



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 11/20/2012

Report Type: Consent

Title: Contracts: Valley Elderberry Longhorn Beetle (VELB) Mitigation and Budget Augmentation for Water Treatment Plants Rehabilitation Project

Report ID: 2012-00876

Location: District 1

Recommendation: 1) Pass a Resolution amending the Water Treatment Plants Rehabilitation Project (Z14000600) by a transfer of \$650,000 (Water Fund 6005) from the Water Based CIP Reserve Project (Z14000700), and 2) Pass a Motion a) awarding a contract to Wildlands Inc. to transplant 18 elderberry bushes, in the amount of \$22,605, b) awarding a contract to Sacramento River Ranch LLC for the purchase of 69 VELB conservation credits, in the amount of \$241,500, and c) authorizing the City Manager or the City Manager's designee to sign all documents necessary to implement the contracts.

Contact: Bill Busath, Interim Engineering Manager, (916) 808-1434: Dan Sherry, Supervising Engineer, (916) 808-1419, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Engineering Administration

Dept ID: 14001311

Attachments:

- 1- Description/Analysis
- 2- Background
- 3 -Location Map
- 4- Resolution
- 5- Bid Summary
- 6- Agreement for Transplanting
- 7- Agreement for Credits

City Attorney Review

Approved as to Form
Joe Robinson
11/13/2012 3:21:01 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
11/8/2012 5:10:25 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 11/9/2012 2:26:17 PM

Description/Analysis

Issue: The City's two surface water treatment plants, the Sacramento River Water Treatment Plant (SRWTP) and the EA Fairbairn Water Treatment Plant (EAFWTP), were constructed in the 1920's and 1960's, respectively. Critical infrastructure and equipment at SRWTP are over 90 years old, have exceeded their service life, and need to be replaced. Improvements are also needed at EAFWTP to maintain reliable capacity. Currently the final design for the Water Treatment Plants Rehabilitation Project (Project) is being performed by Carollo Engineers, under a Professional Services Agreement previously approved by the City Council (City Agreement No. 2010-0266). Construction documents are scheduled to be completed, ready for bidding, by the end of November 2012. Valley Elderberry Longhorn Beetle (VELB) mitigation is required to comply with the Biological Opinion issued for the Project by the U.S. Fish and Wildlife Service (USFWS).

The Project currently has a design budget of \$9.9 million. However, the total estimated cost to complete the design, bid the project, and perform the required VELB mitigation, is now \$10.55 million. In order to complete the final design, complete the VELB mitigation this season, and put the project out to bid, staff is requesting augmentation of the Project budget by \$650,000. For the VELB mitigation, staff recommends award of a contract to Wildlands Inc. for \$22,605 to transplant the elderberry bushes, and award of a contract to Sacramento River Ranch LLC for \$241,500 for purchase of 69 VELB conservation credits.

Policy Considerations: The Project, which provides updated infrastructure for a safe and reliable water supply, is consistent with City Council focus areas of public safety, economic development, livability, and sustainability. Awarding the transplanting and VELB conservation credit purchase contracts will minimize the potential for delay of the water treatment plants rehabilitation, which are essential to the health and safety of the City and City residents.

Economic Impacts: None. Economic impacts are typically estimated for construction categories. The Council actions requested herein precede the planned construction.

Environmental Considerations: Construction of the project is subject to CEQA. Pursuant to CEQA requirements, City Council passed Resolution No. 2012-067 on March 20, 2012, which adopted the mitigated negative declaration and mitigation reporting program for the Water Treatment Plants Rehabilitation project.

On August 9, 2012, the USFWS issued their Biological Opinion for the project (ref. No. 08ESMF00-2012-F-0592) that indicates 18 onsite Elderberry bushes are to be transplanted to a USFWS approved conservation bank, and City is to purchase 69 VELB conservation credits from a USFWS approved conservation bank.

The mitigated negative declaration and Resolution 2012-067 are available for review on the Community Development Department's webpage at:

<http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/>

Transplanting the elderberry bushes from SRWTP and purchasing 69 VELB conservation credits is consistent with mitigation measure BIO-2A of the adopted mitigated negative declaration (see page 25 therein), and with the USFWS Biological Opinion. No additional CEQA action is required.

