

**AGREEMENT FOR SHARING CONSULTANT COSTS FOR COMPLETION OF
ORANGE COUNTY WATER AND WASTEWATER MULTI-JURISDICTIONAL
HAZARD MITIGATION PLAN AND AMERICA WATER INFRASTRUCTURE ACT
OF 2018 PROJECTS**

This Agreement for Sharing Consultant Costs for Completion of Joint Hazard Mitigation Plans and the America's Water Infrastructure Act of 2018 (AWIA) Update Projects ("Agreement") is made and entered into as of August 15, 2024, by and between the City of Huntington Beach ("Participating Agency") and the Municipal Water District of Orange County ("MWDOC"). The Participating Agency and MWDOC are collectively referred to as "Parties."

RECITALS

WHEREAS, MWDOC is the administrator of the Water Emergency Response Organization of Orange County (WEROC), providing countywide emergency preparedness for water and wastewater agencies, which includes essential resources, trainings, and exercises to member agencies and coordination partners throughout Orange County;

WHEREAS, as WEROC administrator, MWDOC ensures compliance with America's Water Infrastructure Act (AWIA) and managing the Orange County Multi-Jurisdictional Water and Wastewater Hazard Mitigation Plan (MJHMP);

WHEREAS, numerous retail and wholesale agencies in Orange County that share infrastructure and are similarly situated with regard to emergency preparedness, including the Participating Agency (collectively "Participating Agencies"), enter into cost-sharing agreements with MWDOC;

WHEREAS, the Participating Agencies and MWDOC have a successful history of collaboration and cost sharing and now desire to coordinate in the preparation of Orange County Multi-Jurisdictional Water and Wastewater Hazard Mitigation Plan (MJHMP) and the AWIA Update Projects to ensure consistency and obtain economies of scale thereby reducing preparation time and costs for each the Participating Agency; and

WHEREAS, a Scope of Orange County Multi-Jurisdictional Water and Wastewater Hazard Mitigation Plan (MJHMP) and AWIA of 2018 Required Components (Risk/Resiliency Assessment (RRA) and Emergency Response Plans (ERP) was incorporated into a Request for Proposals. Partner agencies assisted with the development of the scope of work. In response, consulting firms submitted proposals, which resulted in the selection of *HSG, LLC (d/b/a (Herndon Solutions Group))* ("HSG" or "Consultant") as the consultant to prepare Orange County Multi-Jurisdictional Water and Wastewater Hazard Mitigation Plan (MJHMP) and the AWIA Update Projects for the Participating Agencies (the "Work");

WHEREAS, the Work will consist of an update to a regional hazard mitigation assessment and consequently develop an Orange County Multi-Jurisdictional Water and Wastewater Hazard Mitigation Plan (MJHMP) that meets the Federal Emergency Management Agency (FEMA) guidelines for approval with the goal of updating each Participating Agency's vulnerabilities and apply those to a regional concept of emergency mitigation, in order to have a regional water & wastewater utilities plan;

WHEREAS, each participating water utility has conducted security threat vulnerability assessments and have a general emergency plans that are compliant with California's Standardized Emergency Management System, the National Incident Management System, and the AWIA;

WHEREAS, AWIA requires community water systems that serve more than 3,300 people to identify, manage, and minimize organizational risks and update their RRAs and ERPs at least every five years;

WHEREAS, to maximize resources, MWDOC included the update of agency MJHMPs, as required by the Disaster Mitigation Act of 2000, which will ensure alignment of these planning processes by leveraging the same data sets and collaboration activities, such as hazard identification and mitigation workshops;

WHEREAS, *HSG* previously supported MWDOC with its initial AWIA compliance submittal, completing 23 RRAs and ERPs from 2019 through 2021, which included coordination with MWDOC's HMP and Urban Water Management Plan (UWMP) planning teams;

WHEREAS, MWDOC and its staff are willing to coordinate this process, including the preparation and administration of a professional services agreement with the 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

- 1.1 MWDOC shall award a professional services agreement for the work identified in the Request for Proposals ("Consultant Agreement") to *HSG*. MWDOC shall use its standard professional services agreement form for the Consultant Agreement, including any minor negotiated deviations approved by MWDOC General Manager and Legal Counsel, and require appropriate types and limits of insurance coverage and indemnification as required by this Agreement. Each CGL policy shall identify MWDOC, the Participating Agency, 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 will require the Consultant's insurer(s) to waive all rights of subrogation against MWDOC, the Participating Agency, and their directors, officers, agents, employees, attorneys, consultants and volunteers. The Consultant Agreement will further require the Consultant to indemnify, defend and hold harmless MWDOC, the Participating Agency, and its elected officials, officers and employees, and each of them from and against all third party actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, including reasonable legal fees and costs, arising out of, resulting from, or on account of Consultant's negligent acts or willful misconduct in the performance of the work under this agreement, provided, however, that Consultant's liability under this indemnity shall not apply to the extent of the contributory negligence of the MWDOC, the Participating Agency, its

employees and contractors. The Consultant Agreement will require 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 the selected Consultant and communicate with the Participating Agency, and upon request of the Participating Agency, regarding the status and substance of completion and submission of the MJHMP and AWIA Update Projects.
- 1.3 *HSG* has organized participating agencies into three groups: (1) Participating Agencies that need only MJHMP support, (2) Participating Agencies that need both MJHMP and AWIA RRA and ERP support, and (3) Participating Agencies that need only AWIA RRA and ERP support.
- 1.4 Following notice to proceed, *HSG* will further group the Participating Agencies based on geography, agency-specific due dates, and previously assigned assistant project managers.
- 1.5 The Participating Agency shall, within a reasonable timeframe, provide all documents, information, and assistance requested by the selected Consultant during the performance of the Consultant Agreement.

