

AGREEMENT FOR SHARING CONSULTANT COSTS
FOR 2019 AWIA COMPLIANCE RISK AND RESILIENCY ASSESSMENTS AND
EMERGENCY RESPONSE PLANS FOR PARTICIPATING AGENCIES
(PHASES II AND III)

THIS AGREEMENT is made and entered into as of October 2019, by and between:

1. Irvine Ranch Water District
2. City of Santa Ana
3. South Coast Water District
4. City of Huntington Beach
5. City of Garden Grove
6. Moulton Niguel Water District
7. Santa Margarita Water District
8. City of Fullerton
9. City of Orange
10. East Orange County Water District
11. City of San Juan Capistrano
12. City of Westminster
13. City of Buena Park
14. Yorba Linda Water District
15. City of Tustin
16. City of Newport Beach
17. City of La Habra
18. City of Fountain Valley
19. City of San Clemente
20. El Toro Water District
21. City of Brea
22. City of Seal Beach
23. Trabuco Canyon Water District
24. Serrano Water District,

(collectively "Participating Agencies" and individually "Participating Agency") and the Municipal Water District of Orange County ("MWDOC"). The Participating Agencies and MWDOC are also collectively referred to as "Parties."

RECITALS

WHEREAS, per Section 2013 of Title II, America's Water Infrastructure Act ("AWIA"), utilities are required to design and complete an AWIA Compliance Crosswalk; conduct a Risk and Resilience Assessment ("RRAs") for their agency; and develop or update an Emergency Response Plan ("ERP"); and

WHEREAS, each Participating Agency has the responsibility under AWIA to conduct a RRA and prepare an ERP for its respective agency; and

WHEREAS, the Participating Agencies share many water supply characteristics, including water sources, regional water management agencies, location, climate history, and demographics; and

WHEREAS, the Participating Agencies and MWDOC desire to cooperate with each other to obtain economies of scale and thereby reduce preparation costs for each of the Participating Agencies in conducting RRAs and subsequently preparing or updating an ERP in response to AWIA requirements; and

WHEREAS, MWDOC and the Participating Agencies have jointly prepared and agreed to a Scope of Work that was incorporated into a Request for Proposals for AWIA Compliance Crosswalks, Risk and Resilience Assessments, and Emergency Response Plans for Orange County Water Utilities, issued Wednesday, May 15, 2019 ("RFP") and HSG, LLC, dba Herndon Solutions Group ("HSG" or "Consultant") was chosen as the successful consultant to prepare each Participating Agency's AWIA Compliance Crosswalk, RRA and ERP; and

WHEREAS, Consultant has been retained for three separate and distinct phases of work under the RFP; Phase I, Design and Completion of AWIA Compliance Crosswalks for each of the Participating Agencies; Phase II, conducting RRAs based on AWIA requirements, the Participating Agency's Specific AWIA Compliance Crosswalk and other materials provided by Participating Agencies; and Phase III, updating or creating an ERP for each of the Participating Agencies based on AWIA requirements, the Agency's current ERP, the Agency Specific AWIA Compliance Crosswalk, the Agency Specific RRA, and other materials provided by Participating Agencies; and

WHEREAS, Phase I is in the process of being completed under a separate arrangement for MWDOC and Participating Agencies, and the scope of work for Phases II and III will be finalized based on the results of Phase I and execution of this Agreement; and

WHEREAS, MWDOC and its staff are willing to coordinate this process, including the preparation and administration of a professional services agreement with the selected consultant; and the administration of the cost sharing provisions of this Agreement;

NOW, THEREFORE, in consideration of the payment of money as set forth below and the mutual promises of the Parties hereto, it is agreed:

