

Attachment A
Victorville Water District's
Construction Agreements

**CONSTRUCTION AGREEMENT
BY AND BETWEEN
VICTORVILLE WATER DISTRICT
AND
KELLEY’S UNDERGROUND CONSTRUCTION, INC.
FOR
QUALIFIED EMERGENCY WATER CONTRACTOR,
PROJECT CC23-082-5**

THIS CONSTRUCTION AGREEMENT (the “Agreement”) dated this _____ day of _____, 20____, for reference purpose only, is made and entered into by and between the **VICTORVILLE WATER DISTRICT**, a County water district and subsidiary district of the City of Victorville, organized and existing in the County of San Bernardino under and by virtue of the laws of the State of California hereinafter referred to as the “District”, and **Kelley’s Underground Construction, Inc., a California corporation**, hereinafter referred to as the “Contractor”. The District and the Contractor are sometimes hereinafter referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS:

WHEREAS the District requires **Qualified Emergency Water Contractor, Project CC23-082-5** (the “Project”); and

WHEREAS, in light of the facts set forth above, the District desires to retain Contractor in connection with **Qualified Emergency Water Contractor; and**

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

Section 2. TERM OF AGREEMENT

This Agreement shall commence July 1, 2023 (the “Commencement Date”) and shall terminate upon June 30, 2024, (the “Termination Date”), unless sooner terminated in accordance with the provisions of this Agreement (the “Term”). From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 3 below.

This Agreement may be extended for **Four (4)** additional one-year period (hereinafter “Option Period”), at the option of District, subject to satisfactory performance as determined by the District. District shall give Contractor sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the District decide to exercise its option(s) to extend. In the event District does not give Contractor such written notice of its option to extend, this

Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 3 below. Should the District fail to give Contractor the sixty (60) days written notice of its intention to exercise any Option Period, the District may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Contractor.

Section 3. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the District shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the District shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

Section 4. CONTRACT DOCUMENTS; PRIORITY

a. Contract Documents. The Contract Documents consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference. Said Contract Documents are intended to be correlative and constitute Contractor's performance obligations:

1. This Agreement.
2. Exhibits A & B.
3. Special Provisions.
4. Faithful Performance & Payment Bonds (as applicable).
5. Non-Collusion Declaration.

b. Interpretation. In the event of any conflict between any of the Contract Documents, the document highest in the order of precedence (from highest to lowest), as set forth in Subsection 4.a above shall control.

Section 5. CONTRACTOR'S OBLIGATIONS

Contractor shall complete the Project as specifically set forth in the Contract Documents. Contractor shall furnish, at its own cost and expense, all labor, services, material, tools, equipment, supplies, transportation, and any other items and facilities necessary therefore, as provided in the Contract Documents.

Section 6. COMPENSATION

The Contractor agrees to receive and accept the following amount, not to exceed **One Hundred Thousand and 00/100 Dollars (\$100,000.00)**, as full compensation for furnishing; all materials, doing all the work contemplated and embraced in this contract, all loss or damage arising out of the nature of the work aforesaid, the action of the elements, any unforeseen

difficulties or obstructions which may arise or be encountered in the execution of the work until its acceptance by the District, and for all risks of every description connected with the work, all expenses incurred by or in consequence of the suspension or discontinuance of work well and faithfully completing the whole work, thereof, according to the requirements of the Contract Documents and to the satisfaction of **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, to wit: See **Exhibit "A", Scope of Work**.

Section 7. BID PROPOSAL FORMS

The District shall pay Contractor as provided in the Bid Proposal Forms, attached hereto as **Exhibit "B"**, and incorporated herein by this reference as though set forth in full, subject to approval of the District, when applicable.

Section 8. PREVAILING WAGES

a. In accordance with the provisions of the California Labor Code (1720,1770-1776, 1810, 1813 and 1815), the State Director of Industrial Relations has determined the general prevailing rates of per diem wages in the locality where the Project is to be done. Copies of the updated Wage Determination rates are available from the State of California via the internet at www.dir.ca.gov. Additionally, copies of the prevailing rate of per diem wages are on file at the City of Victorville Finance Division and shall be made available for review to any interested party on request. Notwithstanding anything in the Contract Documents to the contrary, Contractor and all subcontractors shall pay not less than said specified State of California rates to all workers employed by them in the execution of the work contemplated by this Contract.

b. **AB219 (as applicable)** adds Section 1720.9 to the Labor Code, the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving state agency or any political subdivision of the state. Section 1720.9 defines the term "ready-mixed" concrete and specifies that the rate of pay shall be the current prevailing wage "for the geographical area in which the factory or batching plant is located" as determined by the DIR. The statute also requires a written agreement between the party hauling or delivering the ready-mixed concrete and the party that engaged its services. Nothing in Section 1720.9 shall cause any company to be treated as a contractor or subcontractor for any purpose other than the application of this chapter of the Labor Code.

c. The delivery company shall provide certified payroll records under Labor Code section 1776(a) to the party that engaged its services and to the general contractor within five working days after the employee has been paid, accompanied by a written time record within five working days after the employee has been paid, accompanied by a written time record. The time record must be certified by each driver for the performance of job duties.

d. Contractor shall be responsible for using the correct and current prevailing wage rates. An error on the part of any awarding body does not relieve the Contractor from the responsibility for payment of the correct State prevailing wage and compliance with the maintenance and inspection of payroll records, posting of prevailing wage rates at work site, employment of apprentices, and other requirements of California Labor Code Section 1720, et seq.; California Code of Regulations, Title 8, Section 16000 et seq.; and all other applicable State labor laws. Contractor further acknowledges and agrees that it will be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with those laws. Contractor will require the same of all its subcontractors.

NOTE: Copies of the Certified Payrolls, Proof of Payroll submissions and appropriate Lien Releases are required with each invoice to the City. Payment of the invoice may be delayed when Payroll related documents and/or lien releases are not included with the invoice. An error on the part on any awarding body does not relieve the Contractor from responsibility for payment of the prevailing wage of per diem wages and penalties pursuant to Labor Code (1770 - 1776).

Section 9. WORKERS' COMPENSATION INSURANCE

Contractor shall procure and maintain, at its own expense, during the Term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the District.

In conformance with current statutory requirements of Section 1860 et seq., of the Labor Code of the State of California, the undersigned confirms the following as their certification:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract.

Section 10. NOTICE TO PROCEED

No work, service, material, or equipment shall be performed or furnished under this Contract unless and until a Notice to Proceed has been given to the Contractor by the District. Contractor shall commence work pursuant to the Contract Documents as directed by the District in the Notice to Proceed, and to diligently execute the same to completion within the time limits set forth in the Contract Documents.

Section 11. COMPLIANCE WITH LAWS

Contractor shall comply with all local, state, and federal laws and regulations applicable to the performance of the work required by the Contract Documents, including any rule, regulation, or bylaw governing the conduct or performance of Contractor, its employees, officers, board members, agents, independent contractors, and subcontractors. Unless otherwise specified in the Contract Documents, all required permits and licenses shall be held or obtained by the Contractor at its sole expense.

Section 12. COMMERCIAL GENERAL, AUTOMOBILE AND POLLUTION LIABILITY INSURANCE

Contractor shall procure and maintain at its own expense, during the term of this Agreement, commercial general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers, and agents and independent contractors.

Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, commercial vehicle liability insurance covering personal injury and property

damage, of not less than One Million Dollars (\$1,000,000) Combined Single Limit, covering any vehicle(s) utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the services required by this Agreement.

If the project entails the handling or use of hazardous material, Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, pollution liability insurance of not less than One Million Dollars (\$1,000,000).

Section 13. **RESERVED**

Section 14. **ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the District, the City of Victorville and their officers, employees, servants, volunteers, and agents and independent contractors, including, without limitation, the District's Attorney, are named as Additional Insureds.

Section 15. **WAIVER OF SUBROGATION RIGHTS**

Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the District, the City of Victorville and their officers, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

Section 16. **PROOF OF INSURANCE COVERAGE; REQUIRED PRIOR TO COMMENCEMENT OF SERVICES**

a. Contractor shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the District Secretary certificates of said insurance at least one (1) day prior to the commencement of any services to be performed under this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided that, in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the District shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of non-payment, ten (10) days' advance written notice shall be given.

