all such insurance in full force and effect at all times during the term of this License and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A-VII or equivalent or as otherwise approved by District.

2.4.1. Licensee shall take out and maintain the following insurance:

2.4.1.1 Workers' Compensation and Employer's Liability Insurance: Licensee shall cover or insure under the applicable laws relating to workers' compensation insurance all of its employees working on or about the Premises, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Licensee shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars

(\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage."

2.4.1.2 Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of Two Million Dollars (\$2,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to District), or the general aggregate limit shall be twice the required occurrence limit.

2.4.1.3 Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

2.4.2. Endorsements: The policies of liability insurance provided for in Paragraphs 2.4.1.2 and 2.4.1.3 shall specify that this specific License is insured and that coverage for injury to participants resulting from Licensee's activities is not excluded, and shall be in a form satisfactory to District and contain the following separate endorsements:

(a) "The San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and

activities of the named insured at or from the premises of the San Bernardino Valley Water Conservation District. The coverage shall contain no special limitations on the scope of protection afforded to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives and volunteers.”

(b) “This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the San Bernardino Valley Water Conservation District of a written notice of such cancellation, limitation or reduction of coverage.”

(c) “This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the San Bernardino Valley Water Conservation District shall not be liable for the payment of premiums or assessments on this policy.”

(d) “Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the San Bernardino Valley Water Conservation District, its officers, directors, employees, representatives, or volunteers.”

(e) “This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.”

2.4.3. Evidence of Coverage: Licensee shall at the time of the execution of the License present to District the original policies of insurance required by this Paragraph 2.4 or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein and copies of all endorsements signed by the insurer’s representative. All policies shall contain the Licensee’s name and location of the Premises on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with District. Licensee’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

2.4.4. Review of Coverage: District shall have the right at any time to review the coverage, form, and limits of insurance required under this License. If, in the sole and absolute discretion of District, the insurance provisions in this License do not provide adequate protection for District, District shall have the right to require Licensee to obtain insurance sufficient in coverage, form and limits to provide adequate protection and Licensee shall promptly comply with any such requirement. District’s requirements shall not be unreasonable, but shall be adequate in the sole opinion of District to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

2.4.5. Deductibles: Any and all deductibles must be declared and approved by District prior to execution of this License.

2.4.6. License Contingent Upon Coverage: Notwithstanding any other provision of this License, this License shall be null and void at all times when the above-referenced original policies of insurance or Certificate of Insurance or Renewal Certificates or Endorsements are not on file with District.

2.5 Indemnification

2.5.1. District Not Liable: District shall not be liable at any time for any loss, damage or injury whatsoever to the person or property of any person or entity whatsoever, including but not limited to any employee, agent or contractor of Licensee, resulting from or arising out of any act or omission of Licensee or of any person or entity holding under Licensee, the physical condition or state of the Premises, or the occupancy or use of the Premises or any part thereof by or under Licensee, or any act or omission in the exercise of any right or the performance of any obligation under this License, or directly or indirectly from any state or condition of the Premises, or any part thereof.

2.5.2. Indemnification: Irrespective of any insurance carried by Licensee for the benefit of District, and notwithstanding any other provision or statement of precedence of this License to the contrary, Licensee shall indemnify and hold District, its officers, directors, employees, representatives and volunteers (collectively "District Personnel") harmless from and against any and all actions, claims, demands, judgments, attorneys fees, costs, damages to persons or property, penalties, obligations, expenses or liabilities of any kind that may be asserted or claimed by any person or entity (including, but not limited to, any employee, agent or contractor of Licensee) in any way arising out of or in connection with this License, the operations carried on by Licensee on the Premises or any lands to which Licensee has access hereunder, or the occupation or use of the Premises by Licensee or any person or entity holding under Licensee (collectively, "Claims"), whether or not there is concurrent active or passive negligence on the part of District, and/or acts for which the District would be held strictly liable, but excluding the sole active negligence or willful misconduct of District. In connection therewith:

2.5.2.1 Licensee shall defend and hold District and District Personnel harmless from any and all Claims, whether caused in whole or in part by District's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding any Claim that results from the sole active negligence or willful misconduct of District or District Personnel; and Licensee shall pay all expenses and costs, including attorneys' fees, incurred in connection therewith.

2.5.2.2 Licensee shall promptly pay any judgment rendered against Licensee or District covering any Claim, and hold and save District and District Personnel harmless therefrom, whether such Claim was caused in whole or in part by District and/or District Personnel's active or passive negligence, and/or acts for which District and/or District Personnel would be held strictly liable, but excluding the sole active negligence and willful misconduct of District and/or District Personnel.

