## OFFICE OF THE CITY ATTORNEY CHARLES PARKIN, City Attorney 411 West Ocean Boulevard, 9th Floor Long Beach, CA 90802-4664

## ACCESS AND LICENSE AGREEMENT

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THIS ACCESS AND LICENSE AGREEMENT ("Agreement") is made and entered, in duplicate, as of January 11, 2022 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on January 4, 2022, by and between WATER REPLENISHMENT DISTRICT, ("WRD"), with a place of business at 4040 Paramount Boulevard, Lakewood, California 90712, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City is the owner of real property also known as El Dorado Park West at 2800 North Studebaker Road, Long Beach, CA 90815 (hereinafter referred to as "Site"); and

WHEREAS, WRD is responsible for managing the groundwater supplies for 43 cities in south Los Angeles County; and

WHEREAS, WRD uses monitoring wells to provide the information needed to track regional groundwater quality trends, groundwater levels and flow directions in the potable aquifers of the Central Basin; and

WHEREAS, the City receives much of its water supply from local wells, and therefore it is very important to ensure plentiful and high-quality water in the City and southern Los Angeles County; and

WHEREAS, WRD will hire a contractor and consultant (hereinafter referred to as "Subcontractors") to perform the work contemplated under the Scope of Work; and

WHEREAS, WRD requests permission and access from City to install a groundwater monitoring well in conjunction with its Subcontractors at the Site for a period of 2 years, and for ongoing WRD collection sampling and for laboratory testing of the water and to measure water levels for the duration of the Agreement; and

WHEREAS, City wishes to grant WRD access to the Site so WRD and its Subcontractors can conduct the Scope of Work attached hereto as "Exhibit A", incorporated herein by this reference, and to provide access for continual monitoring of the well by WRD.

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WHEREAS, City desires to have WRD perform these specialized services, and WRD is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

#### 1. ACCESS AND LICENSE.

- Right of Entry for Installation. Licensee shall have access to the Site for the purpose of installation of a groundwater monitoring well. All installation work shall be completed no later than 2 years from the date of this Agreement.
- B. Right of Entry for Ongoing Maintenance. Licensee shall have access to the Site for the purpose of ongoing WRD maintenance and monitoring of groundwater monitoring well.
- C. Scope of Work. WRD shall conduct all work necessary to complete the Scope of Work attached hereto as Exhibit A, and incorporated herein by reference. All installation, maintenance and monitoring activities shall be conducted in compliance with the Scope of Work. The Agreement is limited to the activities described in the Scope of Work and for continual monitoring of the well until WRD advises City of its intent to permanently cease all monitoring activities at the site and terminate this Agreement. This Agreement contemplates any and all actions deemed necessary by WRD in preparation for or termination of those activities. CITY does not grant permission for the performance of any other activities not previously agreed upon in writing by City.
- D. Staging Area: Upon the execution of this Agreement, City and WRD shall agree upon a location for the work area for activities necessary or prudent to complete work at the Site. If needed, WRD, at its sole expense, shall install a temporary fence and gates (with mesh fabric) around the perimeter of the work area to maintain work area security, safety and reduce interference with the work.
  - E. Manner of Work: Prior to the start of any work contemplated

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that will minimize interference with City operations at the Site. WRD agrees to utilize its best efforts to minimize noise, fumes, dust, fluids and other similar effects in conducting the Scope of Work and shall not otherwise interfere with the operations of the Site. F. Restoration of Property: Promptly after performing the Scope

of Work, WRD shall restore the Site to the condition that existed prior to the execution of this Agreement. Upon termination of this Agreement or upon WRD's intent to cease use of and abandon said well, whichever occurs first, WRD shall close said well in a reasonable period of time in accordance with California Health & Safety Code section 115700, as amended, and all applicable State of California and Federal laws, rules, regulations and orders for the closure of wells. The Director of Public Works/Water & Power may impose reasonable terms and conditions for the closure of the well that are consistent with existing City ordinances and facility programming requirements that relate to work hours, noise levels, parking and other similar matters. Such imposed conditions shall not be in conflict with State or Federal requirements.