Sustainability: The Project is consistent with the City's Sustainability Master Plan by providing a safe and reliable water supply for the Sacramento Region.

Commission/Committee Action: Not Applicable

Rationale for Recommendation: Engineering Services issued and advertised a request for VELB Mitigation proposals in accordance with City Code Chapter 3.60 and Administrative Policy Instruction Number 4002. Three bids were received by the City Clerk and opened on September 20, 2012. The lowest responsive and responsible bid was received from Wildlands for a combined total amount of \$264,105. Wildlands acts as the Bank manager for Sacramento River Ranch LLC, which is the entity authorized by USFWS to sell VELB conservation credits.

Augmenting the project budget by \$650,000 is necessary to complete the design, perform the VELB mitigation, and provide support services through Project bidding.

Financial Considerations: The Water Treatment Plants Rehabilitation Project (Z14000600) is currently budgeted at \$9.9 million thru design and bidding, with a remaining unobligated amount of \$7,064. Total cost, however, to complete the design documents, bid the Project, and perform the VELB mitigation is projected to cost \$10.55 million. In order to complete the final design and put the Water Treatment Plants Rehabilitation project out to bid, staff is requesting the following: 1) Augment the CIP expenditure budget for Z14006000 by \$650,000 (Water Fund 6005) to be transferred from the water base CIP reserve (Z14000700), and 2) Award contracts to Sacramento River Ranch, LLC and Wildlands, Inc.

Planned use of the augmentation money is as follows:

Award contracts:

Sacramento River Ranch LLC for VELB mitigation	241,500
Wildlands Inc. to transplant Elderberry bushes	22,605

Other costs:

Project review & specifications	135,895
Additional design work for security system	100,000
Design services	95,000
Construction management	50,000
Partially fund the Projects' Art in public places	5,000

Total	\$650,000
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There is sufficient funding in the water base CIP reserve (Z14000700) to complete the transfer to the Water Treatment Plants Rehabilitation Project (Z14000600).

Emerging Small Business Development (ESBD): Not applicable. Only two firms are approved by USFWS to sell VELB conservation credits for the Project, neither of which is an emerging or small business enterprise. Wildlands Inc., who submitted the lowest responsive bid, is not certified with the City of Sacramento as an Emerging or Small Business Enterprise (ESBE).

BACKGROUND

The City's two surface water treatment plants, the Sacramento River Water Treatment Plant (SRWTP) and the EA Fairbairn Water Treatment Plant (EAFWTP), were constructed in the 1920's and 1960's, respectively. Critical infrastructure and equipment at SRWTP is over 90 years old, has exceeded its useful service life, and needs to be replaced. Improvements are also needed at EAFWTP to maintain reliable capacity. In order to provide a safe and reliable water supply today and in the future for the citizens of Sacramento, it is imperative that the treatment plants be rehabilitated. Currently the final design for the Water Treatment Plants Rehabilitation Project (Project) is being performed by Carollo Engineers, under a Professional Services Agreement previously approved by the City Council (City Agreement No. 2010-0266), and is on schedule to be completed by the end of November 2012.