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days written notice to the District of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the Term of this Agreement.

e. The Commercial General Liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Contract, Contractor's service coverage shall be primary with respect to the District. Any insurance maintained by the District shall be in excess of Contractor's insurance and shall not contribute to it.

Section 17. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 18. INDEMNIFICATION

Notwithstanding the limits of any insurance, Contractor shall indemnify the District, its officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the District its officials, officers, agents, volunteers or employees, and in connection therewith:

a. Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

b. Contractor will promptly pay any judgment rendered against the District, its officials, officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the District, its officials, volunteers, officers, agents, and employees harmless there from;

c. In the event the District, its officials, officers, agents, volunteers or employees is made a Party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the District, its officials, volunteers officers, agents or employees, any and all costs and expenses incurred by the District, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to District;

d. Contractor's duty to defend and indemnify as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time;

The Contractor's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

Section 19. REPORTS

Upon request by **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, Contractor shall prepare and submit reports concerning Contractor's performance of the work required by this Agreement.

Section 20. RECORDS

a. Contractor shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Contractor hereunder shall be retained by Contractor and made available to **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 21. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both Parties.

Section 22. ENTIRE AGREEMENT

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the District and Contractor with respect to the subject matter of this Agreement.

b. The Contract Documents contain all of the covenants and agreements between the Parties with respect to the subject matter herein, and each Party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement and the Contract Documents.

c. No agreement, statement, or promise with respect to the subject matter of the Contract Documents, which is not contained in the Contract Documents, or in a valid modification or amendment to the Contract Documents, shall be valid or binding on either Party.

Section 27. **CARE OF WORK**

Contractor must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the District, except those losses or damages as may be caused by the District's own negligence. The performance of the work by Contractor or the payment of money by the District shall not relieve Contractor from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the District, when such inaccuracies are due to the negligence of Contractor

Section 28. **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 29. **SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties. This Contract may not be assigned or transferred by Contractor without the concurrence of the surety and express written consent of the District, which may be withheld in the District's sole discretion since the experience and qualifications of Contractor were material considerations for this Contract.

Section 30. **GENDER; PLURAL**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 31. **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 32. **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 33. **CUMULATIVE REMEDIES**

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 of any other default by the other Party.

Section 34. VENUE

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 35. ATTORNEY'S FEES

Should any litigation, specifically including but not limited to, arbitration and other non-judicial resolution of disputes be commenced between the Parties to this agreement concerning this agreement or the rights and duties of either in relation thereto, the Parties prevailing in such litigation or other proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney fees in such litigation where the proceeding which, if not agreed upon by the Parties, shall be determined by the court or other entity in which such litigation or other proceeding is brought.

Section 36. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the District, until signed by the authorized representative(s) of Consultant, approved by the District's Risk Manager, and executed by the authorized District personnel or Mayor.

**Section 37. REPRESENTATIONS OF PARTIES AND PERSONS
EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 38. COUNTERPARTS

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

VICTORVILLE WATER DISTRICT

By: _____
**Debra Jones,
District Chairman**

Dated: _____

**KELLEY'S UNDERGROUND
CONSTRUCTION, INC.**

By: _____
**Jennifer Kelley,
President**

Dated: _____

ATTEST

By: _____
**Jennifer Thompson,
District Secretary**

Dated: _____

VICTORVILLE WATER DISTRICT

By: _____
**Sandra Bostick,
District Risk Manager**

Dated: _____

APPROVED AS TO STANDARD FORM

By: _____
**Andre de Bortnowsky,
District Legal Counsel**

Dated: _____

EXHIBIT A

SCOPE OF WORK

The District agrees to engage Contractor and Contractor agrees to furnish all necessary labor, tools, materials, and equipment for and do the Work for the Project. The Work shall be performed in accordance with: (i) Specifications as generally described in the Request for Proposal, Project Number CC23-082 for the Project, portions of which are attached hereto for ease of reference as **Exhibit "A"**, and the entirety of which is currently on file in office of the District Secretary); and (ii) the prices set forth in Contractor's Bid Proposal (attached as **Exhibit "B"**).

See Attachment

EXHIBIT A

VICTORVILLE WATER DISTRICT RFP# CC23-082 QUALIFIED EMERGENCY WATER CONTRACTOR

SECTION III – SCOPE OF WORK

As the need arises, the Contractor shall perform, coordinate, and manage its services to ensure the completion of tasks as deemed necessary. The Contractor shall manage the construction to proficiently monitor and control the project costs, quality, and schedule.

The type of work required by the Victorville Water District includes repairs of water infrastructure necessary involved with water conveyance. The contractors will be expected to repair many types of water facilities, including but not limited to valves, water mains and services lines. The size of valves, mainline, and service lines varies from 3/4 inch to 30 inches in diameter.

The Sanitary/Sewer and Storm Drain divisions of the Public Works Department would require work consisting of the excavation, removal, and replacement of damaged and/or failed pipes, which may range in sizes from 4-inch to 27-inch in diameter. Additional type of infrastructure repairs may include repairs to lift/pump stations, manholes, concrete structures such as box culverts, performance of bypass operations and providing traffic control in accordance with current Occupational Safety and Health Administration (OSHA) and Manual on Uniform Traffic Control Devices (MTUCD) requirements within the District right of ways.

The District will have three companies on contract. For each event, the contractor that can most readily address the emergency will be expected to perform, coordinate and manage its services to ensure the completion of tasks as deemed necessary.

The contractor shall perform the tasks in cooperation with selected officials within the Victorville Water District, Public Works Department and Engineering Department, and will be paid on a time and material basis.

PROJECT PERSONNEL

Project personnel shall be a mix of District staff and the Contractor's staff. The Contractor shall propose a sufficient qualified staffing level to ensure that the construction or repair is performed in accordance with the specifications. Since the contractor will get paid by the hour for staff, materials and equipment, the contractor shall endeavor to keep the minimum to adequately perform the work. Billing the District for staff or equipment that was not required to perform the work may result in disqualification for future projects.

The District will supply any surveying services required for the project. If material's testing is required, the District will provide those services via consultant.

EXHIBIT B

COST PROPOSAL FORMS

See Attachment

VICTORVILLE WATER DISTRICT
 RFP# CC23-082
 QUALIFIED EMERGENCY WATER CONTRACTOR

COST PROPOSAL FORM

The undersigned declares he has carefully examined the locations of the proposed work, the Scope of Services, and Contract Documents; and being familiar with all of the conditions surrounding the work, including the availability of materials and labor, here by proposes to furnish all labor, materials, tools, equipment, and incidentals, to complete all the work.

NOTE: The District has the right to award the contract to more than one contractor or if it's deemed in the best interests of the District.

The hours listed in the Bid Proposal Form are provided as a best estimate of usage by the District. These hours do not constitute an offer they are provided as a parameter for bidders to formulate their bids. The District does not guarantee any hours of work and reserves the right to either increase or decrease the hours based on as-needed basis only during the course of the contract.

TIME & MATERIAL – Provide a price per labor category (in accordance with State prevailing wage) Operator Group 4

DESCRIPTION	HOURLY RATE – REGULAR TIME	HOURLY RATE OVERTIME
General Services for Troubleshooting and repairs	<u>115.00</u>	<u>184.00</u>
DESCRIPTION	COST	
Travel Mobilization (if any)	<u>port to port</u>	
DESCRIPTION	% RATE	
Parts Mark-Up Percentage	<u>20</u>	
DESCRIPTION	HOURLY RATE	OVERTIME HOURLY RATE
After Hours	<u>184.00</u>	<u>184.00</u>
Holiday	<u>184.00</u>	<u>184.00</u>
Weekend	<u>184.00</u>	<u>184.00</u>

Emergency Response Time: 2 hours

Warranty Period in months: 12 months

**VICTORVILLE WATER DISTRICT
RFP# CC23-082
QUALIFIED EMERGENCY WATER CONTRACTOR**

COST PROPOSAL FORM

The undersigned declares he has carefully examined the locations of the proposed work, the Scope of Services, and Contract Documents; and being familiar with all of the conditions surrounding the work, including the availability of materials and labor, here by proposes to furnish all labor, materials, tools, equipment, and incidentals, to complete all the work.

