



# NOTICE OF THE BOARD OF DIRECTORS' REGULAR BI-MONTHLY MEETING

Wednesday, November 06, 2024 at 5:30 PM

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## AGENDA

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### LOCATIONS:

#### **Open Session to start at or after 6:30 p.m.**

Marin Water Board Room – 220 Nellen Avenue, Corte Madera, CA 94925

#### **Closed Session begins at 5:30 p.m.**

Marin Water Mt. Tam Conference Room, 220 Nellen Avenue, Corte Madera, CA 94925

### **Public Participation:**

The public may attend this meeting in-person or remotely using one of the following methods:

On a computer or smart device, go to: <https://marinwater.zoom.us/j/88134852296>

By phone, dial: **1-669-444-9171** and use Webinar ID: **881 3485 2296**

### **HOW TO PROVIDE PUBLIC COMMENT:**

**During the Meeting:** Typically, you will have 3 minutes to make your public comment, however, the board president may shorten the amount of time for public comment due to a large number of attendees. Furthermore, pursuant to Government Code, section 54954.2 (the Brown Act), the Board may not take action or discuss any item that does not appear on the agenda.

-- **In-Person Attendee:** Fill out a speaker card and provide to the board secretary. List the number/letter (ex: 6a) of the agenda item(s), for which you would like to provide a comment. Once you're called, proceed to the lectern to make your comment.

-- **Remote Attendee:** Use the "raise hand" button on the bottom of the Zoom screen. If you are joining by phone and would like to comment, press \*9. The board secretary will use the last four digits of your phone number to call on you (dial \*6 to mute/unmute).

**In Advance of the Meeting:** Submit your comments by email in advance of the meeting to [boardcomment@marinwater.org](mailto:boardcomment@marinwater.org). To ensure that your comment is provided to the Board of Directors prior to the meeting, please email your comment 24 hours in advance of the meeting start time. Comments received after this cut off time will be sent to the Board after the meeting. Please do not include personal information in your comment such as phone numbers and home addresses.

**AGENDA ITEMS:**

- 1. Call to Order and Roll Call**
- 2. Adoption of Agenda**
- 3. Announcement of Closed Session Item(s); Public Comments on Closed Session Item(s)**

Following announcement of Closed Session items and prior to recess into Closed Session, the public may speak up to three minutes on items to be addressed in Closed Session. The Board will convene to Closed Session in the Mt. Tam Conference Room after public comment.

**a. Conference with Legal - Existing Litigation**

(California Government Code §54956.9)

California Native Plant Society, Marin Audubon Society, and Marin Conservation League vs. Marin Municipal Water District

Case No. CV0004078

Adjourn closed session and reconvene to open session in the Board Room and via Zoom.

**4. Reconvene to Open Session; Closed Session Report Out**

**5. Public Comment on Non-Agenda Matters**

This is the time when any person may address the Board of Directors on matters not listed on this agenda, but which are within the subject matter jurisdiction of the Board.

**6. Directors' and General Manager's Announcements (6:40 p.m. – Time Approximate)**

**7. Board Committee Reports**

Each Committee Chair or Vice Chair will provide a report on recent committee meetings. Directors may ask questions or provide brief comments or requests for additional information on an item.

**8. Consent Items (6:50 p.m. – Time Approximate)**

All Consent Items will be enacted by a single action of the Board, unless specific items are pulled from Consent by the Board during adoption of the agenda for separate discussion and action.

**a.** Minutes of the Board of Directors' Regular Bi-Monthly Meeting on October 15, 2024

**RECOMMENDATION:** Approve the minutes

**b.** Amendment No. 3 to Agreement 6240

**RECOMMENDATION:** Authorize the General Manager to execute Amendment No. 3 to Agreement 6240 with Black and Veatch to extend the contract date and expand the scope of services in support of grant application development for critical infrastructure projects, increasing the budget by \$205,000 from the current, not to exceed amount of \$95,000, and a new total not to exceed amount of \$300,000

**c.** Amendment No. 1 to Professional Service Agreement with Best, Best and Krieger LLP for Environmental Law and Litigation Legal Services