under this Agreement, WRD shall coordinate with City. WRD shall provide City with

the proposed dates of the installation and shall work with City on acceptable dates

- Monitoring Activities: WRD intends to conduct sampling at the Site on an on-going and continuing basis in accordance with the attached Scope of Work. WRD shall provide one (1) week notice to the City.
- Η. Maintenance of Groundwater Treatment System: WRD is solely responsible for the maintenance of the monitoring wells.
- ١. Waste Disposal: All soils and other wastes generated at the Site during completion of the Scope of Work shall be timely and properly disposed of by WRD and its Subcontractors in accordance with all federal, state and local laws. WRD shall be designated as the 'generator' on any and all non-

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hazardous or hazardous waste manifests required to be prepared as part of the work authorized by this License.

- 2. TERM. The term of this Agreement shall commence at midnight on January 1, 2022, and shall terminate at 11:59 p.m. on December 31, 2042, unless sooner terminated as provided in this Agreement. The term may be extended for four (4) additional five-year periods, at the discretion of the City Manager.
- 3. INDEPENDENT CONTRACTOR. In performing its services, WRD is and shall act as an independent contractor and not an employee, representative, or agent of City. WRD shall have control of WRD's work and the manner in which it is performed.

#### 4. **INSURANCE.**

As a condition precedent to the effectiveness of this Agreement, WRD shall procure and maintain, at WRD's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company the following insurance:

i. Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than One Million Dollars (\$1,000,000.00) per each occurrence and Two Million (\$2,000,000.00) general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain

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no special limitations on the scope of protection given to the City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

- ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- iii. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.
- B. self-insurance program, self-insured retention. deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.
- C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or selfinsurance maintained by WRD. WRD shall notify the City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.
- D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless WRD

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guarantees that WRD will provide to the City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

- E. WRD shall require that all WRDs or contractors which WRD uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.
- Prior to the start of performance, WRD shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, WRD, shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of WRD and WRD's subcontractors and contractors, at any time. WRD shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.
- G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, the City's Risk Manager or designee may require that WRD, WRD's subcontractors and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope, or types of coverages are not adequate.
- H. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to WRD's performance or as full performance of or compliance with the indemnification provisions of this Agreement.
- 5. ASSIGNMENT AND SUBCONTRACTING. This Agreement contemplates the personal services of WRD and WRD's employees, and the parties acknowledge that a substantial inducement to City for entering this Agreement was and is the professional reputation and competence of WRD and WRD's employees. WRD shall not assign its rights or delegate its duties under this Agreement, or any interest in this

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Agreement, or any portion of it, without the prior approval of City, except that WRD may with the prior approval of the City Manager of City, assign any moneys due or to become due the WRD under this Agreement. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of an attempted assignment or delegation. Nothing stated in this Section shall prevent WRD from employing as many employees as WRD deems necessary for performance of this Agreement.

- 6. MATERIALS. WRD shall furnish all labor and supervision, supplies, materials, tools, machinery, equipment, appliances, transportation, and services necessary to or used in the performance of WRD's obligations under this Agreement, except as stated in Exhibit "D".
- 7. OWNERSHIP OF DATA. All information and data prepared. developed, or assembled by WRD from the well site shall be shared with the City upon request.
- 8. TERMINATION. City shall have the right to terminate this Agreement for the breach of the terms of this Agreement, after notice by City and failure to cure within 30 days after receipt of notice.
- 9. AMENDMENT. This Agreement, including all Exhibits, shall not be amended, nor any provision or breach waived, except in writing signed by the parties which expressly refers to this Agreement.
- 10. <u>LAW</u>. This Agreement shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). WRD shall comply with all laws, ordinances, rules and regulations of and obtain all permits, licenses, and certificates required by all federal, state and local governmental authorities.
- 11. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE. WRD shall be responsible for remaining in compliance with the applicable section(s) 16-18 of this Agreement. In addition, it shall be applicable to any contractors ("Contractor") it hires:

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- (b) Contractor is advised that this work constitutes a public work of improvement subject to California Labor Code Division 2, Part 7, Chapter 1, Articles 1-5, §§1720-1861. Pursuant to Labor Code Section 1771.1. Contractor or subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public contract Code, or engage in the performance of any contract for public work, as defined in the California Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5. Contract (or associated subcontracts) shall not be entered into without proof of the Contractor's (or subcontractor's) current registration to perform public work pursuant to Section 1725.5. All work conducted in support of this public work of improvement is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor will abide by all applicable apprenticeship requirements in the California Labor Code Section 1777.5 and will be responsible for subcontractor apprenticeship compliance to the same.
- 12. PREVAILING WAGE RATES. Contractor is directed to pay the general rate of per diem wages for each craft, classification, or type of worker needed to execute the contract (prevailing wage rates). Copies of the current prevailing rate of per diem wages are on file at is principle office (Labor Compliance Division, 411 W. Ocean Boulevard, 6th Floor, Long Beach, California, 90802), and shall be made available to any

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interested party upon request. Contractor is required to post a copy of the determination of the director of the prevailing rate of per diem wages at each job site. Pursuant to Section 1775, Contractor shall forfeit, as a penalty to the City, up to Two Hundred Dollars (\$200) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, that such laborer, worker or mechanic is paid less than the prevailing wage rates for any work done by Contractor, or any subcontractor, under this Contract. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor.

#### 13. CERTIFIED PAYROLL RECORDS.

- Pursuant to the provisions of Labor Code Section 1776, (a) Contractor shall keep and shall cause each subcontractor performing any portion of the work under this Contract to keep an accurate payroll record, showing the name, address, social security number, work classification. straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or subcontractor in connection with the work. Such payroll records for Contractor and all subcontractors shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor pursuant to the provisions of Section 1776 of the Labor Code. Contractor's failure to furnish such records to City or City's authorized Labor Compliance representative in the manner provided herein for notices shall entitle City to withhold the penalty prescribed by law from progress payments due to Contractor.
- (b) Contractor shall submit to the City certified payroll records for Contractor and all subcontractors performing any portion of the work under this Contract on a monthly basis. Certified payroll records for Contractor and all subcontractors shall be maintained during the course of the work

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and shall be kept by Contractor for up to three (3) years after completion of the work.

- (c) The foregoing is in addition to, and not in lieu of, any other requirements or obligations established and imposed by any department of the City with regard to submission and retention of certified payroll records for Contractor and subcontractors.
- 14. ENTIRE AGREEMENT. This Agreement, including all Exhibits. constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

#### 15. INDEMNITY.

- A. WRD shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) WRD's breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by WRD, its officers, employees, agents, subcontractors, or anyone under WRD's control, in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim").
- В. In addition to WRD's duty to indemnify, WRD shall have a separate and wholly independent duty to defend Indemnified Parties at WRD's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of WRD shall be required for the duty to defend to arise. City shall notify WRD of any Claim, shall tender the defense of the Claim to WRD, and shall assist WRD, as may be reasonably requested, in the defense.

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- C. If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, WRD's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.
- D. To the extent this Agreement is a professional service agreement for work or services performed by a design professional (architect, landscape architect, professional engineer or professional land surveyor), the provisions of this Section regarding WRD's duty to defend and indemnify shall be limited as provided in California Civil Code Section 2782.8, and shall apply only to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the WRD.
- E. The provisions of this Section shall survive the expiration or termination of this Agreement.
- 16. AMBIGUITY. In the event of any conflict or ambiguity between this Agreement and any Exhibit, the provisions of this Agreement shall govern.