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TIME & MATERIAL – Provide a price per labor category (in accordance with State prevailing wage)

laborer Group 4 / Teamsters

DESCRIPTION	HOURLY RATE – REGULAR TIME	HOURLY RATE OVERTIME
General Services for Troubleshooting and repairs	103.00	135.00
DESCRIPTION	COST	
Travel Mobilization (if any)	port to port	
DESCRIPTION	% RATE	
Parts Mark-Up Percentage	20	
DESCRIPTION	HOURLY RATE	OVERTIME HOURLY RATE
After Hours	135.00	135.00
Holiday	135.00	135.00
Weekend	135.00	135.00

Emergency Response Time: 2 hours

Warranty Period in months: 12 months



**EQUIPMENT LIST/BARE RENTAL PER HOUR FROM PORT TO PORT
MARKUP INCLUDED (15%)**

BACKHOE	JOHN DEERE 410	\$55.00
EXCAVATOR	45K LB	\$105.00
EXCAVATOR	65K LB	\$115.00
EXCAVATOR	90K LB	\$175.00
EXCAVATOR	110 LB	\$225.00
LOADER	2.5 YARD	\$125.00
END DUMP		\$55.00
LOWBOY		\$55.00
2.5 TON SERVICE TRUCK W/ TOOLS AND TRAFFIC CONTROL		\$45.00
5 YD DUMP TRUCK W/ VACTOR		\$150.00
5 YD DUMP TRUCK		\$45.00
SKIP LOADER		\$45.00
4K WATER TRUCK		\$65.00
2K WATER TRUCK		\$55.00
COMPRESSOR AND JACKHAMMER		\$35.00
WELDER		\$45.00
STREET BROOM		\$35.00
FORKLIFT		\$35.00
TRAFFIC CONTROL TRUCK W/ ARROW BOARD		\$35.00
ARROWBOARD		\$25.00
LIGHTTOWER		\$25.00

EXHIBIT B

FOREMAN/OPERATOR	85.00 AN HOUR	127.50 OVERTIME
LABORER	65.00 AN HOUR	97.50 OVERTIME

PREVAILING WAGES

OPERATOR	\$133.25
LABORER	\$104.00
TEAMSTER	\$105.00

OUTSIDE HAULER HAS TO BE USED FOR HITACHI 450 LC-COST PLUS 15%

ALL MATERIAL WILL BE MARKED UP 15%

EXHIBIT B

FOREMAN/OPERATOR	85.00 AN HOUR	127.50 OVERTIME
LABORER	65.00 AN HOUR	97.50 OVERTIME

PREVAILING WAGES

OPERATOR	\$133.25
LABORER	\$104.00
TEAMSTER	\$105.00

OUTSIDE HAULER HAS TO BE USED FOR HITACHI 450 LC-COST PLUS 15%

ALL MATERIAL WILL BE MARKED UP 15%

**CONSTRUCTION AGREEMENT
BY AND BETWEEN
VICTORVILLE WATER DISTRICT
AND
DDH APPLE VALLEY CONSTRUCTION, INC.
FOR
QUALIFIED EMERGENCY WATER CONTRACTOR,
PROJECT CC23-082-3**

THIS CONSTRUCTION AGREEMENT (the "Agreement") dated this _____ day of _____, 20____, for reference purpose only, is made and entered into by and between the **VICTORVILLE WATER DISTRICT**, a County water district and subsidiary district of the City of Victorville, organized and existing in the County of San Bernardino under and by virtue of the laws of the State of California hereinafter referred to as the "District", and **DDH Apple Valley Construction, Inc., a California corporation**, hereinafter referred to as the "Contractor". The District and the Contractor are sometimes hereinafter referred to as a "Party" and collectively referred to as the "Parties."

RECITALS:

WHEREAS the District requires **Qualified Emergency Water Contractor, Project CC23-082-3** (the "Project"); and

WHEREAS, in light of the facts set forth above, the District desires to retain Contractor in connection with **Qualified Emergency Water Contractor; and**

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

Section 2. TERM OF AGREEMENT

This Agreement shall commence July 1, 2023 (the "Commencement Date") and shall terminate upon June 30, 2024, (the "Termination Date"), unless sooner terminated in accordance with the provisions of this Agreement (the "Term"). From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 3 below.

This Agreement may be extended for **Four (4)** additional one-year period (hereinafter "Option Period"), at the option of District, subject to satisfactory performance as determined by the District. District shall give Contractor sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the District decide to exercise its option(s) to extend. In the event District does not give Contractor such written notice of its option to extend, this

Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 3 below. Should the District fail to give Contractor the sixty (60) days written notice of its intention to exercise any Option Period, the District may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Contractor.

Section 3. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the District shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the District shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

Section 4. CONTRACT DOCUMENTS; PRIORITY

a. Contract Documents. The Contract Documents consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference. Said Contract Documents are intended to be correlative and constitute Contractor's performance obligations:

1. This Agreement.
2. Exhibits A & B.
3. Special Provisions.
4. Faithful Performance & Payment Bonds (as applicable).
5. Non-Collusion Declaration.

b. Interpretation. In the event of any conflict between any of the Contract Documents, the document highest in the order of precedence (from highest to lowest), as set forth in Subsection 4.a above shall control.

Section 5. CONTRACTOR'S OBLIGATIONS

Contractor shall complete the Project as specifically set forth in the Contract Documents. Contractor shall furnish, at its own cost and expense, all labor, services, material, tools, equipment, supplies, transportation, and any other items and facilities necessary therefore, as provided in the Contract Documents.

Section 6. COMPENSATION

The Contractor agrees to receive and accept the following amount, not to exceed **One Hundred Thousand and 00/100 Dollars (\$100,000.00)**, as full compensation for furnishing; all materials, doing all the work contemplated and embraced in this contract, all loss or damage arising out of the nature of the work aforesaid, the action of the elements, any unforeseen

difficulties or obstructions which may arise or be encountered in the execution of the work until its acceptance by the District, and for all risks of every description connected with the work, all expenses incurred by or in consequence of the suspension or discontinuance of work well and faithfully completing the whole work, thereof, according to the requirements of the Contract Documents and to the satisfaction of **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, to wit: See **Exhibit "A", Scope of Work**.

Section 7. BID PROPOSAL FORMS

The District shall pay Contractor as provided in the Bid Proposal Forms, attached hereto as **Exhibit "B"**, and incorporated herein by this reference as though set forth in full, subject to approval of the District, when applicable.

Section 8. PREVAILING WAGES

a. In accordance with the provisions of the California Labor Code (1720,1770-1776, 1810, 1813 and 1815), the State Director of Industrial Relations has determined the general prevailing rates of per diem wages in the locality where the Project is to be done. Copies of the updated Wage Determination rates are available from the State of California via the internet at www.dir.ca.gov. Additionally, copies of the prevailing rate of per diem wages are on file at the City of Victorville Finance Division and shall be made available for review to any interested party on request. Notwithstanding anything in the Contract Documents to the contrary, Contractor and all subcontractors shall pay not less than said specified State of California rates to all workers employed by them in the execution of the work contemplated by this Contract.

b. **AB219 (as applicable)** adds Section 1720.9 to the Labor Code, the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving state agency or any political subdivision of the state. Section 1720.9 defines the term "ready-mixed" concrete and specifies that the rate of pay shall be the current prevailing wage "for the geographical area in which the factory or batching plant is located" as determined by the DIR. The statute also requires a written agreement between the party hauling or delivering the ready-mixed concrete and the party that engaged its services. Nothing in Section 1720.9 shall cause any company to be treated as a contractor or subcontractor for any purpose other than the application of this chapter of the Labor Code.

c. The delivery company shall provide certified payroll records under Labor Code section 1776(a) to the party that engaged its services and to the general contractor within five working days after the employee has been paid, accompanied by a written time record within five working days after the employee has been paid, accompanied by a written time record. The time record must be certified by each driver for the performance of job duties.

d. Contractor shall be responsible for using the correct and current prevailing wage rates. An error on the part of any awarding body does not relieve the Contractor from the responsibility for payment of the correct State prevailing wage and compliance with the maintenance and inspection of payroll records, posting of prevailing wage rates at work site, employment of apprentices, and other requirements of California Labor Code Section 1720, et seq.; California Code of Regulations, Title 8, Section 16000 et seq.; and all other applicable State labor laws. Contractor further acknowledges and agrees that it will be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with those laws. Contractor will require the same of all its subcontractors.

NOTE: Copies of the Certified Payrolls, Proof of Payroll submissions and appropriate Lien Releases are required with each invoice to the City. Payment of the invoice may be delayed when Payroll related documents and/or lien releases are not included with the invoice. An error on the part on any awarding body does not relieve the Contractor from responsibility for payment of the prevailing wage of per diem wages and penalties pursuant to Labor Code (1770 - 1776).

