

## **TWITCHELL DAM AND RESERVOIR MITIGATION CONTRACT**

THIS Twitchell Dam and Reservoir Mitigation Contract (“**Agreement**”) is made and entered into by and between Santa Maria Valley Water Conservation District (“**SMVWCD**” or “**District**”), a California independent special district, and Mitigation Solutions, LLC (“**MSL**”), a Wyoming Limited Liability Company. The Effective Date of the parties shall be the date upon which the Agreement is approved by the Board of Directors of SMVWCD, SMVWCD and MSL are sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties.”

**WHEREAS**, SMVWCD is a water conservation district organized under the California Water Code, section 74000, et seq.

**WHEREAS**, SMVWCD is under contract with the United States of America, Department of the Interior, Bureau of Reclamation for the operation and maintenance of Twitchell Dam and Reservoir, all of which is federal property owned by the United States of America; and

**WHEREAS**, SMVWCD specifically is authorized, empowered, and responsible for the prevention of flooding and recharging groundwater in the Santa Maria Valley Groundwater Basin; and

**WHEREAS**, several recent weather and wildfire events have contributed significantly to the accumulation of sediment and debris in Twitchell Reservoir, which has a direct negative impact on Twitchell Dam’s stability, functionality, and operation in preventing flooding and recharging groundwater; and

**WHEREAS**, said conditions decrease the overall capacity of Twitchell Dam to hold and store water during weather events, which then impedes recharging of groundwater in the Santa Maria Valley Ground Water Basin, in terms of water volume released and the rate of release, consistent with the operational requirements dictated by the Bureau of Reclamation; and

**WHEREAS**, the accumulation of sediment and debris in Twitchell Reservoir from several recent weather and wildfire events creates additional pressure on Twitchell Dam, potentially compromising its stability and operations for flood control and groundwater recharge; and

**WHEREAS**, SMVWCD thus has an immediate, urgent, and pressing need for stabilization of Twitchell Dam and mitigation of conditions in and around the Reservoir to return both facilities to acceptable operational capacities, as contemplated by the operational requirements dictated by the Bureau of Reclamation; and

**WHEREAS**, SMVWCD is specifically authorized to cooperate and contract with the United States as provided in Water Code section 74610 through and including Section 74618; and

**WHEREAS**, SMVWCD is statutorily limited to how much revenue it can generate from special assessments and an ad valorem tax, neither of which, together or separately, can raise funds sufficient to address and remediate the conditions created by recent weather and fire events, much

less the current conditions that compound the sediment and debris from such events, with natural sedimentation from the river systems feeding Twitchell Reservoir. Accordingly, SMVWCD does not, and given its limited statutorily authorized power to raise revenue, will not for the foreseeable future, have the resources necessary to complete the scope of work set forth herein; and

**WHEREAS**, MSL is not a “district, public corporation, or agency” within the meaning of Water Code section 74570, such that Water Code section 74630 does not apply; and

**WHEREAS**, MSL will and does agree to secure and/or assist in securing all funding for the mitigation and repair of Twitchell Dam and Reservoir solely from federal and state government sources as authorized by law, such that no public money from SMVWCD shall be obligated or spent, as set forth herein, and SMVWCD shall be reimbursed for all costs, fees, and expenses incurred in associated with the implementation and carrying out of its obligations under this Agreement, if any; and

**WHEREAS**, SMVWCD agrees to allocate and expend all funds secured in connection with the project described herein, regardless of source, to MSL for the work to be provided as set forth herein, as reimbursements to SMVWCD, and/or required third party monitoring as may be required, and in every case in strict compliance with all funding restrictions or requirements that may govern the allocation and expenditure of such funds; and

**WHEREAS** MSL agrees to complete all activities required to assist SMVWCD in securing funding for the project described herein, with such funding to be used to pay for all work to be carried out under this Agreement, such that SMVWCD will not in any circumstances owe MSL any other monies whatsoever, or for any reason; and

