

**AGREEMENT
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND
ECOLOGY ACTION FOR GRAYWATER DIRECT INSTALLATION PROGRAM**

This AGREEMENT ("Agreement") between the Santa Clara Valley Water District, an independent special district created by the California Legislature (hereinafter referred to as "WATER DISTRICT") and Ecology Action of Santa Cruz, a non-profit 501(c)(3) organization incorporated in the State of California (hereinafter referred to as "ECOLOGY ACTION") sets forth the respective roles of the WATER DISTRICT and ECOLOGY ACTION in regard to a GRAYWATER DIRECT INSTALLATION PROGRAM described in Appendix A, which is hereby incorporated into this Agreement by this reference (hereinafter referred to as "PROGRAM") is made and entered into as of _____, 2018 ("Effective Date").

RECITALS

WHEREAS, the PROGRAM involves providing advanced graywater training to a contractor workforce, which will then provide graywater installation services to up to 100 low-income residents; and

WHEREAS, the PROGRAM is consistent with the WATER DISTRICT's Urban Water Management Planning Act requirements; and

WHEREAS, the PROGRAM'S goal is to save water and provide water conservation services to an underserved community; and

WHEREAS, ECOLOGY ACTION wishes to administer the PROGRAM; and

WHEREAS, the WATER DISTRICT wishes to help fund this PROGRAM.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties expressed in this Agreement, WATER DISTRICT and ECOLOGY ACTION agree as follows:

1. ECOLOGY ACTION'S RESPONSIBILITIES

- a) Administration of the PROGRAM.
- b) ECOLOGY ACTION shall develop all educational, marketing and outreach materials for the PROGRAM, which materials are subject to the WATER DISTRICT's approval.
- c) Collection and analysis of data to determine water savings, which will be provided to the WATER DISTRICT at the conclusion of the PROGRAM.
- d) Ensure that installed graywater systems meet any applicable code and regulation requirements.
- e) Administration of all funds for the PROGRAM.
- f) Provide WATER DISTRICT with PROGRAM participation data, including but not limited to name and address of all participants.
- g) Invoice WATER DISTRICT on a quarterly basis. ECOLOGY ACTION shall not invoice WATER DISTRICT for any amounts exceeding the \$198,077 cap set forth in the attached Program Scope (Appendix A). Only costs paid directly to the PROGRAM shall be included in the quarterly invoice.
- h) Work cooperatively with WATER DISTRICT in appropriately advertising the PROGRAM to targeted customers.

2. WATER DISTRICT'S RESPONSIBILITIES

- a) Review and evaluate all educational, marketing and outreach materials created by ECOLOGY ACTION for the PROGRAM.
- b) WATER DISTRICT's obligation to pay for these activities is capped at a total maximum of \$198,077. All monies provided by the WATER DISTRICT shall be used for the sole purpose of carrying out the objectives set forth in the PROGRAM as identified in Appendix A, Program Scope, consistent with the terms and conditions set forth in this Agreement.

- c) Pay within thirty (30) days of receipt of an undisputed invoice from ECOLOGY ACTION. When submitting an invoice, ECOLOGY ACTION shall provide a copy of the corresponding PROGRAM participation information to the WATER DISTRICT.

3. HOLD HARMLESS AND LIABILITY

Each Party ("Indemnifying Party") agrees to indemnify, defend at its own expense, including attorneys' fees, and hold harmless the other Party ("Indemnified Party") from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to the negligence, or willful misconduct of that Indemnifying Party, its officers, employees, contractors or any other agent acting pursuant to this Agreement.

4. INSURANCE REQUIREMENTS

ECOLOGY ACTION shall comply with the Insurance Requirements set forth in Appendix B, which is incorporated into this Agreement by this reference.

5. DOCUMENT REVIEW

WATER DISTRICT and ECOLOGY ACTION will, upon reasonable advance written notice, make available for inspection to the other party's records, books and other documents relating to the PROGRAMS.