Section 9. WORKERS' COMPENSATION INSURANCE

Contractor shall procure and maintain, at its own expense, during the Term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the District.

In conformance with current statutory requirements of Section 1860 et seq., of the Labor Code of the State of California, the undersigned confirms the following as their certification:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract.

Section 10. NOTICE TO PROCEED

No work, service, material, or equipment shall be performed or furnished under this Contract unless and until a Notice to Proceed has been given to the Contractor by the District. Contractor shall commence work pursuant to the Contract Documents as directed by the District in the Notice to Proceed, and to diligently execute the same to completion within the time limits set forth in the Contract Documents.

Section 11. COMPLIANCE WITH LAWS

Contractor shall comply with all local, state, and federal laws and regulations applicable to the performance of the work required by the Contract Documents, including any rule, regulation, or bylaw governing the conduct or performance of Contractor, its employees, officers, board members, agents, independent contractors, and subcontractors. Unless otherwise specified in the Contract Documents, all required permits and licenses shall be held or obtained by the Contractor at its sole expense.

Section 12. COMMERCIAL GENERAL, AUTOMOBILE AND POLLUTION LIABILITY INSURANCE

Contractor shall procure and maintain at its own expense, during the term of this Agreement, commercial general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers, and agents and independent contractors.

Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, commercial vehicle liability insurance covering personal injury and property

damage, of not less than One Million Dollars (\$1,000,000) Combined Single Limit, covering any vehicle(s) utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the services required by this Agreement.

If the project entails the handling or use of hazardous material, Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, pollution liability insurance of not less than One Million Dollars (\$1,000,000).

Section 13. **RESERVED**

Section 14. **ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the District, the City of Victorville and their officers, employees, servants, volunteers, and agents and independent contractors, including, without limitation, the District's Attorney, are named as Additional Insureds.

Section 15. **WAIVER OF SUBROGATION RIGHTS**

Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the District, the City of Victorville and their officers, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

Section 16. **PROOF OF INSURANCE COVERAGE; REQUIRED PRIOR TO COMMENCEMENT OF SERVICES**

a. Contractor shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the District Secretary certificates of said insurance at least one (1) day prior to the commencement of any services to be performed under this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided that, in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the District shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of non-payment, ten (10) days' advance written notice shall be given.

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days written notice to the District of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the Term of this Agreement.

e. The Commercial General Liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Contract, Contractor's service coverage shall be primary with respect to the District. Any insurance maintained by the District shall be in excess of Contractor's insurance and shall not contribute to it.

Section 17. **TIME OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

Section 18. **INDEMNIFICATION**

Notwithstanding the limits of any insurance, Contractor shall indemnify the District, its officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the District its officials, officers, agents, volunteers or employees, and in connection therewith:

a. Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

b. Contractor will promptly pay any judgment rendered against the District, its officials, officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the District, its officials, volunteers, officers, agents, and employees harmless there from;

c. In the event the District, its officials, officers, agents, volunteers or employees is made a Party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the District, its officials, volunteers officers, agents or employees, any and all costs and expenses incurred by the District, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to District;

d. Contractor's duty to defend and indemnify as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time;

The Contractor's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

Section 19. REPORTS

Upon request by **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, Contractor shall prepare and submit reports concerning Contractor's performance of the work required by this Agreement.

Section 20. RECORDS

a. Contractor shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Contractor hereunder shall be retained by Contractor and made available to **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 21. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both Parties.

Section 22. ENTIRE AGREEMENT

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the District and Contractor with respect to the subject matter of this Agreement.

b. The Contract Documents contain all of the covenants and agreements between the Parties with respect to the subject matter herein, and each Party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement and the Contract Documents.

c. No agreement, statement, or promise with respect to the subject matter of the Contract Documents, which is not contained in the Contract Documents, or in a valid modification or amendment to the Contract Documents, shall be valid or binding on either Party.

Section 23. AMBIGUITIES

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Notwithstanding the foregoing, the Parties agree that **Exhibit “B”** is attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Construction Agreement and **Exhibit “B”**, the terms of this Construction Agreement shall control and nothing set forth in **Exhibit “B”** shall be deemed to supersede any of the provisions of this Construction Agreement.

Section 24. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the District: **Doug Mathews, Director,
Public Works and Water
14343 Civic Drive
Victorville, CA 92392**

To Contractor: **Douglas Gregory Hamilton, President
DDH Apple Valley Construction, Inc.
9312 Deep Creek Road
Apple Valley, CA 92308**

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 25. NON-LIABILITY OF DISTRICT OFFICERS AND EMPLOYEES

No officer or employee of the District shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by the District or for any amount, which may become due to Contractor or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

Section 26. REVIEW BY ATTORNEYS

Each Party hereto has had its attorneys review this Agreement and all related documents. Each Party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

Section 27. **CARE OF WORK**

Contractor must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the District, except those losses or damages as may be caused by the District's own negligence. The performance of the work by Contractor or the payment of money by the District shall not relieve Contractor from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the District, when such inaccuracies are due to the negligence of Contractor

Section 28. **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 29. **SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties. This Contract may not be assigned or transferred by Contractor without the concurrence of the surety and express written consent of the District, which may be withheld in the District's sole discretion since the experience and qualifications of Contractor were material considerations for this Contract.

Section 30. **GENDER; PLURAL**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 31. **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 32. **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 33. **CUMULATIVE REMEDIES**

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 of any other default by the other Party.

Section 34. VENUE

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 35. ATTORNEY'S FEES

Should any litigation, specifically including but not limited to, arbitration and other non-judicial resolution of disputes be commenced between the Parties to this agreement concerning this agreement or the rights and duties of either in relation thereto, the Parties prevailing in such litigation or other proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney fees in such litigation where the proceeding which, if not agreed upon by the Parties, shall be determined by the court or other entity in which such litigation or other proceeding is brought.

Section 36. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the District, until signed by the authorized representative(s) of Consultant, approved by the District's Risk Manager, and executed by the authorized District personnel or Mayor.

**Section 37. REPRESENTATIONS OF PARTIES AND PERSONS
EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 38. COUNTERPARTS

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

VICTORVILLE WATER DISTRICT

DDH APPLE VALLEY CONSTRUCTION, INC.

By: _____
**Debra Jones,
District Chairman**

By: _____
**Douglas Gregory Hamilton,
President**

Dated: _____

Dated: _____

ATTEST

By: _____
**Jennifer Thompson,
District Secretary**

Dated: _____

VICTORVILLE WATER DISTRICT

APPROVED AS TO STANDARD FORM

By: _____
**Sandra Bostick,
District Risk Manager**

By: _____
**Andre de Bortnowsky,
District Legal Counsel**

Dated: _____

Dated: _____

EXHIBIT A

SCOPE OF WORK

The District agrees to engage Contractor and Contractor agrees to furnish all necessary labor, tools, materials, and equipment for and do the Work for the Project. The Work shall be performed in accordance with: (i) Specifications as generally described in the Request for Proposal, Project Number CC23-082 for the Project, portions of which are attached hereto for ease of reference as **Exhibit "A"**, and the entirety of which is currently on file in office of the District Secretary); and (ii) the prices set forth in Contractor's Bid Proposal (attached as **Exhibit "B"**).

See Attachment

EXHIBIT A

VICTORVILLE WATER DISTRICT RFP# CC23-082 QUALIFIED EMERGENCY WATER CONTRACTOR

SECTION III – SCOPE OF WORK

As the need arises, the Contractor shall perform, coordinate, and manage its services to ensure the completion of tasks as deemed necessary. The Contractor shall manage the construction to proficiently monitor and control the project costs, quality, and schedule.

The type of work required by the Victorville Water District includes repairs of water infrastructure necessary involved with water conveyance. The contractors will be expected to repair many types of water facilities, including but not limited to valves, water mains and services lines. The size of valves, mainline, and service lines varies from 3/4 inch to 30 inches in diameter.

The Sanitary/Sewer and Storm Drain divisions of the Public Works Department would require work consisting of the excavation, removal, and replacement of damaged and/or failed pipes, which may range in sizes from 4-inch to 27-inch in diameter. Additional type of infrastructure repairs may include repairs to lift/pump stations, manholes, concrete structures such as box culverts, performance of bypass operations and providing traffic control in accordance with current Occupational Safety and Health Administration (OSHA) and Manual on Uniform Traffic Control Devices (MTUCD) requirements within the District right of ways.