1. Engagement of Consultant and Administration of Consultant Agreement

MWDOC has executed a professional services agreement for the work identified in the response to the Request for Proposals by HSG for purposes of Phases I, II and III of the RFP ("Consultant Agreement"), and this Agreement is necessary to budget the scope of services for each Participating Agency for Phases II and III along with other MWDOC costs, attached as **Exhibit A**. MWDOC has amended its standard professional services agreement form for the Consultant Agreement and required appropriate types and limits of insurance coverage. Each CGL policy shall identify MWDOC, the Participating Agencies, and their directors, officers, agents, employees, attorneys, consultants and volunteers as additional insureds, or be endorsed to identify these parties as additional insureds using a form acceptable to MWDOC. The Consultant Agreement requires the consultant's insurer(s) to waive all

rights of subrogation against MWDOC, the Participating Agencies, and their directors, officers, agents, employees, attorneys, consultants and volunteers. The Consultant Agreement requires Consultant to ensure that its sub-consultants, if any, provide similar insurance coverage.

1.2 MWDOC shall coordinate all aspects of the proposed work with Consultant and communicate with each Participating Agency, regularly and upon request of the Participating Agency, regarding the status and substance of Phases II and III;

1.3 MWDOC shall make payments to the Consultant for progress payments as work proceeds. MWDOC shall withhold 10% of each progress payment to Consultant in a retention fund until such time as every Participating Agency has notified MWDOC that it is satisfied with the final RRAs and ERPs prepared for it by Consultant.

1.4 Each Participating Agency shall provide all documents, information and assistance requested by Consultant during the performance of the Consultant Agreement.

1.5 The City of San Juan Capistrano agrees to add MWDOC as an additional protected party, pending approval by the City's insurance provider, the California Joint Powers Insurance Authority.

2. Cost Sharing by Participating Agencies.

2.1 MWDOC shall:

2.1.1 Collect from each Participating Agency upon execution of this Agreement or at other times as agreed upon between MWDOC and Participating Agency amounts that will total the full amount of the portion of the total cost allocated to that Participating Agency based on the Consultant's proposal and other MWDOC costs for Phases II and III, as attached in **Exhibit A**. The column labeled "Agency Estimated Total Phases 2 & 3 w/ Contingency" in **Exhibit A** includes, and each participating Agency agrees to, a 10% contingency which allows for minor variations in the cost of work as noted in Section 2.2.3 or for additional work that may be added by a Participating Agency per Section 2.2.2);

2.1.2 Inform each Participating Agency of any proposed extra work under the Consultant Agreement that relates to preparation of that Participating Agency's final RRAs and ERPs for Phases II and III and that would result in an increase in that Participating Agency's payment under this Agreement. MWDOC and the affected Participating Agency must both approve such extra work before MWDOC will notify Consultant to proceed with the work.

2.1.3 Be responsible for making progress payments directly to Consultant from funds paid to MWDOC by Participating Agencies (see section 1.3).

2.1.4 Prepare a final accounting and either distribute any remaining funds collected from the Participating Agencies back to the Participating Agencies or issue a final bill to Participating Agencies where there are funds due.

2.2 Each Participating Agency shall:

2.2.1 Pay to MWDOC upon execution of this Agreement or at other times as agreed upon between MWDOC and Participating Agency amounts that will total to the full amount of the portion of the total cost allocated to that Participating Agency in the selected contractor's proposal plus other MWDOC costs, as attached in **Exhibit A**;

2.2.2 Pay to MWDOC, upon prior written approval of any extra work under the Consultant Agreement that relates to preparation of its final RRAs and ERPs for Phases II and III, the full amount owed for the approved work. Each Participating Agency shall bear all costs associated with extra work it approves.

2.2.3 Note that as Participating Agencies decide to participate or not to participate in Phases II and III, the cost sharing of costs among the Participating Agencies for the Consultant and MWDOC's costs will vary somewhat from agency to agency. Information relative to adjustments in costs among Participating Agencies shall be shared on a periodic basis as decisions are being made by the various Participating Agencies. Also, because the timing of completion of the RRA and ERP vary among agencies, it is allowable to schedule the payment of an invoice for those smaller agencies desiring to pay their deposit out of next year's budget.

3. Accounting

Upon request of any Participating Agency, MWDOC will provide copies of the selected Consultant's invoices and MWDOC's payment records.