6. TERM

The term of the Agreement is from Effective Date to June 30, 2020, or until funds are depleted, whichever occurs first. The term of the Agreement may be extended by mutual written consent of the Parties. This Agreement shall be contingent upon approval of program funding each fiscal year by both the WATER DISTRICT's Board of Directors and by ECOLOGY ACTION.

7. NOTICE

Any notice, payment, credit or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery or five (5) days after deposit in any United States mail depository, first class postage prepaid and addressed to the party for whom intended; or on the same day as a facsimile transmission is sent as long as original is placed in the mail on the same day.

If to WATER DISTRICT:

Mr. Jerry De La Piedra
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Attn: Conservation Programs

If to ECOLOGY ACTION:

Ms. Kirsten Liske
Vice President of Community Programs
877 Cedar St, Ste 240
Santa Cruz, CA 95060

Either party may change such address by notice given to the other party as provided in this Section 6.

8. AMENDMENTS

The Agreement may only be amended by written agreement executed by both parties.

9. ASSIGNMENT

Neither party is allowed to assign, sublet, or transfer this Agreement or any of the rights or interests in this Agreement without the written consent of the other party.

10. SEVERABILITY

The partial or total invalidity of one or more parts of this Agreement will not affect the intent or validity or remaining parts of this Agreement.

11. GOVERNING LAW

This Agreement is a contract under the laws of the State of California and for all purposes must be interpreted in accordance with such laws.

12. TERMINATION OF AGREEMENT

This Agreement may be terminated by either party hereto for any reason upon thirty (30) days written notice to the other party.

13. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

In WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

ECOLOGY ACTION OF SANTA CRUZ

APPROVED AS TO FORM:

Signature

Name

Title

Signature

Name

Title

SANTA CLARA VALLEY WATER DISTRICT

APPROVED AS TO FORM:

Anthony Fulcher
Sr. Assistant District Counsel
Santa Clara Valley Water District

Norma J. Camacho
Chief Executive Officer
Santa Clara Valley Water District

APPENDIX A

PROGRAM SCOPE

A. General Description

ECOLOGY ACTION will provide advanced graywater training to a contractor workforce. Contractors who complete the training will be qualified through Ecology Action to provide laundry-to-landscape (L2L) direct installation services to up to 100 low-income/underserved residents.

Timeline:

October 1, 2018 – June 30, 2020

Funding:

WATER DISTRICT will pay for program coordination by ECOLOGY ACTION, with some cost share matching from contractors in training and direct installation program participants.

Total Not-To-Exceed Amount Payable by WATER DISTRICT: \$198,077

B. ECOLOGY ACTION's TASKS

1. Contract Management and Invoicing

ECOLOGY ACTION will:

- i. Meet with WATER DISTRICT staff to refine and clarify program elements, including low-income participant eligibility requirements and geographic areas excluded from program due to seasonal groundwater depth;
- ii. Report and document outcomes for WATER DISTRICT staff, including locations of sites requesting site assessments, locations of installation sites, total landscaped area to be irrigated with graywater at each site, estimated water savings per site, and total project savings;
- iii. Prepare invoices and supporting documentation;
- iv. Develop and/or update program participation agreements, liability waivers, and contractor agreements for WATER DISTRICT and translate necessary program participation documents to Spanish, Vietnamese or Chinese, at the WATER DISTRICT's discretion; and
- v. Develop Spanish/English flyer to promote L2L direct installation services. Marketing materials may also be translated to Vietnamese and/or Chinese at the WATER DISTRICT's discretion.

2. Coordinate and Staff a Professional Graywater Installer Training

ECOLOGY ACTION will use best efforts to ensure at least twenty landscape and plumbing industry professionals attend an installer training resulting in Green Gardener Program laundry-to-landscape continuing education certificate. This training will occur over 2-3 Saturdays with 16 hours of instructional time, including 8 hours of classroom instruction on the 2016 CA plumbing code, sizing

graywater irrigation systems, laundry to landscape design, construction, and maintenance, an overview of graywater systems requiring permits (gravity and pumped systems), and 8 hours of hands-on training installing an L2L system at a residence. Licensed contractors that participate in this training will be eligible to contract with Ecology Action to implement DI services.