The District will have three companies on contract. For each event, the contractor that can most readily address the emergency will be expected to perform, coordinate and manage its services to ensure the completion of tasks as deemed necessary.

The contractor shall perform the tasks in cooperation with selected officials within the Victorville Water District, Public Works Department and Engineering Department, and will be paid on a time and material basis.

PROJECT PERSONNEL

Project personnel shall be a mix of District staff and the Contractor's staff. The Contractor shall propose a sufficient qualified staffing level to ensure that the construction or repair is performed in accordance with the specifications. Since the contractor will get paid by the hour for staff, materials and equipment, the contractor shall endeavor to keep the minimum to adequately perform the work. Billing the District for staff or equipment that was not required to perform the work may result in disqualification for future projects.

The District will supply any surveying services required for the project. If material's testing is required, the District will provide those services via consultant.

EXHIBIT B

COST PROPOSAL FORMS

See Attachment

VICTORVILLE WATER DISTRICT
RFP# CC23-082
QUALIFIED EMERGENCY WATER CONTRACTOR

COST PROPOSAL FORM

The undersigned declares he has carefully examined the locations of the proposed work, the Scope of Services, and Contract Documents; and being familiar with all of the conditions surrounding the work, including the availability of materials and labor, here by proposes to furnish all labor, materials, tools, equipment, and incidentals, to complete all the work.

NOTE: The District has the right to award the contract to more than one contractor or if it's deemed in the best interests of the District.

The hours listed in the Bid Proposal Form are provided as a best estimate of usage by the District. These hours do not constitute an offer they are provided as a parameter for bidders to formulate their bids. The District does not guarantee any hours of work and reserves the right to either increase or decrease the hours based on as-needed basis only during the course of the contract.

TIME & MATERIAL – Provide a price per labor category (in accordance with State prevailing wage)

DESCRIPTION	HOURLY RATE – REGULAR TIME	HOURLY RATE OVERTIME
General Services for Troubleshooting and repairs		
DESCRIPTION	COST	
Travel Mobilization (if any)		
DESCRIPTION	% RATE	
Parts Mark-Up Percentage		
DESCRIPTION	HOURLY RATE	OVERTIME HOURLY RATE
After Hours		
Holiday		
Weekend		

****Please see attached Wage & Equipment Rate Schedule 2023****

Emergency Response Time: 60-90 minutes

Warranty Period in months: 12 months

EXHIBIT B

Apple Valley

CONSTRUCTION CO., INC.

GENERAL ENGINEERING CONTRACTOR

Wage & Equipment Rate Schedule 2023

Labor	Straight Time	Overtime
Super (Group 8 - Foreman)	\$88.58	\$118.87
Foreman (Group 8 - Foreman)	\$88.58	\$118.87
Operator (Group 8)	\$87.58	\$115.64
Pipelayer Foreman (Group 4)	\$68.84	\$90.88
Pipelayer (Group 4)	\$67.84	\$88.78
Laborer (Group 1)	\$57.64	\$77.78

Equipment/Hourly	Hourly Rate
Crew Truck (Ford F250 1-ton 4x4)	\$75.00
Utility Truck/Flatbed	\$75.00
Backhoe: CAT 430E	\$80.00
Case 580B w/ backhoe	\$60.00
Backhoe/ Sweeper	\$102.00
Loader: 744	\$180.00
Loader: 544K	\$160.00
Loader: 950 CAT	\$185.00
JD 210LE	\$60.00
Skiploader (Case 570l xt)	\$45.00
Skidsteer - 279D	\$63.00
Excavator: CAT 375	\$335.00
Excavator: CAT 330	\$320.00
Excavator: PC 220	\$280.00
Excavator: PC 400	\$290.00
Mini Ex - 85g	\$70.00
CAT 328	\$136.00
CAT Roller	\$68.00
Truck:End dump (85000 GVW)	\$125.00
Truck:Lowboy	\$140.00
Truck:Water (2500 gallon)	\$65.00
Truck:Water (4000 gallon)	\$85.00
Truck:Concrete Mixer	\$42.00
Utility Tow Trailer	\$18.00
Potholer	\$35.00
Asphalt Zipper (Pavement Grinder)	\$125.00
Light Plants	\$22.00
Pipe Laser	\$6.00
Vibratory Compactor	\$27.00
Vibratory Plate	\$30.00
Generator	\$18.00
Pump: 3" Submersible / Trash	\$8.00
Tool: Air Compressor	\$4.00
Tool: K-Rail, by LF	\$2.00
Tamper	\$3.00
Compaction Wheel	\$72.00
Traffic Control: Daily	\$300.00
Traffic Control: Delineators per day	\$42.00
Shoring Box 8 x 24	\$28.00
Shoring Box 6 x 24	\$24.00
Shoring Box 8 x 16	\$19.00
Pneumatic Hammer	\$28.00
Steel Plates/ Trench Plates	\$7.00

All equipment will be priced using California State Transportation Agency (Caltrans)
Labor Surcharge and Equipment Rental Rates Effective April 1, 2023 through March 31, 2024
For rented equipment we will submit backup invoices for pricing reimbursement

**CONSTRUCTION AGREEMENT
BY AND BETWEEN
VICTORVILLE WATER DISTRICT
AND
HIGH DESERT UNDERGROUND, INC.
FOR
QUALIFIED EMERGENCY WATER CONTRACTOR,
PROJECT CC23-082-1**

THIS CONSTRUCTION AGREEMENT (the "Agreement") dated this _____ day of _____, 20____, for reference purpose only, is made and entered into by and between the **VICTORVILLE WATER DISTRICT**, a County water district and subsidiary district of the City of Victorville, organized and existing in the County of San Bernardino under and by virtue of the laws of the State of California hereinafter referred to as the "District", and **High Desert Underground, Inc., a California corporation**, hereinafter referred to as the "Contractor". The District and the Contractor are sometimes hereinafter referred to as a "Party" and collectively referred to as the "Parties."

RECITALS:

WHEREAS the District requires **Qualified Emergency Water Contractor, Project CC23-082-1** (the "Project"); and

WHEREAS, in light of the facts set forth above, the District desires to retain Contractor in connection with **Qualified Emergency Water Contractor; and**

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

Section 2. TERM OF AGREEMENT

This Agreement shall commence July 1, 2023 (the "Commencement Date") and shall terminate upon June 30, 2024, (the "Termination Date"), unless sooner terminated in accordance with the provisions of this Agreement (the "Term"). From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 3 below.

This Agreement may be extended for **Four (4)** additional one-year period (hereinafter "Option Period"), at the option of District, subject to satisfactory performance as determined by the District. District shall give Contractor sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the District decide to exercise its option(s) to extend. In the event District does not give Contractor such written notice of its option to extend, this

Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 3 below. Should the District fail to give Contractor the sixty (60) days written notice of its intention to exercise any Option Period, the District may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Contractor.

Section 3. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the District shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the District shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

Section 4. CONTRACT DOCUMENTS; PRIORITY

a. Contract Documents. The Contract Documents consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference. Said Contract Documents are intended to be correlative and constitute Contractor's performance obligations:

1. This Agreement.
2. Exhibits A & B.
3. Special Provisions.
4. Faithful Performance & Payment Bonds (as applicable).
5. Non-Collusion Declaration.

b. Interpretation. In the event of any conflict between any of the Contract Documents, the document highest in the order of precedence (from highest to lowest), as set forth in Subsection 4.a above shall control.

Section 5. CONTRACTOR'S OBLIGATIONS

Contractor shall complete the Project as specifically set forth in the Contract Documents. Contractor shall furnish, at its own cost and expense, all labor, services, material, tools, equipment, supplies, transportation, and any other items and facilities necessary therefore, as provided in the Contract Documents.

Section 6. COMPENSATION

The Contractor agrees to receive and accept the following amount, not to exceed **One Hundred Thousand and 00/100 Dollars (\$100,000.00)**, as full compensation for furnishing; all materials, doing all the work contemplated and embraced in this contract, all loss or damage arising out of the nature of the work aforesaid, the action of the elements, any unforeseen

difficulties or obstructions which may arise or be encountered in the execution of the work until its acceptance by the District, and for all risks of every description connected with the work, all expenses incurred by or in consequence of the suspension or discontinuance of work well and faithfully completing the whole work, thereof, according to the requirements of the Contract Documents and to the satisfaction of **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, to wit: See **Exhibit "A", Scope of Work**.