2. Cost Sharing Obligations

2.1 MWDOC shall:

- 2.1.1 Track the Participating Agency's costs for each plan (HMP, RRA, and ERP) as described in Exhibit A ("2025 MJHMP and AWIA Participating Agency Cost Worksheet"), which includes the Participating Agency's estimated base cost for each plan and is attached hereto and incorporated herein by this reference;
- 2.1.2 Be responsible for receiving Consultant invoices by the 10th day of the month pursuant to the Consultant Agreement;
- 2.1.3 Be responsible for billing the Participating Agency for the costs due on the payment date as described in Exhibit A, including additional amounts owed for any approved changes to the Work;
- 2.1.4 Be responsible for making payments directly to Consultant from funds paid to MWDOC by the Participating Agency;
- 2.1.5 Inform the Participating Agency of any proposed changes to the estimated costs in Exhibit A that would result in an increase or decrease in that Participating Agency's payment under this Agreement and seek the Participating Agency's approval for such changes before notifying the Consultant to proceed with the work;

- 2.1.6 Prepare a final accounting at the end of each fiscal year and either distribute any remaining funds collected from the Participating Agency back to the Participating Agency or issue a final bill to Participating Agency where there are funds due;
 - 2.1.7 Share information relative to adjustments in costs with Participating Agency on a periodic basis if decisions to participate by the various Participating Agencies affect the costs in Exhibit A.
- 2.2 Each Participating Agency shall:
- 2.2.1 Pay to MWDOC the costs due for each plan on each payment date as described in Exhibit A;
 - 2.2.2 Within 60 days of each invoice date, pay to MWDOC the amount invoiced in accordance with , Exhibit A;
 - 2.2.3 If the Participating Agency requests or requires additional work that was not included in the cost calculation in Exhibit A, MWDOC will assist with coordination with the Consultant and develop the change order for any contract changes if both Participating Agency and Consultant approves such work. Participating Agency agrees to pay to MWDOC, the full amount owed for the additional work within 60 days of the invoice date;
 - 2.2.4 Acknowledge that costs may vary as Participating Agencies decide whether or not to participate and/or as additional work is completed with the Participating Agency's approval.
3. Accounting
- 3.1 Upon request of the Participating Agency, MWDOC will provide copies of the selected Consultant's invoices and MWDOC's payment records.
4. Non-Appropriation of Funds
- 4.1 Payments to be made by the Participating Agency under Section 2.2 to MWDOC for any Work performed by the selected Consultant within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that the Participating Agency does not appropriate sufficient funds for payment of the selected Contractor's Work beyond the current fiscal year, this Agreement shall cover payment for such Work only to the conclusion of the last fiscal year in which the Participating Agency appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.
 - 4.2 The Participating Agency agrees to use reasonable efforts to ensure appropriated funds are available and acknowledge that MWDOC is facilitating payment to the

Consultant under this Agreement for benefit of and cost-savings for the Participating Agency.

5. Independent Contractor

5.1 Any consultant engaged by MWDOC on behalf of the Participating Agency as contemplated in this Agreement will not be a party to this Agreement and will not be an employee or agent of MWDOC or the Participating Agency, 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.

6. Warranty, Indemnification, and Defense

6.1 MWDOC shall use its best efforts in administering the Consultant Agreement, but makes no representations, guarantees or warranties to the Participating Agency as to the quality or timeliness of work product provided by Consultant pursuant to the Consultant Agreement.

6.2 All losses or liabilities resulting 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 work contemplated by this Agreement shall be subject to the indemnification described in this Section 6.3.

6.3 Subject to Sections 6.1, 6.2, and 6.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed or occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Parties hereto, their officers, board members employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to any other Parties under this Agreement.

6.4 As between Participating Agencies, any costs associated with the defense and indemnity obligations set forth in Section 6.3 shall be the financial responsibility of each Participating Agency based on their proportionate share of fault, as determined by final arbitration or court decision or by the agreement of the Participating Agencies.

7. Notice

7.1 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:

Notice to Parties	
1. MWDOC	Harvey De La Torre, General Manager Municipal Water District of Orange County 18700 Ward St. P.O. Box 20895 Fountain Valley, CA 92728 <i>With copy to:</i> Vicki Osborn Director of Emergency Management Water Emergency Response Organization of Orange County (WEROC) VOsborn@mwdoc.com
2. City of Huntington Beach	Eric Parra Interim City Manager City of Huntington Beach 2000 Main Street Huntington Beach, CA 92648

8. Jurisdiction and Venue

8.1 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.

9. Counterparts and Facsimile

9.1 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.

10. Severability

10.1 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.

11. Term

11.1 This Agreement shall commence upon the date of execution by the Participating Agency below and shall extend thereafter through the completion of all work product generated by the Consultant and delivered to MWDOC and to the Participating Agency.

11.2 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 11, this Agreement may be terminated earlier by MWDOC in its discretion upon or after termination of the Consultant Agreement.

12. Entire Agreement

12.1 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 the Parties	
MWDOC	Date: _____ By: _____ Harvey De La Torre, General Manager Municipal Water District of Orange County Approved as to Form: Date: 9/9/2024 1:50 PM PDT Signed by: _____ By: <u>Joe Byrne</u> 000D769307204EC... Joseph P. Byrne, Partner Best Best & Krieger LLP
City of Huntington Beach	Date: _____ By: _____ Eric Parra, Interim City Manager City of Huntington Beach Approved as to Form: Date: 9/10/2024 By: <u>Michael Gates</u> Michael Gates, City Attorney

APPROVED AS TO FORM

By: _____
MICHAEL E. GATES
CITY ATTORNEY
CITY OF HUNTINGTON BEACH