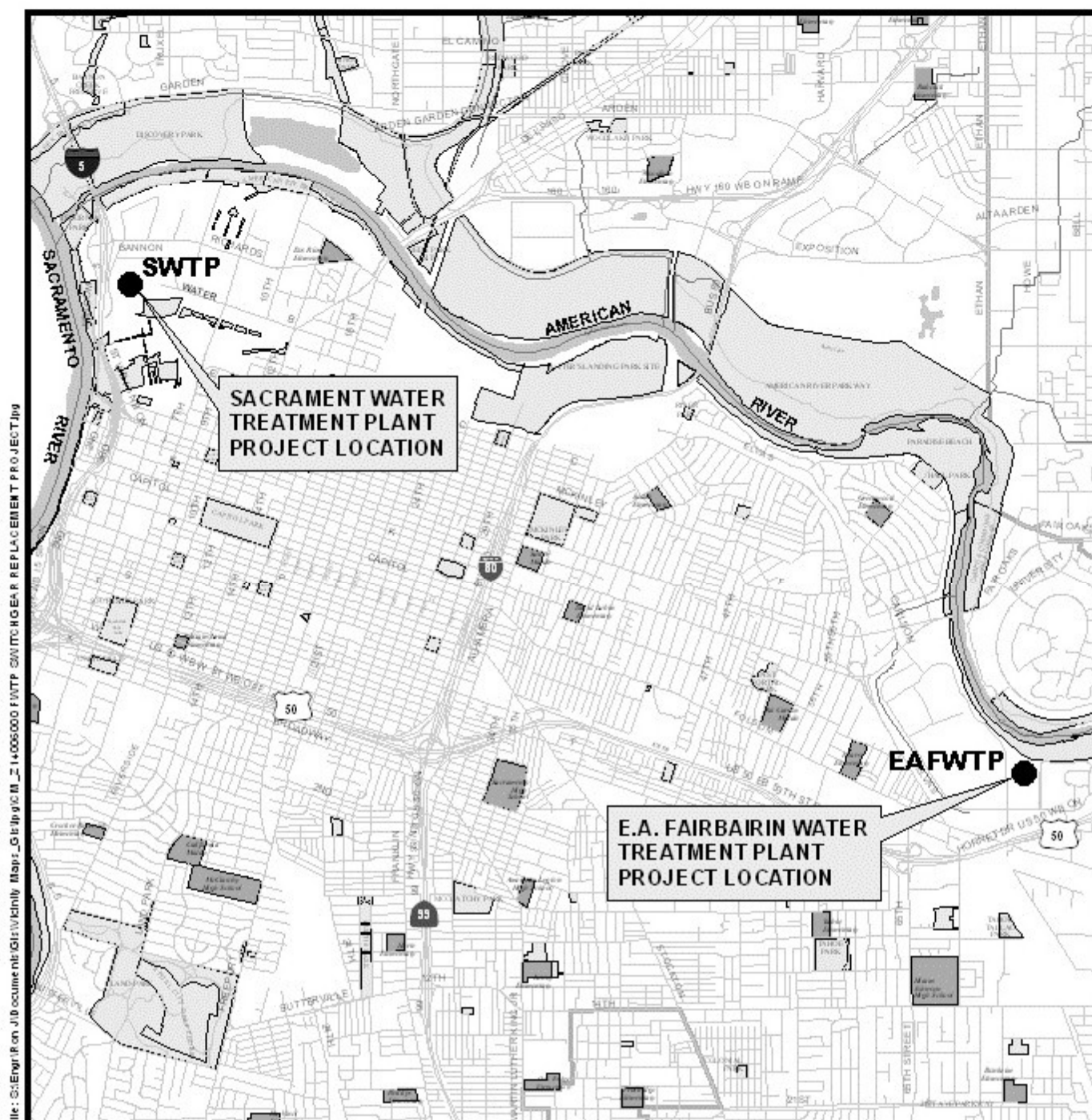
In order to complete final design of the Project and put the project out to bid, staff is requesting augmentation of the Project budget by \$650,000 to fund the following: 1) additional design work for perimeter security at both water treatment plants (\$100,000); 2) partially fund the project's art in public places (\$5,000); 3) support services from the design consultant during the bid period (\$95,000); 4) additional City staff time to review the project Construction Documents (\$135,895); 5) support services from the construction management team during the bid period (\$50,000); 6) transplant Valley Elderberry Bushes (\$22,605); and 7) purchase Valley Elderberry Long Horn Beetle (VELB) conservation credits (\$241,500).

The USFWS Biological Opinion for the Project (ref. No. 08ESMF00-2012-F-0592) requires that 18 Elderberry bushes onsite at SRWTP be transplanted to a USFWS-approved conservation bank, and requires the purchase of 69 VELB conservation credits from a USFWS approved conservation bank. Each conservation credit purchased represents a minimum of 1,800 square feet of land that can support as many as 10 conservation plantings (i.e. elderberry cuttings or seedlings and/or associated native plants) that will provide habitat for the VELB in perpetuity. Since there is a narrow seasonal window (November 1st thru February 15th) each year to transplant elderberry bushes, it is necessary to award a VELB mitigation contract this season so as not to delay the Project's planned March 2013 start of construction.