Section 7. BID PROPOSAL FORMS

The District shall pay Contractor as provided in the Bid Proposal Forms, attached hereto as **Exhibit "B"**, and incorporated herein by this reference as though set forth in full, subject to approval of the District, when applicable.

Section 8. PREVAILING WAGES

a. In accordance with the provisions of the California Labor Code (1720,1770-1776, 1810, 1813 and 1815), the State Director of Industrial Relations has determined the general prevailing rates of per diem wages in the locality where the Project is to be done. Copies of the updated Wage Determination rates are available from the State of California via the internet at www.dir.ca.gov. Additionally, copies of the prevailing rate of per diem wages are on file at the City of Victorville Finance Division and shall be made available for review to any interested party on request. Notwithstanding anything in the Contract Documents to the contrary, Contractor and all subcontractors shall pay not less than said specified State of California rates to all workers employed by them in the execution of the work contemplated by this Contract.

b. **AB219 (as applicable)** adds Section 1720.9 to the Labor Code, the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving state agency or any political subdivision of the state. Section 1720.9 defines the term "ready-mixed" concrete and specifies that the rate of pay shall be the current prevailing wage "for the geographical area in which the factory or batching plant is located" as determined by the DIR. The statute also requires a written agreement between the party hauling or delivering the ready-mixed concrete and the party that engaged its services. Nothing in Section 1720.9 shall cause any company to be treated as a contractor or subcontractor for any purpose other than the application of this chapter of the Labor Code.

c. The delivery company shall provide certified payroll records under Labor Code section 1776(a) to the party that engaged its services and to the general contractor within five working days after the employee has been paid, accompanied by a written time record within five working days after the employee has been paid, accompanied by a written time record. The time record must be certified by each driver for the performance of job duties.

d. Contractor shall be responsible for using the correct and current prevailing wage rates. An error on the part of any awarding body does not relieve the Contractor from the responsibility for payment of the correct State prevailing wage and compliance with the maintenance and inspection of payroll records, posting of prevailing wage rates at work site, employment of apprentices, and other requirements of California Labor Code Section 1720, et seq.; California Code of Regulations, Title 8, Section 16000 et seq.; and all other applicable State labor laws. Contractor further acknowledges and agrees that it will be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with those laws. Contractor will require the same of all its subcontractors.

NOTE: Copies of the Certified Payrolls, Proof of Payroll submissions and appropriate Lien Releases are required with each invoice to the City. Payment of the invoice may be delayed when Payroll related documents and/or lien releases are not included with the invoice. An error on the part on any awarding body does not relieve the Contractor from responsibility for payment of the prevailing wage of per diem wages and penalties pursuant to Labor Code (1770 - 1776).

Section 9. WORKERS' COMPENSATION INSURANCE

Contractor shall procure and maintain, at its own expense, during the Term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the District.

In conformance with current statutory requirements of Section 1860 et seq., of the Labor Code of the State of California, the undersigned confirms the following as their certification:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract.

Section 10. NOTICE TO PROCEED

No work, service, material, or equipment shall be performed or furnished under this Contract unless and until a Notice to Proceed has been given to the Contractor by the District. Contractor shall commence work pursuant to the Contract Documents as directed by the District in the Notice to Proceed, and to diligently execute the same to completion within the time limits set forth in the Contract Documents.

Section 11. COMPLIANCE WITH LAWS

Contractor shall comply with all local, state, and federal laws and regulations applicable to the performance of the work required by the Contract Documents, including any rule, regulation, or bylaw governing the conduct or performance of Contractor, its employees, officers, board members, agents, independent contractors, and subcontractors. Unless otherwise specified in the Contract Documents, all required permits and licenses shall be held or obtained by the Contractor at its sole expense.

Section 12. COMMERCIAL GENERAL, AUTOMOBILE AND POLLUTION LIABILITY INSURANCE

Contractor shall procure and maintain at its own expense, during the term of this Agreement, commercial general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers, and agents and independent contractors.

Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, commercial vehicle liability insurance covering personal injury and property

damage, of not less than One Million Dollars (\$1,000,000) Combined Single Limit, covering any vehicle(s) utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the services required by this Agreement.

If the project entails the handling or use of hazardous material, Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, pollution liability insurance of not less than One Million Dollars (\$1,000,000).

Section 13. RESERVED

Section 14. ADDITIONAL INSURED

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the District, the City of Victorville and their officers, employees, servants, volunteers, and agents and independent contractors, including, without limitation, the District's Attorney, are named as Additional Insureds.

Section 15. WAIVER OF SUBROGATION RIGHTS

Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the District, the City of Victorville and their officers, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

Section 16. PROOF OF INSURANCE COVERAGE; REQUIRED PRIOR TO COMMENCEMENT OF SERVICES

a. Contractor shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the District Secretary certificates of said insurance at least one (1) day prior to the commencement of any services to be performed under this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided that, in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the District shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of non-payment, ten (10) days' advance written notice shall be given.

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days written notice to the District of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the Term of this Agreement.

e. The Commercial General Liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this Contract, Contractor's service coverage shall be primary with respect to the District. Any insurance maintained by the District shall be in excess of Contractor's insurance and shall not contribute to it.

Section 17. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 18. INDEMNIFICATION

Notwithstanding the limits of any insurance, Contractor shall indemnify the District, its officials, officers, agents, volunteers and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the District its officials, officers, agents, volunteers or employees, and in connection therewith:

a. Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

b. Contractor will promptly pay any judgment rendered against the District, its officials, officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the District, its officials, volunteers, officers, agents, and employees harmless there from;

c. In the event the District, its officials, officers, agents, volunteers or employees is made a Party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the District, its officials, volunteers officers, agents or employees, any and all costs and expenses incurred by the District, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to District;

d. Contractor's duty to defend and indemnify as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time;

The Contractor's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

Section 19. **REPORTS**

Upon request by **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, Contractor shall prepare and submit reports concerning Contractor's performance of the work required by this Agreement.

Section 20. **RECORDS**

a. Contractor shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Contractor hereunder shall be retained by Contractor and made available to **DOUG MATHEWS, DIRECTOR, PUBLIC WORKS AND WATER**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 21. **MODIFICATIONS AND AMENDMENTS**

This Agreement may be modified or amended only by a written instrument signed by both Parties.

Section 22. **ENTIRE AGREEMENT**

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the District and Contractor with respect to the subject matter of this Agreement.

b. The Contract Documents contain all of the covenants and agreements between the Parties with respect to the subject matter herein, and each Party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement and the Contract Documents.

c. No agreement, statement, or promise with respect to the subject matter of the Contract Documents, which is not contained in the Contract Documents, or in a valid modification or amendment to the Contract Documents, shall be valid or binding on either Party.

Section 23. AMBIGUITIES

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Notwithstanding the foregoing, the Parties agree that **Exhibit “B”** is attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Construction Agreement and **Exhibit “B”**, the terms of this Construction Agreement shall control and nothing set forth in **Exhibit “B”** shall be deemed to supersede any of the provisions of this Construction Agreement.

Section 24. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the District: **Doug Mathews, Director,
Public Works and Water
14343 Civic Drive
Victorville, CA 92392**

To Contractor: **Blane Sandwick, COO
High Desert Underground, Inc.
13355 Osage Court
Apple Valley, CA 92308**

b. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 25. NON-LIABILITY OF DISTRICT OFFICERS AND EMPLOYEES

No officer or employee of the District shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by the District or for any amount, which may become due to Contractor or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

Section 26. REVIEW BY ATTORNEYS

Each Party hereto has had its attorneys review this Agreement and all related documents. Each Party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

Section 27. **CARE OF WORK**

Contractor must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the District, except those losses or damages as may be caused by the District's own negligence. The performance of the work by Contractor or the payment of money by the District shall not relieve Contractor from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the District, when such inaccuracies are due to the negligence of Contractor

Section 28. **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 29. **SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties. This Contract may not be assigned or transferred by Contractor without the concurrence of the surety and express written consent of the District, which may be withheld in the District's sole discretion since the experience and qualifications of Contractor were material considerations for this Contract.