2.5.2.3 In the event District is made a party to any action or proceeding filed or prosecuted for or arising out of or in connection with any Claim, Licensee shall pay to District any and all costs and expenses incurred by District in any such action or proceeding, together with reasonable attorneys' fees.

2.5.2.4 All of the indemnity obligations of Licensee under this Paragraph 2.5.2, or as otherwise set forth in this License, shall survive the expiration or earlier termination of this License.

2.6 Legal Relations and Responsibilities

2.6.1. Nature of Relationship: District and Licensee understand and agree that the only relationship between them created by this License is that of Licensors and Licensee, and that this License is a license and not a lease, profit a prendre, or any other interest in the Premises, and does not create, and shall not be construed to create, any agency, partnership, joint venture, landlord-tenant or other relationship between District and Licensee.

2.6.2. Compliance with Laws: Licensee shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect the activities of Licensee under this License, or the possession or use of the Premises by Licensee, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Licensee shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees, and shall protect and indemnify, as required herein, District, its officers, directors, employees and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Licensee or any person or entity holding under Licensee.

2.6.3. Assignment: The License granted hereby is personal to Licensee and any assignment of said License by Licensee, voluntarily or by operation of law, shall automatically terminate this License, unless Licensee has obtained the prior written consent of District, which may be withheld, in its sole and absolute discretion, for any reason or no reason at all.

2.6.4. Acknowledgment of District's Title: Licensee hereby acknowledges the title of District in and to the Premises, including the real property fixtures and improvements existing or erected thereon, and Licensee hereby covenants and promises never to assail, contest or resist District's title to the Premises.

2.6.5. Liens: Licensee shall maintain the Premises free from and clear of any claims, obligations, liabilities, liens, encumbrances and charges, including but not limited to any claims, liens or charges arising out of or in connection with the furnishing of materials or the performance of labor on the Premises. Licensee further shall protect and indemnify District and the Premises from and hold them, and each of them, harmless against any and all such claims, obligations, liabilities, liens, encumbrances and charges.

2.6.6. Taxation: A possessory interest subject to property taxation may be created by this License. It is understood and agreed that if such a possessory interest is created, Licensee shall be responsible for the payment of all property taxes levied on such interest, and that District shall have no responsibility therefor. Licensee shall be solely responsible for any

second allotted taxes or charges that may be revised or imposed on Licensee's activities taken hereunder, including any severance or other taxes.

2.6.7. Condemnation. In the event the Premises or any portion of the Premises is acquired under the power of eminent domain, or transferred by way of negotiated agreement in lieu of, or under threat of eminent domain, District shall receive and be entitled to all just compensation that may be awarded for the taking, including but not limited to just compensation for the property taken, any damage for injury to the remainder, and damage for any loss of business goodwill, excepting only damages or compensation specifically awarded for any relocation benefits that may be available to Licensee, and any compensation for tangible personal property losses or improvements pertaining to the realty owned by Licensee, all of which shall be recoverable by Licensee.

2.6.8. District's Reservations

2.6.8.1 District hereby reserves the right to grant easements and rights-of-way for pole or tower lines for transmission of electricity, and easements, leases and rights-of-way for telephone, telegraph, telecommunication facilities, gas, water, sewer and oil lines, for roads and highways, and for other similar uses over and across the Premises at any location or locations within the Premises. In the event Licensee determines that the granting or exercise of any such easement, lease, or right-of-way significantly interferes with Licensee's possession or use of the Premises, Licensee's only remedy shall be to terminate this License upon thirty (30) days written notice to District. Licensee shall not interfere with any easements or rights-of-way pertaining to or affecting the Premises.

2.6.8.2 District hereby reserves the right to sell, transfer or otherwise dispose of any portion of the Premises at any time. In the event of such sale, transfer or disposition, and notwithstanding any other provision of this License, this License shall, upon the close of escrow or the conveyance of title, terminate as to the portions of the Premises sold, transferred or disposed of, and Licensee shall release the same from the terms of this License and from any encumbrance which results from this License, and shall promptly quit the Premises, in accordance with Sections 2.6.10 and 2.6.11 below.

2.6.8.3 District reserves the right unto itself to perform any and all work involved in protecting, replenishing and/or conserving the basin groundwater supply and any other work necessary to the functions or purposes of District, as set forth in the Water Conservation District Law of 1931, as amended, Water Code Section 74000, *et seq.*, upon any portion, or all, of the Premises, at any time. Such work may be performed without incurring any liability of any nature whatsoever to Licensee and Licensee hereby releases District from, and covenants not to sue District for, any such liability. District further reserves unto itself the rights of ingress and egress over all or any portion of the Premises.