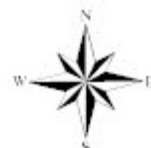
On August 21st, 2012, the Dept. of Utilities Engineering Services issued Request for Proposals number P13141311006 for the purchase of 69 VELB conservation credits and transplanting 18 elderberry bushes. Bids were opened September 20, 2012. Of the three bids received, the lowest bid, from Stillwater Plains, was deemed nonresponsive because the firm was not approved by USFWS to sell Project conservation credits. Of the other two bids received, Wildlands Inc. provided the lowest responsive and responsible bid with a total amount of \$264,105. The bid includes two components, a

contract to Wildlands Inc. for \$22,605 to transplant the elderberry bushes and a contract to Sacramento River Ranch LLC for \$241,500 for purchase of 69 VELB conservation credits.

WATER TREATMENT PLANTS
REHABILITATION PROJECT
(PN: Z14006000)



Map Prepared By
City of Sacramento
Department of Utilities





RESOLUTION NO.

Adopted by the Sacramento City Council

AUTHORIZING BUDGET AMENDMENT FOR THE WATER TREATMENT PLANTS REHABILITATION PROJECT

BACKGROUND

- A. The City's Water Treatment Plants Rehabilitation Project (Project) will rehabilitate and improve critical infrastructure and equipment at the Sacramento River Water Treatment Plant (SRWTP) and the EA Fairbairn Water Treatment Plant.
- B. At the SRWTP, there are 18 existing elderberry bushes that must be transplanted between November 1st and February 15th by a U.S. Fish & Wildlife Service approved specialty firm to an authorized conservation bank, and compensating Valley Elderberry Longhorn Beetle (VELB) conservation credits must be purchased before construction can start.
- C. A budget augmentation of \$650,000 (Water Fund 6005) is required for the Project to provide sufficient funding to complete the Project design; bid the Project; award the elderberry bush transplant contract; and purchase the required VELB conservation credits as shown below:

Award contracts:

Sacramento River Ranch LLC for VELB mitigation	241,500
Wildlands Inc. to transplant Elderberry bushes	22,605

Other costs:

Project review & specifications	135,895
Additional design work for security system	100,000
Design services	95,000
Construction management	50,000
Partially fund the Projects' Art in public places	5,000

Total	\$650,000
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BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

The City Manager or City Manager's designee is authorized to amend the Water Treatment Plants Rehabilitation Project (Z14006000) budget by transferring \$650,000 (Water Fund 6005) from the Water Base CIP Reserve (Z14000700) budget.



Bid Summary: SRWTP VELB Mitigation (P13141344006)					PM: Stu Williams				
Bid date: 9/20/2012					JN/PN: Z14006000				
Item #	Description	Est. Quantity	Units	Low Bid per unit	BID TOTAL	Bid per unit	BID TOTAL	Bid per unit	BID TOTAL
				Stillwater Olains LOW BIDDER	1	Wildlands	2	Delta Habitat	3
1	Transplant Elderberry Bushes	18	ea	\$ 390.00	\$ 7,020.00	\$ 1,255.83	\$ 22,605.00	\$ 1,087.00	\$ 19,566.00
2	VELB Conservation Credits	69	ea	\$ 3,099.00	\$ 213,831.00	\$ 3,500.00	\$ 241,500.00	\$ 3,750.00	\$ 258,750.00
Bid Total					\$ 220,851.00		\$ 264,105.00		\$ 278,316.00

Note: AWARD notification is dependent on USFWS allowing Stillwater to sell mitigation credits outside their authorized boundary, which currently doesn't extend south of Red Bluff, CA.



Proposed Agreement between City and Wildlands Inc. for transplanting the SRWTP Elderberry bushes

PROJECT #: Z14006000
PROJECT NAME: SRWTP VELB Mitigation
DEPARTMENT: Utilities
DIVISION: Engineering Services

CITY OF SACRAMENTO

NONPROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

Wildlands
3855 Atherton Road, Rocklin, CA 95765
Phone: 916.435-3555/Fax: 916.435-3578

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

Invitation to Bid
Instructions to Bidders
Certificate(s) of Insurance
Drug-Free Workplace Policy and Affidavit

Workers' Compensation Certificate
Contractor's 9-18-12 Bid Proposal Form
(including Attachment 1)
ESBD Program Statement
Technical Specifications

2. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
3. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
5. **General Provisions.** The General Provisions set forth in Exhibit D that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Living Wage Requirements.** Not applicable.
7. **Non-Discrimination in Employee Benefits.** Not applicable.
8. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
9. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO

A Municipal Corporation

City Clerk

By: _____

Print name: Dave Brent

Title: Director, Dept. of Utilities

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

Attachments

Exhibit A - Scope of Service
Exhibit B - Fee Schedule/Manner of Payment
Exhibit C - Facilities/Equipment Provided
Exhibit D - General Provisions

CONTRACTOR:

Wildlands, Inc.
NAME OF FIRM

80-0687348
Federal I.D. No.