Section 30. **GENDER; PLURAL**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 31. **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 32. **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 33. **CUMULATIVE REMEDIES**

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 of any other default by the other Party.

Section 34. VENUE

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 35. ATTORNEY'S FEES

Should any litigation, specifically including but not limited to, arbitration and other non-judicial resolution of disputes be commenced between the Parties to this agreement concerning this agreement or the rights and duties of either in relation thereto, the Parties prevailing in such litigation or other proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney fees in such litigation where the proceeding which, if not agreed upon by the Parties, shall be determined by the court or other entity in which such litigation or other proceeding is brought.

Section 36. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the District, until signed by the authorized representative(s) of Consultant, approved by the District's Risk Manager, and executed by the authorized District personnel or Mayor.

**Section 37. REPRESENTATIONS OF PARTIES AND PERSONS
EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 38. COUNTERPARTS

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

VICTORVILLE WATER DISTRICT

HIGH DESERT UNDERGROUND, INC.

By: _____
**Debra Jones,
District Chairman**

By: _____
**Blane Sandwick,
COO**

Dated: _____

Dated: _____

ATTEST

By: _____
**Jennifer Thompson,
District Secretary**

Dated: _____

VICTORVILLE WATER DISTRICT

APPROVED AS TO STANDARD FORM

By: _____
**Sandra Bostick,
District Risk Manager**

By: _____
**Andre de Bortnowsky,
District Legal Counsel**

Dated: _____

Dated: _____

EXHIBIT A

SCOPE OF WORK

The District agrees to engage Contractor and Contractor agrees to furnish all necessary labor, tools, materials, and equipment for and do the Work for the Project. The Work shall be performed in accordance with: (i) Specifications as generally described in the Request for Proposal, Project Number CC23-082 for the Project, portions of which are attached hereto for ease of reference as **Exhibit "A"**, and the entirety of which is currently on file in office of the District Secretary); and (ii) the prices set forth in Contractor's Bid Proposal (attached as **Exhibit "B"**).

See Attachment

EXHIBIT A

VICTORVILLE WATER DISTRICT RFP# CC23-082 QUALIFIED EMERGENCY WATER CONTRACTOR

SECTION III – SCOPE OF WORK

As the need arises, the Contractor shall perform, coordinate, and manage its services to ensure the completion of tasks as deemed necessary. The Contractor shall manage the construction to proficiently monitor and control the project costs, quality, and schedule.

The type of work required by the Victorville Water District includes repairs of water infrastructure necessary involved with water conveyance. The contractors will be expected to repair many types of water facilities, including but not limited to valves, water mains and services lines. The size of valves, mainline, and service lines varies from 3/4 inch to 30 inches in diameter.

The Sanitary/Sewer and Storm Drain divisions of the Public Works Department would require work consisting of the excavation, removal, and replacement of damaged and/or failed pipes, which may range in sizes from 4-inch to 27-inch in diameter. Additional type of infrastructure repairs may include repairs to lift/pump stations, manholes, concrete structures such as box culverts, performance of bypass operations and providing traffic control in accordance with current Occupational Safety and Health Administration (OSHA) and Manual on Uniform Traffic Control Devices (MTUCD) requirements within the District right of ways.

The District will have three companies on contract. For each event, the contractor that can most readily address the emergency will be expected to perform, coordinate and manage its services to ensure the completion of tasks as deemed necessary.

The contractor shall perform the tasks in cooperation with selected officials within the Victorville Water District, Public Works Department and Engineering Department, and will be paid on a time and material basis.

PROJECT PERSONNEL

Project personnel shall be a mix of District staff and the Contractor's staff. The Contractor shall propose a sufficient qualified staffing level to ensure that the construction or repair is performed in accordance with the specifications. Since the contractor will get paid by the hour for staff, materials and equipment, the contractor shall endeavor to keep the minimum to adequately perform the work. Billing the District for staff or equipment that was not required to perform the work may result in disqualification for future projects.

The District will supply any surveying services required for the project. If material's testing is required, the District will provide those services via consultant.

EXHIBIT B

COST PROPOSAL FORMS

See Attachment

HDU

**VICTORVILLE WATER DISTRICT
RFP# CC23-082
QUALIFIED EMERGENCY WATER CONTRACTOR**

COST PROPOSAL FORM

The undersigned declares he has carefully examined the locations of the proposed work, the Scope of Services, and Contract Documents; and being familiar with all of the conditions surrounding the work, including the availability of materials and labor, here by proposes to furnish all labor, materials, tools, equipment, and incidentals, to complete all the work.

NOTE: The District has the right to award the contract to more than one contractor or if it's deemed in the best interests of the District.

The hours listed in the Bid Proposal Form are provided as a best estimate of usage by the District. These hours do not constitute an offer they are provided as a parameter for bidders to formulate their bids. The District does not guarantee any hours of work and reserves the right to either increase or decrease the hours based on as-needed basis only during the course of the contract.

TIME & MATERIAL – Provide a price per labor category (in accordance with State prevailing wage)

DESCRIPTION	HOURLY RATE – REGULAR TIME	HOURLY RATE OVERTIME
General Services for Troubleshooting and repairs	HDU COST PLUS - SEE RATE SHEET ATTACHED.	HDU COST PLUS - SEE RATE SHEET ATTACHED.
DESCRIPTION	COST	
Travel Mobilization (if any)	PORT TO PORT TRAVEL FOR CREW AND EQUIPMENT	
DESCRIPTION	% RATE	
Parts Mark-Up Percentage	20%	
DESCRIPTION	HOURLY RATE	OVERTIME HOURLY RATE
After Hours		
Holiday	HDU COST PLUS - SEE RATE SHEET ATTACHED.	
Weekend		

Emergency Response Time: 1 HOUR

Warranty Period in months: 1 YEAR (365 DAYS FROM DATE OF INSTALLATION)



CITY OF VICTORVILLE
HDU EQUIPMENT RATE SHEET

JAN 01 2023**

LABOR COST (PORT TO PORT TRAVEL)				
JOB CLASSIFICATION	NON-PREVAILING WAGE		PREVAILING WAGE **	
	HOURLY RATE		HOURLY RATE **	
	REGULAR	OVERTIME	REGULAR	OVERTIME
LABORER	\$ 65.00	\$ 97.50	\$ 90.50	\$ 135.75
OPERATOR / FOREMAN	\$ 85.00	\$ 127.50	\$ 120.50	\$ 180.75
SUPERINTENDENT/PM	\$ 100.00	\$ 150.00	\$ 130.00	\$ 195.00
TRUCK DRIVER	\$ 85.00	\$ 127.50	\$ 120.50	\$ 180.75
SUBCONTRACTOR/MATERIALS MARKUP	20%		20%	
HDU FEE	20%		20%	

EQUIPMENT RATES (PORT TO PORT TRAVEL)				
NOTE THIS IS BARE RATES - ADD OPERATOR RATE (NON-PW OR PW)				
ASPHALT GRINDERS (ZIPPERS)				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
AG01*	JOHN DEERE	JOHN DEERE	COLD PLANER	\$ 75.00
AG02	ZIPPER 480		AZ480	\$ 100.00

BACKHOE				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
BH01	CASE 580 CAB	CASE	580 SUPER M PLUS S2	\$ 35.00
BH02	CASE 580L	CASE		\$ 35.00
BH03	CASE 580L	CASE		\$ 35.00
BH04	CASE 580SN	CASE	580SN 4WD T4 FINAL	\$ 35.00
BH05	CASE 590	CASE	590 SUPER M SERIES 2	\$ 35.00
BH06	JD 310	JOHN DEERE	310 SLHL	\$ 45.00
BH07	JD 310	JOHN DEERE	310 SLHL	\$ 45.00

DOZER				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
DZ01	JOHN DEERE	JOHN DEERE	550 HLT	\$ 45.00

EXCAVATORS				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
EX01	CASE CX 160	CASE	CX160	\$ 80.00
EX02	DEERE 450	JOHN DEERE	450DLC	\$ 150.00
EX03	DOOSAN 225	DOOSAN	SOLAR 225LCV	\$ 100.00
EX04	HYUNDAI 35 MINI X	HYUNDAI	ROBEX 35Z-9A	\$ 35.00
EX07	HITACHI ZX350LC	HITACHI	ZX350LC	\$ 200.00
EX08	DEERE 135	JOHN DEERE	135G FT4	\$ 175.00