#### 17. NONDISCRIMINATION.

- In connection with performance of this Agreement and subject to applicable rules and regulations, WRD shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or disability. WRD shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. It is the policy of City to encourage the participation of Disadvantaged, Minority and Women-owned Business Enterprises in City's

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procurement process, and WRD agrees to use its best efforts to carry out this policy in its use of subcontractors and contractors to the fullest extent consistent with the efficient performance of this Agreement. WRD may rely on written representations by subcontractors and contractors regarding their status. WRD shall report to City in May and in December or, in the case of short-term agreements, prior to invoicing for final payment, the names of all subcontractors and contractors hired by WRD for this Project and information on whether or not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

- 18. FORCE MAJEURE. If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, pandemic, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance will be excused for a period equal to the period of such cause for failure to perform.
- 19. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in accordance with the provisions of the Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.
  - Α. During the performance of this Agreement, the WRD certifies and represents that the WRD will comply with the EBO. The WRD agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a contract with the City of Long Beach, the WRD will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of

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Long Beach's Equal Benefits Ordinance may be obtained from the City of Long Beach Business Services Division at 562-570-6200."

- B. The failure of the WRD to comply with the EBO will be deemed to be a material breach of the Agreement by the City.
- If the WRD fails to comply with the EBO, the City may cancel, terminate or suspend the Agreement, in whole or in part, and monies due or to become due under the Agreement may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against the WRD in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.
- E. If the City determines that the WRD has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Agreement on behalf of the City. Violation of this provision may be used as evidence against the WRD in actions taken pursuant to the provisions of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.
- 20. NOTICES. Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to WRD at the address first stated above, and to the City at 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a copy to the City Engineer at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.
- 21. COVENANT AGAINST CONTINGENT FEES. WRD warrants that WRD has not employed or retained any entity or person to solicit or obtain this Agreement and that WRD has not paid or agreed to pay any entity or person any fee, commission, or other monies based on or from the award of this Agreement. If WRD breaches this warranty, City shall have the right to terminate this Agreement immediately notwithstanding

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the provisions of Section 10 or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of the fee, commission, or other monies.

- 22. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
- 23. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to the Sections titled "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Indemnity", and "Audit" prior to termination or expiration of this Agreement.
- 24. ADVERTISING. WRD shall not use the name of City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee.
- 25. AUDIT. City shall have the right at all reasonable times during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of WRD relating to this Agreement.
- 26. THIRD PARTY BENEFICIARY. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly 1 executed with all formalities required by law as of the date first stated above. 2 WATER REPLENISHMENT DISTRICT 3 April 7
April 7 4 5 Title Board 6 By\_ Name 7 Title 8 "WRD" 9 CITY OF LONG BEACH, a municipal 10 corporation 11 By Sunda J. Ja, City Manager CHARLES PARKIN, City Attorney 411 West Ocean Boulevard, 9th Floor Long Beach, CA 90802-4664 12 13 "City" **EXECUTED PURSUANT** This Access and Lease Agreement 14 is 15 2022. 16 CHARLES PARKIN, City Attorney 17 18 Deputy City Manney Anita Lakhani, 19 20 21 22 23 24 25 26 27 28

# **EXHIBIT "A"**

## **EXHIBIT A**

# ATTACHMENT A: WRD PROJECT MAP WRD MONITORING WELL EL DORADO PARK



Figure 2: WRD Project Map showing El Dorado Regional Park West, El Dorado East Regional Park, WRD's Leo J. Vander Lans Advanced Water Treatment Facility (LVL), Los Angeles County Sanitation District Long Beach Wastewater Reclamation Facility, proposed onsite Injection Well location (at LVL), proposed onsite Monitoring Well location (MW-LVL1), propose offsite Monitoring Well location (MW-LVL2), existing Long Beach Water Department Production Well Wise 1A (WIS1A), and existing WRD Regional Monitoring Well Long Beach #1.

MW-LVL2 is the subject of the recommended action.