00417519
State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

____ Individual/Sole Proprietor
____ Partnership
____ Corporation (*may require 2 signatures*)
____ Limited Liability Company
____ Other (*please specify:* _____)

Signature of Authorized Person

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

EXHIBIT A

NONPROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Ian Pietz/PE
1395 35th Ave., Sacramento CA 95822
Phone: 916.808-1910/Fax: 916.808-1497/E-mail: ipietz@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Julie Maddox/Marketing Coordinator
3855 Atherton Road, Rocklin CA 95765
Phone: 916.435-3555/Fax: 916.435-3578/E-mail: jmaddox@wildlandsinc.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Scope of Services.

The services provided shall consist of transplanting 18 elderberry shrubs from the SRWTP site to the River Ranch VELB Conservation Bank in Yolo County, in accordance with the Proposal/Contract letter from Wildlands dated September 18, 2012 addressed to Stu Williams, CITY OF SACRAMENTO, that was issued in response to and in conformance with all conditions in the City's Request for Proposals #P13141311006, both of which documents are incorporated herein by reference.

3. Time of Performance. The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

EXHIBIT B

NONPROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$22,605.00.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

*Dept. Of Utilities
1395 35th Ave, Sacramento CA 95822
Phone: 916.808-1426/Fax: 916.808-1497
Attn: Annette Atkins*

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

EXHIBIT C

NONPROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*] ☐ Not furnish any facilities or equipment for this Agreement; or

☒ furnish the following facilities or equipment for the Agreement:

1. Mark and call for Underground Service Alert clearance at each plant site.
2. Clear up to and around each Elderberry bush per addendum No. 1 to RFP # P13141311006.

EXHIBIT D
NONPROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term “information” shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party’s trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY’s failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR’s proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked “trade secret” when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff’s attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual “trade secret” designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated “trade secret” by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

- 8. Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR’s profession in California. All products of whatsoever nature that CONTRACTOR delivers

to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services render by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type



Proposed Agreement between City and Sacramento River Ranch LLC for Purchase of VELB Conservation Credits

**AGREEMENT FOR SALE OF CONSERVATION CREDITS
RIVER RANCH VELB CONSERVATION BANK
SERVICE File No. 08ESMF00-2012-F-0592**

This Agreement is entered into this _____ day of _____, 2012, by and between SACRAMENTO RIVER RANCH, LLC (Bank Owner) and the CITY OF SACRAMENTO (Project Applicant), jointly referred to as the “Parties,” as follows:

RECITALS

A. The Bank Owner has developed the River Ranch VELB Conservation Bank (Bank) located in Yolo County, California; and

B. The Bank was approved by the United States Fish and Wildlife Service (Service) on June 9, 2005, and is currently in good standing with this agency; and

C. The Bank Owner has received approval from the Service to offer valley elderberry longhorn beetle conservation credits (Conservation Credits) for sale as compensation for the loss of the federally listed valley elderberry longhorn beetle’s habitat as specified in the River Ranch VELB Conservation Bank Agreement between Bank Owner and Service (Bank Agreement); and

D. Project Applicant is seeking to implement the project described on Exhibit “A” attached hereto (Project), which would unavoidably and adversely impact listed Valley Elderberry Longhorn Beetle habitat, and seeks to compensate for the loss of Valley Elderberry Longhorn Beetle habitat by purchasing Conservation Credits from Bank Owner; and

E. Project Applicant has been authorized by the Service under File No. 08ESMF00-2012-F-0592 to purchase 69 Conservation Credits at a Service-approved conservation bank upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

F. Project Applicant desires to purchase from Bank Owner and Bank Owner desires to sell to Project Applicant 69 Conservation Credits.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The foregoing recitals are incorporated herein by this reference.
2. Bank Owner hereby agrees to sell to Project Applicant and Project Applicant hereby purchases from Bank Owner 69 Conservation Credits for the purchase price of \$241,500.00 (Purchase Price), in accordance with the terms hereof. The Purchase Price for the Conservation Credits shall be paid by wire transfer of funds or by check payable to “Sacramento River Ranch, LLC.” Upon receipt of the Purchase Price, Bank Owner will deliver to Project Applicant an executed Bill of Sale in the form attached hereto as Exhibit “B”.