EXHIBIT B
FORKLIFTS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
FL01	GRADALL	GRADALL	534B-8	\$ 35.00
FL02	GRADALL	GRADALL	534D-6	\$ 35.00
FL03	MITSUBISHI CAB	MITUBISHI CAT	FGC20	\$ 35.00
FL04	TOYOTA	TOYOTA		\$ 35.00
FL05	DATSUN	DATSUN	CPF02-A25V	\$ 35.00
FL06	SCISSOR LIFT	UPRIGHT	66000-000	\$ 35.00

HYDROHAMMER

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
HH01	HYDROHAMMER	ARROW MASTER	HJ1350	\$ 45.00

LOADERS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
LD01	DOOSAN 200V	DOOSAN	MEGA 200V	\$ 45.00
LD02	KAWASAKI 90 Z4	KAWASAKI	90 Z4 ANGUS PALM CAB	\$ 85.00
LD03	KOMATSU 450	KOMATSU	WA450-3	\$ 85.00
LD04	SKIP LOADER	CASE	570 LXT SKIP SERIES 2	\$ 35.00
LD05	SKIP LOADER 02	CASE	570 NXT	\$ 35.00
LD06	JOHN DEERE LOADER	JOHN DEERE	644K	\$ 85.00

MOTOGRADERS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
MG01	CAT 140H	CAT	140H	\$ 75.00
MG03	TOPCON GRADE CONTROL	TOPCON		\$ 25.00

ROLLERS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
RL01	DYNAPAC	DYNAPAC	CC142	\$ 35.00
RL02	HAMM ROLLER	HAMM	HD12 VV	\$ 45.00

SERVICE TRUCKS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
ST01	WELDING SERVICE TRUCK	GMC	2500 HD	\$ 45.00
ST02	SERVICE TRUCK	FORD	F550	\$ 45.00
ST03	SERVICE TRUCK	FORD	F250XL 4X4	\$ 45.00
ST04	SERVICE TRUCK	FORD	F450	\$ 45.00
ST05	SERVICE TRUCK	FORD	F550	\$ 45.00
ST06	SERVICE TRUCK	CHEVY	3500	\$ 45.00
ST07	SERVICE TRUCK	FORD	F550	\$ 45.00
ST09	TOP KICK	GMC	C4500	\$ 45.00
ST10	SERVICE TRUCK	CHEVY	2500	\$ 45.00
ST12	SERVICE TRUCK	FORD	F550 DRW	\$ 45.00
ST13	SERVICE TRUCK	FORD	RAPTOR F150	\$ 45.00
ST14	SERVICE TRUCK	FORD	F150 LARIAT	\$ 45.00

SCRAPERS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
SC01	613 B	CAT	613 B	\$ 75.00

EXHIBIT B

SCREENS				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
SN01	SMALL REED SCREEN	REED SCREENALL	RD-40B	\$ 100.00
SN02	BIG REED SCREEN	REED	RE150A	\$ 100.00

SKID-STEERS (ATTACHMENTS AVAILABLE - BROOM, BREAKER, GRINDER ETC.)				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
SS02*	BOBCAT S570	BOBCAT	S570	\$ 35.00
SS03*	JOHN DEERE 333G	JOHN DEERE	333G	\$ 45.00

STREET BROOM (SWEEPERS)				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
SB01	LAYMOR	LAYMOR	8B	\$ 35.00
SB02	TERRAMITE TSS38	TERRAMITE	TSS38	\$ 35.00
SB03	TERRAMITE	TERRAMITE	TSS48	\$ 35.00

TRAFFIC CONTROL (ARROW BOARDS)				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
TC01	DIESEL			\$200.00 / DAY
TC02	DIESEL			\$200.00 / DAY
TC03	SOLAR	ALLMAND ECLIPSE	GSI269	\$200.00 / DAY
TC04	SOLAR	ALLMAND ECLIPSE	GSI269	\$200.00 / DAY

TRAILERS				
NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
TL01	FLAT BED	TRANSCRAFT		\$ 40.00
TL03	TILT TRAILER	TRAIL KING		\$ 30.00
TL04	HEAVY HAUL	MURRAY		\$ 50.00
TL05	STAKEBED	APACHE TRAILER		\$ 30.00
TL06	END DUMP	RANCH MAN		\$ 45.00
TL07	ROLLER TRAILER	CARSON		\$ 30.00
TL08	DOVE TAIL	TRAIL EZE		\$ 45.00
TL09	TRAILER	TRAIL KING		\$ 30.00
TL10	NEW TILT TRAILER	MARKSMAN		\$ 30.00
TL11	DITCHWITCH TRAILER 1999	DITCHWITCH		\$ 50.00
TL12	BIG TEX TRAILER	BIGTX		\$ 50.00
TL13	TRASH TRAILER	SPENCER	UTILITY TRAILER	\$ 50.00
TL14	ZIEMAN TRAILER	ZIEMAN		\$ 50.00
TL15	ASPHALT ZIPPER TRAILER	WILSON		\$ 50.00
TL16	FORT IRWIN STORAGE TRAILER	TIMPT		\$ 50.00
TL17	BIG TEX TRAILER 2019	BIGTX	14LX-12BK7KHJ-P4	\$ 50.00
TL18	TEXAS PRIDE	TEXAS PRIDE	GT82320KBP	\$ 50.00

EXHIBIT B

TRAILER MOUNTED EQUIPMENT

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
TM01	AIR COMPRESSOR 01	95 LEROI	INTERNATIONAL	\$ 20.00
TM02	AIR COMPRESSOR 02	INGERSOLL RAND		\$ 20.00
TM03	AIR COMPRESSOR 03	SPERCA		\$ 20.00
TM04	LIGHT TOWER	TEREX	AL4060DI-4MH	\$200.00 / DAY
TM05	MIXER 01	MULITQUIP	MC-94	\$ 20.00
TM06	MIXER 02	CROWN		\$ 20.00
TM07	MIXER 03	SPENCER	UTILITY TRAILER	\$ 20.00
TM08	WELDER 01	LINCOLN SA 200		\$50.00 + WELDER
TM09	WELDER 02	LINCOLN SA 200		\$50.00 + WELDER
TM10	UTILITY TRAILER	TEREX	AL4060DI-4MH	\$200.00 / DAY
TM11	DITCHWITCH 1330	MULITQUIP	MC-94	\$ 65.00
TM12	TRAILER MTD PORT O POTTY	CROWN		\$ 20.00
TM13	LIGHT TOWER	SPENCER	UTILITY TRAILER	\$200.00 / DAY

TRUCKS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
TR01	CREW VAN		E350	\$ 45.00
TR02	FLAT BED	INTERNATIONAL	4700	\$ 40.00
TR03	SPARE RANGER	FORD	RANGER	\$ 45.00
TR04	TRUCK	TOYOTA	TUNDRA	\$ 45.00
TR05	RANGER	FORD	RANGER	\$ 45.00
TR06				
TR07	HEAVY HAUL	PETERBILT	367	\$ 50.00
TR08	5 CY DUMP TRUCK	2002	CHEVY	\$ 45.00
TR09	10 WHEELER DUMP TRUCK	PETERBILT	PB348	\$ 50.00

WATERTRUCKS

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
WT01	2K - INTERNATIONAL			\$ 30.00
WT02	2K - VOLVO	VOLVO	MII PLUS	\$ 30.00
WT03	4K - WHITE VOLVO			\$ 45.00
WT04	4K - FORD 6X6	FORD	L8000	\$ 45.00
WT06	WATER WAGON	MAGNUM	MWT500	\$ 25.00
WT07	WATER TOWER 01	SONS		\$200.00 / DAY
WT08	WATER TOWER 02			\$200.00 / DAY
WT09	WATER TOWER 03	333	SPCNS - SE391148	\$200.00 / DAY

VACCU TRAILER (VACTOR)

NUMBER	VEHICLE DESCRIPTION	MAKE	MODEL	COST
VT01	VACTRON	VACTRON	PMD 00800DT	\$ 50.00
VT02	VACMASTER	SPV800 6T3-W		\$ 50.00

***NOTE:** CERTAIN EQUIPMENT REQUIRES SPECIAL ATTACHMENTS AND/OR HAULING THAT REQUIRES SPECIAL PERMITTING

****NOTE:** RATES SUBJECT TO CHANGE DUE TO STATE OF CALIFORNIA / FEDERAL RATE INCREASES / EQUIPMENT ADDITIONAL OR DELETION