ECOLOGY ACTION will:

- i. Secure a classroom workshop venue.
- ii. Conduct site assessments for appropriate hands-on workshop venue sites and secure one homeowner agreement for providing training space.
- iii. Develop and distribute a promotional flyer through the Santa Clara Valley Green Gardener Program; CLCA, WATER DISTRICT landscape contractor channels, and builders' guilds.
- iv. Create a workshop registration page on centralcoastgreywater.org and respond to registration questions.
- v. Purchase and coordinate the delivery of installation materials for the hands-on portion of training.
- vi. Update installer training PowerPoints for consistency with the current version of CA Uniform Plumbing Code (UPC) and other applicable codes and regulations.
- vii. Provide all training instruction. (WATER DISTRICT is welcome to assist at its discretion.)

3. Schedule and Conduct Participant Site Assessments

Participants must have at least 500 square feet of high or medium use landscaping (Species factor > 0.5) to participate in the DI program.

ECOLOGY ACTION will:

- i. Promote the DI opportunity to residents via qualified contractors, WATER DISTRICT, and non-profit organizations working in under-resourced communities.
- ii. Respond by phone to resident's request to participate in the graywater DI program. Conduct phone interviews to determine initial feasibility using the Central Coast Greywater Alliance site assessment form.
- iii. Per WATER DISTRICT's discretion, send a weekly list of property address to WATER DISTRICT's groundwater staff to verify that seasonally-high depth to groundwater is 5 feet or deeper at each property. Confirm that property meets groundwater separation requirement before proceeding with scheduling a site assessment. Per WATER DISTRICT's discretion, the WATER DISTRICT may provide final approval for all sites.
- iv. Schedule and complete up to 300 site assessments. One out of 3 site assessments will lead to a signed project agreement. During the site assessment, residents will be provided with Spanish-bilingual DI program information and educated on plant-friendly soaps and legal uses of graywater for landscape irrigation. Project agreements may be translated to Vietnamese or Chinese at the WATER DISTRICT's discretion.
- v. Ensure all graywater DI contractors comply with all insurance and licensing requirements for sub-contractors set forth in Appendix B of the Agreement. Contractors that fulfill the insurance and licensing requirements but do not attend the one-time training may apply to contract with ECOLOGY ACTION by sending 3 references of clients that have paid for L2L services in the past 2 years.

4. Secure Project Agreements for 100 L2L Installations

Program participants will provide a cost-share of \$250 per irrigation zone for L2L direct installation services if they choose to have a contractor complete the entire installation. If the resident chooses to install the mulch basin construction and irrigation portion of the system, the cost share for the system will be \$0. Each qualified contractor will enter into an agreement with ECOLOGY ACTION to perform a scope of work for L2L installation at a set price of \$750 or \$1,000 under specific conditions.

ECOLOGY ACTION will:

- i. Secure up to 100 project agreements over an 18-month period.
- ii. Produce a graywater irrigation design for each qualifying installation site where a project agreement has been signed. Irrigation design will specify what specific plants or landscaped areas will be irrigated with laundry graywater.

5. Coordinate Direct Installation of 100 L2L Systems

Each program participant will be assigned to a qualified DI contractor. The contractor will schedule installation directly with the program participant within one week of receiving an assignment and complete the installation within 45 days of receiving the assignment. Contractors will be referred to program participants on rotation. If a contractor is not available to perform services when requested, the installation will be assigned to the next available contractor on the rotation list.