2.6.9. Waiver of Claims: As a material part of the consideration to District under the License, Licensee hereby waives any and all claims that it may have against District during the term of this License, or any extension or renewal thereof, for any damage to goods, wares and merchandise upon or about the Premises, and for any injury to Licensee, its

employees, agents, invitees, or to third parties in or about the Premises, from any cause arising at any time.

2.6.10. Surrender of Possession: At the expiration or termination of this License, whether with or without cause, Licensee shall promptly quit and surrender the Premises in a good state of repair.

2.6.11. Disposition of Abandoned Property: If Licensee abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property left on the Premises for fifteen (15) or more days after such event shall at District's opinion, be deemed to have been abandoned and transferred to District. District shall have the right to remove and dispose of any and all such property without liability therefor to Licensee or to any person or entity claiming under Licensee, and District shall have no duty to account for such property. Licensee agrees to reimburse District for any and all costs associated with District transferring or disposing of Licensee's personal property pursuant to this Section.

2.6.12. Premises "As-Is": Licensee acknowledges that the Premises are being provided to Licensee on an "as-is" basis, and Licensee takes and occupies the Premises without reliance upon any representation by District, or any of its officers, employees, agents or representatives, or any other person, concerning the Premises, their fitness for Licensee's intended use or any other particular purpose of use, the Premises' state of title, their income-producing history, potential or capabilities, their value, or any other promise, representation or inducement not expressly set forth in this License.

2.6.13. No Representation or Warranty Concerning Premises: Licensee acknowledges that neither District, nor any of its officers, employees, agents or representatives, has made any written or oral representation, promise, or warranty, expressed or implied, concerning the Premises, their fitness for Licensee's intended use or any other purpose or use, their income producing history, potential or capabilities, their value, or any other matter not expressly set forth in this License.

2.6.14. Disputes: In the event that any action is commenced by a party to this License against the other to enforce its rights or obligations arising from this License or seeking to interpret this License, the prevailing party in such action, in addition to any other relief and recovery ordered by the court, shall be entitled to recover all statutory costs, plus reasonable attorneys' fees. Should District be named in any suit brought by any third party against Licensee in connection with or in any way arising out of Licensee's occupancy or use of the Premises under this License, Licensee shall pay to District its costs and expenses incurred in such suit, including reasonable attorneys' fees.

2.6.15. Security Measures: Licensee acknowledges that the Premises are licensed to and accepted by Licensee in an "as-is" condition, and that the License Payments and other sums payable from Licensee to District hereunder do not include the cost of any site preparation or security guard or any other security services or measures. Licensee further acknowledges that District makes no representation or warranty, express or implied, regarding the security of the Premises or the need for or propriety of any security measures at the Premises; and Licensee further acknowledges that District shall have no obligation whatsoever to provide guard service

or any other security measures. Licensee expressly assumes all responsibility for the protection and security of the Premises, Licensee, its agents, employees, invitees and property within the Premises from any and all acts of any third party.

2.6.16. No Obligation to Third Parties: Execution and issuance of this License shall not be deemed to confer any rights upon, directly, indirectly or by way of subrogation, nor obligate either of the parties hereto to, any person or entity other than District and Licensee.

2.6.17. Waiver: Any waiver by any party of a breach of any provision of this License shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision hereof.

2.6.18. District's Liability on Termination: Licensee hereby waives all damages or claims for damage that may be caused by any action of District in terminating this License (either with or without cause), or taking possession of the Premises as provided in this License or at law, and Licensee waives all claims for damages to or loss of such property of Licensee as may be in or upon the Premises upon the termination of this License.

2.6.19. Copies of Reports. Licensee shall provide to District copies of all surveys, engineering information, analysis, environmental reports, tests and studies and any other information obtained or generated by Licensee in connection with Licensee's use of the Premises.

2.7 Maintenance and Repair of Premises

2.7.1. Licensee's Obligation to Maintain Premises: Licensee shall at all times during the term of this License, and any extension or renewal thereof, at its sole cost and expense, remove all trash and debris from the Premises. Licensee shall also keep and maintain in good condition and in substantial repair (all to the satisfaction of District in its sole discretion), the Premises and all appurtenances and every part thereof, including improvements of any kind erected, installed or made on or within the Premises. Licensee shall at all times in the maintenance and use of the Premises and the buildings, structures, facilities, improvements and equipment thereon, comply with all laws, ordinances and regulations pertaining thereto, and all conditions and restrictions set forth herein. Licensee expressly agrees to maintain the Premises in a safe, clean, wholesome, and sanitary condition and free of trash and debris, to the complete satisfaction of District and in compliance with all applicable laws.