**WHEREAS**, SMVWCD maintains and operates Twitchell Dam (“**Dam**”) and Twitchell Reservoir (“**Reservoir**,” and, collectively with the Dam, the “**Project Site**”) pursuant to a contract for operation and maintenance with the United States of America, Department of the Interior, Bureau of Reclamation (“**Bureau**”); and

**WHEREAS**, sedimentation is a significant problem for the Reservoir, as the reservoir is being filled with sediments 70 percent faster than expected; this reduces its capacity and blocks the water inlet to the control gates. Twitchell Reservoir has been impacted by excessive sediment due to flooding from weather events in recent years, coupled with ash and debris from recent wildfires have mixed to an extent to allow the sediment to slide to the dam during recent flooding. The weight of the sediment combined with the low holding capacity of the Reservoir is putting extreme pressure on the Dam; and

**WHEREAS**, the Twitchell Reservoir Scope of Work (“**SOW**”) calls for the removal and management of approximately 40 to 50 million cubic yards of ash contaminated and non-contaminated sediments and mitigation of source sediments entering the reservoir and Project Site. Removal of up to 7 million cubic yards will have to be completed on an emergency basis to stabilize the dam and return it to a functioning flood control structure; and

**WHEREAS**, the Reservoir has been impacted by multiple wildfires and flooding events, and excessive sediment due to flooding in recent years. These sediments interfere with the

operations of the Dam and have reduced the effectiveness of the Reservoir as a primary flood control tool by greatly reducing the holding capacity of the Reservoir. This also detrimentally affects groundwater recharge efforts to the Santa Maria Valley Groundwater Basin; and

**WHEREAS**, the Parties understand that complete remediation and mitigation in the Project Site will, based on currently known information, require between approximately seven to ten years to complete with an estimated budget of \$1,500,000,000.00 to \$2,000,000,000.00, which includes remediation of the emergency conditions and mitigation of conditions within the Project Site to promote efficient operation and maintenance moving forward; and

**WHEREAS**, SMVWCD wishes to mitigate the adverse effect of said sediment build up by removing sediments from the Reservoir and instituting sediment mitigation solutions to prevent sediments entering the Reservoir from the Huasna and Cuyama Rivers to the extent feasible, and in compliance with all applicable laws; and

**WHEREAS**, MSL is informed and believes that, due to the nexus between the sediment buildup of the Reservoir and wildfires in California, funding for the Twitchell Dam and Reservoir Mitigation Project may be available via Infrastructure Investment and Jobs Act, The Inflation Reduction Act and the 2022 Omnibus Appropriations Bill through various Federal and State agencies, primarily through the Federal Emergency Management Agency (FEMA), United States department of Agriculture (USDA), and the U.S. Department of Transportation (USDOT). Financial participation by other Federal Agencies including FEMA disaster relief, Hazard Mitigation, Flood Mitigation, and Building Resilient Infrastructure and Communities (BRIC) assistance programs, and other federal and/or state program funding, by way of contracting with federal and/or state agencies; and

**WHEREAS**, MSL has invested its time and resources to develop for execution a project proposal for the Project Site, has and will continue to pursue appropriate federal and/or state government funding as allowed by law, and, subject to the terms and conditions herein, perform the remediation and mitigation of Twitchell Dam and Reservoir; and

**WHEREAS**, MSL has completed its activities under the Twitchell Dam and Reservoir Feasibility Study and Contract (“**Feasibility Contract**”), previously entered into by MSL and District, with the Mitigation Notice as defined in Section 1.4 therein, having been received by the District on or about January 9, 2023; and

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

**Section 1. Incorporation of Feasibility Contract.** The Parties hereby incorporate by reference the terms of the Feasibility Contract as if originally set forth herein. In the case of any conflict in terms between the Feasibility Contract and this Agreement, the terms of this Agreement will control, except for Section 1.4 and all subsections thereof, which shall otherwise control.