ECOLOGY ACTION will:

- i. Provide the program participant's contact, site, and design information to the contractor.
- ii. Track the progress of contractor installations and respond to troubleshooting and site management issues.
- iii. Provide the program participant with information and support for procuring mulch and irrigation materials delivery (if the program participant is performing mulch basin installation themselves).
- iv. At the time of the site assessment, if a resident prefers to install all aspects of the graywater system, ECOLOGY ACTION will direct and assist the resident in applying for the WATER DISTRICT's Graywater Laundry to Landscape Rebate Program.

6. Perform Quality Assurance and Quality Control

- i. For all installations, ECOLOGY ACTION will conduct a follow-up site assessment to ensure that the subcontractor's or resident's work was performed to current CA Uniform Plumbing Code standards. During the site visit, a load of laundry will be run through the graywater irrigation system and all distribution plumbing inspected with the property owner present. When an installation is not completed to code standard, ECOLOGY ACTION will require the subcontractor or homeowner to address code violations before payment is made.
- ii. Each resident will be provided with a customized operations and maintenance manual that addresses all current CA Uniform Plumbing Code requirements. ECOLOGY ACTION will

review the contents of the maintenance manual with the system user(s), which will instruct the user(s) in how and when to turn the graywater system back to sewer or septic, plant-friendly product options, and frequency of mulch basin maintenance to prevent graywater pooling and run-off. The contact information of the installation contractor (ECOLOGY ACTION and sub-contractor) will be listed on the owner's maintenance & operations manual.

B. Budget (*see next page*)

Task	Task Description	Labor Costs			Consulting/Materials/Equipment				TOTAL COST
		Rate	# of Hours	Total Labor	Unit Cost	Cost share	# of Units	Non-Labor Cost	
1	Contract Management: Coordination Meetings with WATER DISTRICT Staff, Reporting and Contractor Relations	\$85.00	96	\$8,160				\$0	\$8,160
	Contract Invoicing	\$115.00	24	\$2,760				\$0	\$2,760
	Translation Services				\$5,000.00		lump sum	\$5,000.00	\$5,000
	Develop DI program marketing materials	\$78.58	30	\$2,357				\$0	\$2,357
2	Coordinate and Staff 2-3 Day Installer Training	\$85.00	100	\$8,500		\$100.00	20	\$2,000.00	\$10,500
3	Schedule and conduct up to 300 site assessments to determine eligibility and feasibility.	\$62.00	600	\$37,200	\$0.50		2000	\$1,000.00	\$38,200
4	Secure project agreements for up to 100 L2L Installations	\$62.00	200	\$12,400				\$0	\$12,400
5	Coordinate direct Installation of L2L system between participants and contractors. Process contractor invoices	\$62.00	400	\$24,800	\$750.00	\$250.00	100	\$100,000	\$124,800
6	Post-installation verification and QAQC	\$62.00	200	\$12,400				\$0	\$12,400
		\$85.00	100	\$8,500				\$0	\$8,500
							TOTAL PROGRAM COST		\$225,077.00
							ECOLOGY ACTION Cost Share		\$27,000.00
							WATER DISTRICT Cost Share		\$198,077.40

APPENDIX B

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below.

Please Note: Failure to comply with the instructions below could result in a delay in receiving the Notice to Proceed. District will not be responsible for time lost or costs incurred due to failure to comply with these requirements. Please note the check-list of documents needed at the end of the Appendix B.

Without limiting the Consultant's indemnification of, or liability to, the Santa Clara Valley Water District ("District"), the Consultant must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

Consultant must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Consultant's insurance agent(s) and/or broker(s), who have been instructed by Consultant to procure the insurance coverage required herein.

Initial certificates of insurance and endorsement must be mailed to:

Consultant Contracts Services Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Renewal certificates and endorsements must be submitted to:

certificates-santaclara@riskworks.com

or mailed to:

Santa Clara Valley Water District
c/o EXIGIS Risk Management Services
P.O. Box 4668 - ECM #35050
New York, NY 10163-4668

If your insurance broker has any questions about the above requirements, please advise him/her to call Mr. David Cahen, District Risk Manager at (408) 630-2213.