2.7.2. Licensee's Default of its Maintenance Duties: In the event that Licensee fails, neglects or refuses to remove trash or debris deposited by Licensee or its invitees on the Premises or to maintain or make repairs or replacements as required by this License, District shall notify Licensee in writing of such failure or refusal. Should Licensee fail or refuse to correct such default within ten (10) days of receipt of such written notice from District, District may, but shall not be required to, itself or by contract, undertake the necessary maintenance, repair or replacements; and the cost thereof, including but not limited to the cost of labor, materials and equipment and procurement of insurance, plus an administrative fee in the amount of fifteen percent (15%) of the sum of such costs, shall be paid by Licensee to District within ten (10) days of Licensee's receipt of a statement of such costs from District. Any such

maintenance, repair or replacement by or on behalf of District shall not be deemed to be a waiver of Licensee's default under this License, and shall not in any way impair, prevent or restrict District from exercising any of its rights or remedies set forth in this License or otherwise provided at law.

2.8 Miscellaneous

2.8.1. Notices: Any notice, payment or instrument required or permitted to be given or delivered by this License may be given or delivered by personal delivery or by depositing the same in any United States mail depository, first class postage prepaid, and addressed as follows:

If to District: SAN BERNARDINO VALLEY WATER
 CONSERVATION DISTRICT
 1630 West Redlands Blvd., Suite A
 P.O. Box 1839
 Redlands, California 92373
 Attn: General Manager

If to Licensee: To such name and address set forth for Licensee in Section
 One of this License,

or such other person or address as either party may direct in writing to the other; provided, however, that such new or different person or address shall not become effective until acknowledged in writing by the party to who directed. Except where service is by personal delivery or by registered or certified mail, return receipt requested, service of any instrument or writing shall be deemed completed forty-eight (48) hours after deposit in a United States mail depository.

2.8.2. Warranty of Authority: Each officer of District and Licensee affixing his or her signature to this License warrants and represents by such signature that he or she has the full legal authority to bind his or her respective party to all of the terms, conditions and provisions of this License, that his or her respective party has the full legal right, power, capacity and authority to enter into this License and perform all of its provisions and obligations, and that no other approvals or consents are necessary in connection therewith.

2.8.3. Headings: The titles and headings of Sections and Paragraphs of this License, as herein set forth, have been inserted for the sake of convenience only, and are not to be taken, deemed or construed to be any part of the terms, covenants or conditions of this License, or to control, limit or modify any of the terms, covenants or conditions hereof.

2.8.4. Time of Essence: Time is of the essence of this License. Failure to comply with any requirement, including but not limited to any time requirement, of this License shall constitute a material breach of this License.

2.8.5. Construction and Amendment: This License shall be construed, interpreted, governed and enforced in all respects according to the laws of the State of California and as if drafted by both District and Licensee. No amendment, change or modification of this

document shall be valid unless in writing, stating that it amends, changes or modifies this License, and signed by all of the parties hereto.

2.8.6. Successors: Subject to the provisions of Paragraph 2.6.3 above, this License, and all of the terms, conditions and provisions herein, shall inure to the benefit of, and be binding upon, District, Licensee, and their respective successors and assigns.

2.8.7. Re-Entry: No entry or re-entry into the Premises by District shall be construed as an election to terminate this License, unless prior thereto or concurrently therewith written notice of intent to terminate is given by District to Licensee. District's entry into possession of the Premises without having elected to terminate shall not prevent District from making such an election and giving Licensee notice thereof.

2.8.8. Partial Invalidity: If any term, covenant, condition or provision of this License is held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way affect, impair, or invalidate any other term, covenant, condition or provision contained in this License.

2.8.9. Further Assurances: Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

2.8.10. Precedence: In the event of any conflict between Section of this License, Section One shall prevail over Sections Two, Three and Four, and Section Three shall prevail over Section Two.

2.8.11. Statutory References. All references in this Agreement to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the County of San Bernardino shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

[END GENERAL LICENSE PROVISIONS]

SECTION THREE:
SPECIAL LICENSE PROVISIONS

[END SPECIAL LICENSE PROVISIONS]

SECTION FOUR:
MAP OF THE PREMISES

[END MAP OF THE PREMISES]

SECTION FIVE:
SCOPE OF WORK

[TO BE INSERTED PRIOR TO AGREEMENTS ENDORSEMENTS]

[END SCOPE OF WORK]

SECTION SIX

LICENSE FEE SCHEDULE

[TO BE INSERTED PRIOR TO AGREEMENTS ENDORSEMENTS]

[END OF LICENSE FEE SCHEDULE]