## **Section 2. Rights and Obligations.**

### **2.1. Representations of MSL.** MSL has, at MSL's sole cost and expense:

(a) developed a technical remediation and mitigation plan for dredging the Project Site (including sediment dewatering/treatment, pumping, transportation, and disposal) as required under the Feasibility Contract, the first phase of which is attached hereto as **Exhibit A**;

(b) determined that subsequent phases may require a modified or different scope of work and plan to carry out the entire remediation and mitigation plan for the Project Site, which shall be set forth in subsequent amendments to this Agreement;

(b) pursued federal and/or state funding for the Feasibility Assessment required under the Feasibility Contract, as well as funding for the first phase of the SOW, as shown in Exhibit A.

### **2.2. Obligations of MSL.** MSL has concluded that the Feasibility Assessment completed under the Feasibility Contract is suitable to MSL at least in part due to approval by applicable federal and state funding agencies, and is otherwise suitable to MSL to invoke its exclusive right to perform the actual remediation and mitigation of the Project Site ("Mitigation Activities") per the guidance of federal and state funding agencies, the first phase of which is set forth in Exhibit A. Per Section 1.4 of the Feasibility Contract, this Agreement contains the following mandatory and material provisions:

(a) The Mitigation Activities shall be performed in accordance with the Plan as approved by applicable federal and state funding agencies and SMVWCD.

(b) The Mitigation Activities shall be performed in conformity with all federal, state, and local laws, regulations, and permits, including the National Environmental Protection Act ("NEPA") and the California Environmental Quality Act ("CEQA") as might apply.

(c) The Mitigation Activities shall be performed in a good and workmanlike and expeditious manner (and continued diligently until completed) and in accordance with any drawings, plans and specifications incorporated to the application or other request for funding submitted to, and approved by, the applicable federal and state funding agencies, with MSL to provide the labor, supplies, management, and administrative support necessary in connection with such Mitigation Activities.

(d) The Mitigation Activities shall be performed at no cost to SMVWCD and shall be funded solely and exclusively by MSL and/or the applicable federal and state funding agencies. Further, any expenses incurred by SMVWCD with respect to contract engineering services, legal review, administrative support, and oversight costs, shall be subject to reimbursement from funding provided by applicable government agencies, pursuant to the "Twitchell Dam and Reservoir Reimbursement Agreement," ("**Reimbursement Agreement**"), the terms of which are incorporated herein by this reference, such that SMVWCD's total cost is ZERO DOLLARS (\$0).

- (e) MSL shall indemnify and hold harmless SMVWCD for said Mitigation Activities.
- (f) MSL shall provide insurance, in a form and in an amount acceptable to SMVWCD, for accidents and damages associated with said Mitigation Activities.
- (g) The Mitigation Activities will not impact SMVWCD's continuing operations and obligations and SMVWCD shall have the sole discretion to modify, alter, or halt the Mitigation Activities should the need arise, in its sole and absolute discretion.
- (h) MSL will obtain adequate written permissions, as necessary, from any third parties who may own or control certain portions of land adjacent to or comprising the Project Site before taking any action on those lands.
- (i) The Parties will retain a duly qualified independent third party to monitor all Mitigation Activities, and reimbursements made under the Reimbursement Agreement, to be paid for by MSL and/or via funding provided by the applicable federal and state funding agencies, as may be permitted.
- (j) MSL shall provide for the Payment of prevailing wages as required by applicable federal, state, and/or local law.
- (k) MSL shall comply with applicable competitive bidding requirements as required by federal, state, and/or local law.
- (l) MSL shall adhere to all applicable non-discrimination requirements.

**2.3. Funding.** The Parties acknowledge that this Agreement is a ZERO DOLLAR (\$0) contract and that any and all billable actions will be initiated by SMVWCD issuing a task order on a project-by-project basis. Task orders will contain a specific scope of work, a fee schedule, and a not to exceed amount ("Task Order"). Reimbursement to SMVWCD will be handled on the basis of each Task Order for, but necessarily not limited to, contract engineering services, legal review, administrative support, oversight costs, and contract administration. When federal funds are used to facilitate activities associated with this Agreement, MSL agrees to maintain all documentation in compliance with federal standards and reporting requirements necessary for each federal funding source. MSL acknowledges that should any contract not be necessary throughout the course of this Agreement that there will be ZERO DOLLARS (\$0) billable to SMVWCD.