In addition to certificates, Consultant must furnish District with copies of all original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before work commences.** In the event of a claim or dispute, District has the right to require Consultant's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Consultant must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

Required Coverages

1. **Commercial General/Business Liability Insurance** with coverage as indicated:

\$1,000,000 per occurrence / **\$1,000,000** aggregate limits for bodily injury and property damage

General Liability insurance must include:

- a. Coverage at least as broad as found in standard ISO form CG 00 01.
- b. Contractual Liability expressly including liability assumed under this contract.
- c. If Consultant must be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- d. Severability of Interest.
- e. Broad Form Property Damage liability.

2. Business Auto Liability Insurance with coverage as indicated:

\$1,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

3. Professional/Errors and Omissions Liability with coverage as indicated:

\$1,000,000 per claim/ **\$1,000,000** aggregate

Professional/Errors and Omission Liability appropriate to the Consultant's profession, and must include:

- a. If coverage contains a deductible, or self-insured retention, it shall not be greater than one hundred thousand dollars (\$100,000) per occurrence/event.
- b. Coverage shall include contractual liability
- c. If coverage is claims-made:
 - i. Certificate of Insurance shall clearly state that the coverage is claims-made
 - ii. Policy retroactive date must coincide with or precede the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
 - iii. Policy must allow for reporting of circumstances or incidents that might give rise to future claims.
 - iv. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.

4. Workers' Compensation and Employer's Liability Insurance

Statutory California Workers' Compensation coverage covering all work to be performed for the District.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

General Requirements

With respect to all coverages noted above, the following additional requirements apply:

- 1. Additional Insured Endorsement(s):** Consultant must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Consultant will be notified of such requirement(s) by the District. **NOTE:** This section does not apply to the Workers' Compensation and Professional Liability policies.

(**NOTE:** Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 2010, CG 2033, CG 2037. Editions dated 07/04 are not acceptable.)

2. **Primacy Clause:** Consultant will provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that consultant's insurance is primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called upon to contribute or share in the loss. **NOTE:** This section does not apply to the Workers' Compensation and Professional Liability policies.
3. **Cancellation Clause:** Consultant will provide endorsements for all policies stating that the District will be given 30 days' notice of cancellation, (10 days for non-payment of premium). **NOTE: The standard wording in the ISO Certificate of Insurance is not acceptable.**
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the District's Risk Manager. Non-Admitted companies may be substituted on a very limited basis at the Risk Manager's sole discretion.
5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Consultant agrees that in the event of a claim they will pay down any agreed upon SIR in a prompt manner as soon as bills are incurred in order to trigger the insurance related to the SIR.
6. **Subconsultants:** Should any of the work under this Agreement be sublet, Consultant will name each of the subconsultants of any tier under its own policies, or will require each of its subconsultants of any tier to carry the aforementioned coverages. District reserves the right to accept lower limits of coverage for select subcontractors. District Risk Manager shall make all such determinations. Consultant is responsible for ensuring all evidence of insurance for any subconsultant is forwarded to the District for review prior to receipt of a Notice to Proceed.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Consultant for the benefit of the District must not be deemed to release or limit any liability of Consultant. Damages recoverable by the District for any liability of Consultant must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** With the exception of the Professional Liability/Errors and Omissions coverage mentioned above, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Consultant agrees to waive subrogation against the District to the extent any loss suffered by Consultant is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy, or Professional policy described in **Required Coverages** above. Consultant agrees to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived.
10. **Non-compliance:** The District reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

CHECK LIST OF DOCUMENTS NEEDED

General Liability:	A.	Limits (\$1,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Auto Liability:	A.	Limits (\$1,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Umbrella:	A.	Limits (\$)	
	B.	Primacy (Endorsement or policy language)	
Workers Comp:	A.	Limits (\$1,000,000)	
	B.	Waiver of Subrogation (Endorsement or policy language)	
	C.	Cancellation Endorsement	
Professional/Errors and Omissions:	A.	Limits (\$1,000,000)	