4. Independent Contractor

Any consultant engaged by MWDOC on behalf of the Participating Agencies as contemplated in this Agreement will not be a party to this Agreement and will not be an employee or agent of MWDOC or any of the Participating Agencies, either as a result of this Agreement or as a result of a professional services agreement between MWDOC and the consultant. Any consultant engaged as contemplated in this Agreement will be an independent contractor to MWDOC.

5. Warranty, Indemnification and Defense

MWDOC shall use its best efforts in administering the Consultant Agreement, but makes no representations, guarantees or warranties to the Participating Agencies as to the quality or timeliness of work product provided by Consultant pursuant to the Consultant Agreement. The Participating Agencies, and each of them, shall indemnify MWDOC, its directors, officers, employees and agents against, and will hold and save them harmless from, any and all actions, claims, penalties,

obligations or liabilities, in law or in equity, of every kind or nature whatsoever, that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in any manner directly or indirectly connected with any RRA, ERP, and/or any other work contemplated by this Consultant Agreement subject to AWIA. As between the Participating Agencies, any costs associated with the indemnity and defense obligations set forth in the previous two sentences shall be the financial responsibility of each Participating Agency based on the same pro rata basis as the allocation of costs set forth in Section 2.1.1 herein and **Exhibit A** hereto. In the event MWDOC, its directors, officers, employees and agents are made a party to any action or proceeding filed in connection with a challenge to any work prepared pursuant to the Consultant Agreement in connection with any RRA, ERP, and/or any other work contemplated by this Consultant Agreement subject to AWIA, the Participating Agency whose RRA, ERP or AWIA-related work is challenged shall provide a complete defense to MWDOC, its directors, officers, employees and agents and shall reimburse MWDOC for all costs and expenses incurred as a result of the action or proceeding, including reasonable attorney's fees.

6. Notice

Any notice or communication required to be given under this Agreement shall be in writing and effective when deposited, first class postage prepaid, with the United States Postal Service addressed to the contracting Parties as follows:

Notices to Parties	
If to:	
Municipal Water District of Orange County	Robert J. Hunter, General Manager Municipal Water District of Orange County 18700 Ward St. P.O. Box 20895 Fountain Valley, CA 92728
1. Irvine Ranch Water District	Paul Cook, General Manager Irvine Ranch Water District 15600 Sand Canyon Avenue Irvine, CA 92618
2. City of Santa Ana	Kristine Ridge, City Manager City of Santa Ana P.O. Box 1988, M-24 Santa Ana, CA 92702

3. South Coast Water District	Rick Shintaku, General Manager South Coast Water District 31592 West Street Laguna Beach, CA 92651
4. City of Huntington Beach	Dave Kiff, City Manager City of Huntington Beach 2000 Main Street Huntington Beach, CA 92648
5. City of Garden Grove	Scott Stiles, City Manager City of Garden Grove P.O. Box 3070 Garden Grove, CA 92842
6. Moulton Niguel Water District	Joone Lopez, General Manager Moulton Niguel Water District 27500 La Paz Road P.O. Box 30203 Laguna Niguel, CA 92607-0203
7. Santa Margarita Water District	Dan Ferons, General Manager Santa Margarita Water District P.O. Box 7005 Mission Viejo, CA 92690
8. City of Fullerton	Ken Domer, City Manager City of Fullerton 303 W. Commonwealth Avenue Fullerton, CA 92832
9. City of Orange	Rick Otto, City Manager City of Orange 300 E. Chapman Ave Orange, CA 92866
10. East Orange County Water District	Lisa Ohlund, General Manager East Orange County Water District 185 N. McPherson Rd. Orange, CA 92869
11. City of San Juan Capistrano	Benjamin Siegel, City Manager City of San Juan Capistrano 32400 Paseo Adelanto San Juan Capistrano, CA 92675