**2.4. Obligations of SMVWCD.** SMVWCD agrees to assist MSL by reasonably gathering and providing information related to the proposed project and funding application processes as reasonably requested by MSL. It is understood and agreed that the Bureau and other federal and state government agencies may limit and/or condition the use of the information that may be provided to MSL and MSL waives any claims against SMVWCD in all such an events.

**2.5. Approval of Bureau.** MSL understands and acknowledges that the proposed project or any component thereof, including the Mitigation Activities, may be subject to the approval of the Bureau or other third parties, who may condition or deny such approval. By

signature below, MSL waives any claim against SMVWCD arising from any governmental decision or action, including those made by the Bureau.

### **Section 3. Rights of Access; Protection of SMVWCD Property During Mitigation Activities**

**3.1. Access Rights.** To the extent that SMVWCD is permitted, as a further consideration for this Agreement, during the Mitigation Activities, SMVWCD grants MSL such rights of ingress and egress over the Project Site as reasonably necessary for MSL to proceed with the Mitigation Activities. MSL understands that portions of the Project Site are owned and/or controlled by entities or third parties other than SMVWCD and MSL agrees that they will obtain written consents of said entities or third parties before accessing said portions of the Project Site.

**3.2. Indemnification.** MSL agrees to and shall hold harmless, indemnify, and defend SMVWCD and its employees, agents, successors, invitees, and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments including, without limitation, reasonable attorney's fees, arising from or related to (a) any act or omission of MSL, its agents, affiliates, employees, or invitees, whether intentional, negligent, or otherwise, occurring on or about the Project Site or associated with this Agreement, or (b) some condition on or about the Project Site. SMVWCD agrees to provide like indemnification to MSL, limited only to those conditions on or about the Project Site of which SMVWCD has actual notice.

**3.3. Exclusion of Others.** MSL further agrees to use all reasonable efforts to prevent the general public and all unauthorized persons from accessing the Project Site without the written consent of SMVWCD.

**3.4. Limitations on Access.** MSL agrees that, in utilizing the access granted herein and in undertaking any work contemplated herein, MSL will not impact SMVWCD's continuing operations and obligations and MSL agrees that SMVWCD shall have the sole and absolute discretion to modify, alter, or halt such access or work should the need arise.

### **Section 4. Non-Disclosure**

**4.1. Confidentiality.** SMVWCD, on behalf of itself, its agents, employees, successors and assigns, agrees to maintain strict confidentiality of any confidential documents and information related to this Agreement any related matters, and any data or information relating to the business of MSL which would reasonably be considered to be proprietary to MSL including, but not limited to, accounting records, business processes, membership lists and client records and so long as the same is not generally known in the industry of MSL and where the release of that confidential information could reasonably be expected to cause harm to MSL ("Confidential Material of MSL"), and not to disclose Confidential Material of MSL except upon consent by MSL, and except as otherwise required by law. Notwithstanding the foregoing, SMVWCD may disclose Confidential Material of MSL to its advisors, agents or employees, but only to those who are required to have the information in order to evaluate or

engage in discussions concerning the carrying out of obligations of the Parties under this Agreement. SMVWCD agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Material of MSL. All documents and other tangible objects containing or representing Confidential Material of MSL and all copies thereof which are in the possession, custody or control of SMVWCD shall be and remain the property of MSL and shall be promptly returned to MSL upon request. Notwithstanding anything to the contrary herein, in no case shall the following be considered Confidential Material of MSL: (1) information that is now or subsequently becomes generally available to the public through no wrongful act of SMVWCD, (2) information that SMVWCD rightfully had in its possession from sources other than MSL prior to receiving said information from MSL, (3) information that SMVWCD rightfully obtains from a third party who has the right to transfer or disclose it; and (4) any information or documents that SMVWCD is required to disclose under California law.