3. The sale and transfer of the Conservation Credits described herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

4. Project Applicant shall have no obligation whatsoever by reason of the purchase of the Conservation Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable in any way for the success or continued expense or maintenance in perpetuity of the Conservation Credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank Owner shall monitor and make reports to the appropriate agency or agencies on the status of any Conservation Credits sold to Project Applicant. Bank Owner shall be solely and completely responsible for satisfying any and all conditions placed on the Bank or the Conservation Credits by all state or federal jurisdictional agencies. Bank Owner hereby shall defend Project Applicant of and from all such liabilities and obligations.

5. The Conservation Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

6. Project Applicant must deliver the Purchase Price to Bank Owner within 30 days of the date of this Agreement. After the 30 day period this Agreement will be considered null and void and Bank Owner and Project Applicant shall have no further obligations hereunder.

7. Upon purchase of the Conservation Credits specified above, Bank Owner shall complete the payment receipt form attached hereto as Exhibit "C", and shall submit the completed payment receipt to the Service.

8. This Agreement may only be amended in writing, and any such amendment shall not be effective until duly approved and executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BANK OWNER:

PROJECT APPLICANT:

SACRAMENTO RIVER RANCH, LLC

CITY OF SACRAMENTO

By: Wildlands

Its: Authorized Representative

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPROVED

SERVICE:

This Agreement fulfills Conservation Measure #1 for the purchase of 69 credits as compensation for effects to VELB, as specified under the Service's Biological Opinion, File No. 08ESMF00-2012-F-0592 dated August 9, 2012.

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

By: _____

Title: _____

Dated: _____

Exhibit “A”

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

The proposed project is for the replacement of aging infrastructure and other improvements to be made at the Sacramento River Water Treatment Plant. The 18 elderberry bushes that will be impacted by project activities are located on the Sacramento River Water Treatment Plant site, located at 301 Water Street, in the City of Sacramento, Sacramento County.

Exhibit "B"

BILL OF SALE

Contract # RRVCB-12-__

Service File # 08ESMF00-2012-F-0592

In consideration of \$241,500.00, receipt of which is hereby acknowledged, SACRAMENTO RIVER RANCH, LLC (Bank Owner) does hereby bargain, sell and transfer to the CITY OF SACRAMENTO, 69 Valley Elderberry Longhorn Beetle Conservation Credits in the River Ranch VELB Conservation Bank in Yolo County, California, developed, and approved by the U. S. Fish and Wildlife Service.

Bank Owner represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Bank Owner covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

SACRAMENTO RIVER RANCH, LLC

By: Wildlands

Its: Authorized Representative

By:_____

Its:_____

Date:_____

RIVER RANCH VELB CONSERVATION BANK
VALLEY ELDERBERRY LONGHORN BEETLE CREDITS: PAYMENT RECEIPT

Name:	City of Sacramento
Address:	915 I Street, 1 st Floor, Sacramento, CA 95814
Telephone:	(916) 808-1410
Contact:	Stu Williams

Project Description:	Sacramento River Water Treatment Plant Rehabilitation
Service File Number:	08ESMF00-2012-F-0592
Habitat Affected:	18 elderberry bushes; 140 stems affected
Credits Required:	69
Payment Amount:	\$241,500.00
Project Location:	City of Sacramento
County:	Sacramento
Address:	Sacramento River Water Treatment Plant, on the Sacramento River

Payee:	<u>SACRAMENTO RIVER RANCH, LLC</u>		
Payer:	<u>CITY OF SACRAMENTO</u>		
Amount:	<u>Two Hundred Forty-One Thousand Five Hundred and No/100ths Dollars (\$241,500.00)</u>		
Method of Payment:	Cash	Check#	Other

Name: _____

Title: _____

Date: _____

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