<p>12. City of Westminster</p>	<p>Eddie Manfro, City Manager City of Westminster 8200 Westminster Blvd. Westminster, CA 92683</p>
<p>13. City of Buena Park</p>	<p>Jim Vanderpool, City Manager City of Buena Park 6650 Beach Blvd. Buena Park, CA 90622</p>
<p>14. Yorba Linda Water District</p>	<p>Marc Marcantonio, General Manager Yorba Linda Water District 1717 E. Miraloma Ave. Placentia, CA 92870</p>
<p>15. City of Tustin</p>	<p>Matthew West, City Manager City of Tustin 300 Centennial Way Tustin, CA 92780</p>
<p>16. City of Newport Beach</p>	<p>Grace Leung, City Manager City of Newport Beach P.O. Box 1768 Newport Beach, CA 92663</p>
<p>17. City of La Habra</p>	<p>Jim Sadro, City Manager City of La Habra P.O. Box 337 La Habra, CA 90633-0337</p>
<p>18. City of Fountain Valley</p>	<p>Rob Houston, City Manager City of Fountain Valley 10200 Slater Ave. Fountain Valley, CA 92708</p>
<p>19. City of San Clemente</p>	<p>James Makshanoff, City Manager City of San Clemente 100 Avenida Presidio San Clemente, CA 92672</p>
<p>20. El Toro Water District</p>	<p>Dennis Cafferty, General Manager El Toro Water District P.O. Box 4000 Laguna Hills, CA 92654</p>

<p>21. City of Brea</p>	<p>Bill Gallardo, City Manager City of Brea 1 Civic Center Circle Brea, CA 92821</p>
<p>22. City of Seal Beach</p>	<p>Jill Ingram, City Manager City of Seal Beach 211 8th Street Seal Beach, CA 90740</p>
<p>23. Trabuco Canyon WD</p>	<p>Michael Perea, General Manager Trabuco Canyon Water District 32003 Dove Canyon Drive Trabuco Canyon, CA 92679</p>
<p>24. Serrano Water District</p>	<p>Jerry Vilander, General Manager Serrano Water District 18021 Lincoln Street Villa Park, CA 92861-6446</p>

7. Jurisdiction and Venue

In all matters concerning the validity, interpretation, performance, or effect of this Agreement, the laws of the State of California shall govern and be applicable. The Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that venue of any action brought hereunder shall be in Orange County, California.

8. Counterparts and Facsimile

This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all the Parties had executed the same instrument. Counterpart signatures may be transmitted by facsimile, email, or other electronic means and have the same force and effect as if they were original signatures. All parties have participated in the drafting of this Agreement.

9. Severability

If any provision of this Agreement shall be held illegal, invalid, or unenforceable, in whole or in part, the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

10. Term

This Agreement shall commence upon the date of the earliest execution by any Participating Agency below and shall extend thereafter through the completion of all work product generated by the Consultant and delivered to MWDOC and to each Participating Agency. The scheduled completion date by the Consultant is November 21, 2021. MWDOC shall issue a Notice of Completion to all Participating Agencies upon close-out of the Consultant Agreement. Notwithstanding anything to the contrary in this Section 10, this Agreement may be terminated earlier by MWDOC in its discretion upon or after termination of the Consultant Agreement.

11. Entire Agreement

This Agreement contains the entire agreement of the Parties relating to the subject matter hereof; and the Parties have made no agreements, representations, or warranties, either written or oral, relating to the subject matter hereof that are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without prior written approval from both parties.

IN WITNESS WHEREOF, the Parties have hereunto affixed their names as of the day and year hereinafter written, which shall be and is the effective date of this Agreement.

Execution of Agreement by Parties	
Municipal Water District of Orange County	Date: _____ By: _____ Robert J. Hunter, General Manager Municipal Water District of Orange County Approved as to Form: Date: _____ By: _____ Joseph Byrne General Counsel

1. Irvine Ranch Water District

Date: _____

By: _____

Paul Cook, General Manager
Irvine Ranch Water District

Approved as to Form:

Date: _____

By: _____

General Counsel

2. City of Santa Ana

Date: _____

By: _____

Kristine Ridge, City Manager
City of Santa Ana

Approved as to Form:

Date: _____

By: _____

City Attorney

3. South Coast Water District

Date: _____

By: _____

Rick Shintaku, General Manager
South Coast Water District

Approved as to Form:

Date: _____

By: _____

Arthur Kidman
General Counsel

4. City of Huntington Beach

Date: _____

By: _____

Dave Kiff, City Manager
City of Huntington Beach

Approved as to Form:

Date: _____

By: _____

City Attorney

5. City of Garden Grove

Date: _____

By: _____

Scott Stiles, City Manager
City of Garden Grove

Approved as to Form:

Date: _____

By: _____

City Attorney

<p>6. Moulton Niguel Water District</p>	<p>Date: _____</p> <p>By: _____ Joone Lopez, General Manager Moulton Niguel Water District</p> <p>Approved as to Form:</p> <p>Date: _____</p> <p>By: _____ General Counsel</p>
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7. Santa Margarita Water District

Date: _____

By: _____

Dan Ferons, General Manager
Santa Margarita Water District

Approved as to Form:

Date: _____

By: _____

General Counsel

8. City of Fullerton

Date: _____

By: _____

Ken Domer, City Manager
City of Fullerton

Approved as to Form:

Date: _____

By: _____

City Attorney

9. City of Orange

Date: _____

By: _____

Rick Otto, City Manager
City of Orange

Approved as to Form:

Date: _____

By: _____

Gary Sheatz
City Attorney

10. East Orange County Water District

Date: _____

By: _____
Lisa Ohlund, General Manager
East Orange County Water District

Approved as to Form:

Date: _____

By: _____
General Counsel

11. City of San Juan Capistrano

Date: _____

By: _____

Benjamin Siegel, City Manager
City of San Juan Capistrano

Approved as to Form:

Date: _____

By: _____

City Attorney

12. City of Westminster

Date: _____

By: _____

Eddie Manfro, City Manager
City of Westminster

Approved as to Form:

Date: _____

By: _____

City Attorney

13. City of Buena Park

Date: _____

By: _____

Jim Vanderpool, City Manager
City of Buena Park

Approved as to Form:

Date: _____

By: _____

City Attorney

14. Yorba Linda Water District

Date: _____

By: _____
Marc Marcantonio, General Manager
Yorba Linda Water District

Approved as to Form:

Date: _____

By: _____
Arthur Kidman
General Counsel

15. City of Tustin

Date: _____

By: _____

Matthew West, City Manager
City of Tustin

Approved as to Form:

Date: _____

By: _____

City Attorney

16. City of Newport Beach

Date: _____

By: _____

Grace Leung, City Manager
City of Newport Beach

Approved as to Form:

Date: _____

By: _____

City Attorney

17. City of La Habra

Date: _____

By: _____

Jim Sadro, City Manager
City of La Habra

Approved as to Form:

Date: _____

By: _____

City Attorney

18. City of Fountain Valley

Date: _____

By: _____

Mayor, Steve Nagel
City of Fountain Valley

Approved as to Form:

Date: _____

By: _____

Attorney for the City, Colin Burns

19. City of San Clemente

Date: _____

By: _____

James Makshanoff, City Manager
City of San Clemente

Approved as to Form:

Date: _____

By: _____

City Attorney

20. El Toro Water District

Date: _____

By: _____
Dennis Cafferty, General Manager
El Toro Water District

Approved as to Form:

Date: _____

By: _____
Gil Granito
General Counsel

21. City of Brea

Date: _____

By: _____

Bill Gallardo, City Manager
City of Brea

Approved as to Form:

Date: _____

By: _____

City Attorney

22. City of Seal Beach

Date: _____

By: _____

Jill Ingram, City Manager
City of Seal Beach

Approved as to Form:

Date: _____

By: _____

City Attorney

23. Trabuco Canyon Water District

Date: _____

By: _____

Michael Perea, General Manager
Trabuco Canyon Water District

Approved as to Form:

Date: _____

By: _____

General Counsel

24. Serrano Water District

Date: _____

By: _____

Jerry Vilander, General Manager
Serrano Water District

Approved as to Form:

Date: _____

By: _____

Joel Kuperberg
General Counsel

Exhibit A
List of Potential Participating Agencies - TOTAL Estimated as of August 13, 2019 Including 10% Contingency
Note: totals may change when final participation is known

AWIA Scope of Services Selection									
Orange County Potable Water Jurisdictions	Population	AWIA RRA Deadline	Phase 1 Crosswalk Under Separate Invoicing	Phase 2 Risk and Resilience Assessment	Phase 3 Emergency Response Plans			Agency Estimated Total Phases 1, 2 & 3	Agency Estimated Total Phases 2 & 3 w/ Contingency
					Low	Medium	High		
COSTS			\$15,205	\$83,662	\$14,801	\$33,085	\$61,743		
Municipal Water District of Orange County	2,300,000	3/31/2020	\$15,205	\$83,662	\$0	\$33,085	\$0	\$131,953	\$116,748
Irvine Ranch Water District	412,933	3/31/2020	\$15,205	\$83,662	\$14,801	\$0	\$0	\$113,668	\$98,463
Santa Ana, City of	338,247	3/31/2020	\$15,205	\$83,662	\$0		\$61,743	\$160,610	\$145,405
South Coast Water District	257,386	3/31/2020	\$15,205	\$83,662		\$33,085	\$0	\$131,953	\$116,748
Huntington Beach, City of	201,000	3/31/2020	\$15,205	\$83,662	\$0	\$33,085	\$0	\$131,953	\$116,748
Garden Grove, City of	174,226	3/31/2020	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Moulton Niguel Water District ***	171,856	3/31/2020	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Santa Margarita Water District	159,104	3/31/2020	\$15,205	\$83,662	\$14,801	\$0	\$0	\$113,668	\$98,463
Fullerton, City of	140,392	3/31/2020	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Orange, City of	140,094	3/31/2020	\$15,205	\$83,662	\$0	\$33,085	\$0	\$131,953	\$116,748
Mesa Water District	110,000	3/31/2020	\$0	\$0	\$0	\$0	\$0	\$0	\$0
East Orange County Water District ***	100,000	3/31/2020	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
San Juan Capistrano, City of **	34,593	6/30/2021	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Westminster, City of	93,179	12/31/2020	\$15,205	\$83,662	\$14,801	\$0	\$0	\$113,668	\$98,463
Buena Park, City of	83,347	12/31/2020	\$15,205	\$83,662	\$0	\$33,085	\$0	\$131,953	\$116,748
Yorba Linda Water District ***	80,067	12/31/2020	\$15,205	\$83,662	\$0	\$33,085	\$0	\$131,953	\$116,748
Tustin, City of	68,088	12/31/2020	\$15,205	\$83,662	\$0	\$33,085	\$0	\$131,953	\$116,748
Newport Beach, City of ***	66,800	12/31/2020	\$15,205	\$83,662	\$14,801	\$0	\$0	\$113,668	\$98,463
La Habra, City of	63,118	12/31/2020	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Fountain Valley, City of	59,227	12/31/2020	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
San Clemente, City of	51,522	12/31/2020	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
El Toro Water District	49,054	6/30/2021	\$15,205	\$83,662	\$14,801	\$0	\$0	\$113,668	\$98,463
Brea, City of	43,328	6/30/2021	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Seal Beach, City of	25,561	6/30/2021	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Laguna Beach County Water District	23,000	6/30/2021	\$0	\$0	\$0	\$0		\$0	\$0
La Palma, City of	15,948	6/30/2021	\$0	\$0	\$0		\$0	\$0	\$0
Trabuco Canyon Water District	12,712	6/30/2021	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
Serrano Water District	6,641	6/30/2021	\$15,205	\$83,662	\$0	\$0	\$61,743	\$160,610	\$145,405
			\$380,125	\$2,091,558	\$74,006	\$231,598	\$802,653		
TOTAL PROJECT								\$3,579,940	\$3,199,815

*** Agencies cannot yet commit for Phases 2 & 3 until completion of Phase 1 or Board Approval. Expected ultimate participation level is shown.