MSL, on behalf of itself, its agents, employees, successors and assigns, agrees that certain information held by SMVWCD is considered confidential in nature (“Confidential Material of SMVWCD”). All Confidential Material of SMVWCD will either be (a) discussed in closed session of the SMVWCD Board, or (b) identified as “confidential” on any document. MSL agrees not to disclose to maintain strict confidentiality of any Confidential Material of SMVWCD except upon the written consent of SMVWCD or as required by law. Further, MSL agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Material of SMVWCD. All documents and other tangible objects containing or representing Confidential Material of SMVWCD and all copies thereof which are in the possession, custody or control of MSL shall be and remain the property of SMVWCD and shall be promptly returned to SMVWCD upon request.

Notwithstanding the above, MSL agrees to provide all data collected and reports generated from the Project Site in developing the Feasibility Study, and in preparation for carrying out the Mitigation Activities, to SMVWCD upon reasonable request.

**4.2. Survival.** The obligations of the Parties described in this Section shall survive the termination of this Agreement.

## **Section 5. MSL’s Warranties**

**5.1. Good Standing.** MSL is a business duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization and the State of California, has all requisite power to carry on its business as now being conducted and as proposed to be conducted, and is duly qualified to do the business contemplated herein. MSL warrants that it has complied with, is not in violation of, and has not received any notice of violations with respect to, any federal, state or local statute, rule, or regulation with respect to the conduct of its business, or the ownership of its business.

**5.2. Qualifications.** MSL represents and warrants that it is qualified to prepare the Plan, including but not limited to, production of dredging plans, preparation of specifications, and completing site inspections regarding physical conditions impacting its performance. MSL further warrants that the Plan developed during the Feasibility Period for

the Mitigation Activities contemplated herein will be sufficient and adequate in every respect to produce the results intended by undertaking the Mitigation Activities, should MSL elect to do so.

**5.3. Licensing and Continuing Warranties.** MSL represents and warrants that it is now, and will remain for the duration of its performance hereunder, properly licensed, qualified, experienced, bonded (as may be required under California law for contractors doing business with public agencies), and equipped to perform as provided herein, and that any subcontractor hired by MSL will also be properly licensed, qualified, experienced, bonded, and equipped to perform as necessary for performance of any sub-contracted work. MSL may elect, upon approval by SMVWCD and as may be authorized by California law, to provide alternative security in place of bonding requirements.

**5.4. Insurance.** MSL further agrees to take out and keep in force during the duration of this Agreement, at MSL's own expense, public liability insurance and property damage insurance with companies approved by SMVWCD for protection against (1) liability to the public and the Project Site arising as an incident to the use of, or resulting from, any accident occurring in or about the Project Site and (2) damage to any portion of the Project Site. The limits of liability under this insurance are to be not less than \$3,000,000.00 combined limit liability and \$3,000,000.00 for property damage. These insurance policies shall insure the contingent liability of SMVWCD and SMVWCD shall be named as additional insured. Such policies shall contain a written obligation on the part of the insurance companies to notify SMVWCD, in writing, before any cancellation of the insurance. MSL further agrees to take out and keep in force during the term of this Agreement, and any extension hereof, at MSL's own expense, proper and adequate workers' compensation insurance. MSL hereby waives its right of recovery against SMVWCD for any loss insured by fire, extended coverage and other property insurance policy held by SMVWCD. MSL shall apply to its insurer to obtain said waiver and shall secure any special endorsement if required by its insurer to comply with this provision.

## **Section 6. Termination**

The Parties each have the right to terminate this Agreement at any time and for any reason following ninety (90) days of written notice.

## **Section 7. Attorney Fees**

If either Party becomes involved in litigation (or arbitration) arising out of this Agreement or the performance thereof, the court in such litigation or arbitration, or in a separate suit, shall award all costs and expenses, including attorneys' and experts' fees, to the prevailing Party.

## **Section 8. Successors and Assigns**

This Agreement shall bind and inure to the benefit of the Parties hereto and their respective personal representatives, successors, heirs, and assigns.



## **Section 9. Assignment**

MSL may assign or subcontract any work to be performed under this Agreement upon written consent of such assignment by SMVWCD and so long as said assignee or subcontractor agrees, in writing, to hold harmless, indemnify, and defend SMVWCD and its employees, agents, successors, invitees, and assigns from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments including, without limitation, reasonable attorney's fees, arising from or related to (a) any act or omission of said assignee or subcontractor, or their agents, affiliates, employees, or invitees, whether intentional, negligent, or otherwise, occurring on or about the Project Site or associated with the Feasibility Assessment, or (b) some condition on or about the Project Site.

## **Section 10. Governing Law**

The interpretation and execution of all provisions of this Agreement is subject to the laws of the State of California. In any action or proceeding by either Party to enforce this Agreement, or any provision thereof, then exclusive venue for such an action will be the Superior Court in the State of California, County of Santa Barbara, Santa Maria Cook Street Branch.

## **Section 11. Notices**

All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses or to such other address as either Party may from time to time notify the other, and will be deemed to be properly delivered (a) immediately upon being served personally, (b) two days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier:

- (a) Santa Maria Valley Water Conservation District:

***Mailing Address:***

P.O. Box 364  
Santa Maria, CA 93456  
Attn: Casey Conrad,  
Twitchell Operations Committee Chairman

***Physical Address:***

2250 S. Broadway Avenue, Suite #8E  
Santa Maria, CA 93454

***Copy to:***

Aleshire & Wynder, LLP  
3880 Lemon Street, Ste. 520  
Riverside, CA 92501  
Attn: G. Ross Trindle, III, District Counsel

(b) Mitigation Solutions, LLC

***Kentucky Address:***  
841 Corporate Drive  
Suite 302  
Lexington, KY 40503  
Attn.: Scott Hastings  
Chief Operating Officer

The Parties shall provide courtesy copies of all notices, requests, demands or other communications required or permitted by the terms of this Agreement via electronic mail, to supplement written notice required by this Section 11. The Parties agree to a continuing obligation to provide updated electronic mail addresses to each other for this purpose.

### **Section 12. Severability**

In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

### **Section 13. Waiver**

The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

### **Section 14. Entire Agreement**

This Agreement: (a) constitutes the entire agreement between the Parties and supersedes all prior negotiations, agreements and understandings, both written and oral, among the Parties, including course of conduct, with respect to the subject matter hereof; and (b) is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder. No modifications of the terms hereof shall be binding unless reduced to writing and executed by both Parties as provided for in this Agreement. Each Party agrees that it was not induced to enter into this Agreement by any statement, representations, understandings, promises or agreements not otherwise contained within this Agreement, and that the other Party is not bound by or in any way liable because of any such statement, representation, understanding, promise or agreement not contained herein.

### **Section 15. Counterparts**

The Parties agree that this Agreement may be signed in counterpart originals with the same effect as if both Parties had signed the same document.

### **Section 16. Captions**

The captions of this Agreement are for the convenience of the Parties only and shall not be construed as limiting or otherwise interpreting any of the provisions contained in such paragraphs.

**Section 17. Time of Essence**

Time is of the essence of this Agreement with respect to the performance of all of the conditions and covenants to be observed and performed by each Party hereto.

**Section 18. Construction**

The Parties have negotiated and mutually drafted this Agreement such that it shall not be construed against the Party or its representative who drafted this Agreement or any portion hereof.

**Section 19. Documentary Evidence of Execution**

Facsimile signatures or emailed signatures of this Agreement in portable document format (i.e. .pdf) shall be acceptable as evidence of execution should the original, executed document become lost, stolen, or otherwise unavailable.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below.

**Mitigation Solutions, LLC**  
A Wyoming limited liability company


By:   
Scott Hastings,  
Chief Executive Office

Date: 01.19.2023

By:   
Jeff H. Jones,  
President

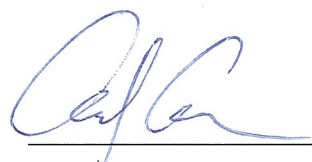
Date: 01.19.23

**SANTA MARIA VALLEY WATER  
CONSERVATION DISTRICT**  
A California independent special district

By:   
Keith Hadick  
President, Board of Directors

Date: 01.19.2023

**Attest:**

By:   
Andy Adam  
Secretary, Board of Directors

Date: 1-19-23