**RECOMMENDATION:** Approve Amendment No. 1 to MA-6328, professional services agreement with Best, Best and Krieger to add \$200,000 for environmental law and litigation legal services

- d. Amendment No. 2 to Professional Service Agreement with Kronick, Moskovitz, Tiedemann & Girard for Water Law and Environmental Legal Services

**RECOMMENDATION:** Approve Amendment No. 2 to MA-6200, professional services agreement with Kronick, Moskovitz, Tiedemann & Girard to add \$200,000 for water and environmental law and legal services

- e. Contract Amendment with Acclamation Insurance Management Services (AIMS) for Liability Claims Management

**RECOMMENDATION:** Approve a Fifth Amendment to Miscellaneous Agreement (MA) No. 5204 with AIMS to add \$50,000 for liability claims management services through June 30, 2025

- f. Adopt the 2024 Revised Marin Municipal Water District Board of Directors Handbook

**RECOMMENDATION:** Adopt the 2024 Revised Marin Municipal Water District Board of Directors Handbook (Board Handbook) setting forth the recently reviewed revisions and updates, including incorporation of appropriate provisions of the Board’s Ethics Policy, Board Policy No. 50, and sunset Board Policy No. 50

- g. Award of Contract No. 2019 Marin City Phase I Pipeline Replacement Project (GC25005)

**RECOMMENDATION:** Approve a resolution authorizing award of Contract No. 2019, Marin City Phase I Pipeline Replacement Project, to Maggiora & Ghilotti, Inc. in the amount of \$2,594,594; and, approve a reimbursement agreement with the County of Marin for paving costs and authorize the Board President to execute the agreement

- h. Request to Fill Records Manager Position in the Engineering Division

**RECOMMENDATION:** Authorize the General Manager to recruit and hire one Records Manager in the Engineering Division

- i. Purchase of SCADA Replacement Equipment to Replace Outdated Equipment at the Bon Tempe Treatment Plant

**RECOMMENDATION:** Authorize the General Manager to execute a purchase order for replacement SCADA Equipment from Graybar to replace the outdated SCADA Equipment at the Bon Tempe Treatment Plant in the amount of \$159,576

- j. Enterprise Resource Planning (ERP) Software Modernization

**RECOMMENDATION:** Approve an agreement with SAP SuccessFactors for software entitlements required to modernize the District’s Enterprise Resource Planning software

**9. Regular Items (6:55 p.m. – Time Approximate)**

- a. Grant Program Update

**RECOMMENDATION:** Receive a staff update on the District’s recent grant activities

- b. Nicasio Spillway Environmental Compliance Contract

**RECOMMENDATION:** Authorize the General Manager to execute a professional services agreement with Environmental Science Associates (ESA) for the Nicasio Spillway Modification Project Environmental Review, Permitting, and Fisheries Services Contract in the amount of

\$1,738,360 with a staff requested contingency of \$260,754, for a total not to exceed amount of \$1,999,114

**10. Future Board and Committee Meetings and Upcoming Agenda Items**

This schedule lists upcoming board and committee meetings as well as upcoming agenda items for the next month, which may include Board interest in adding future meeting items. The schedule is tentative and subject to change pending final publication and posting of the meeting agendas.

**a.** Upcoming Meetings

**11. Announcement of Closed Session Item(s); Public Comments on Closed Session Item(s) - None.**

Following announcement of Closed Session items and prior to recess into Closed Session, the public may speak up to three minutes on items to be addressed in Closed Session. The Board will convene to Closed Session in the Mt. Tam Conference Room after public comment.

**12. Reconvene to Open Session; Closed Session Report Out - Not applicable.**

**13. Adjournment (7:30 p.m. – Time Approximate)**

**ADA NOTICE AND HEARING-IMPAIRED PROVISIONS**

In accordance with the Americans with Disabilities Act (ADA) and California Law, it is Marin Water’s policy to offer its public programs, services, and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are an individual with a disability and require a copy of a public hearing notice, an agenda, and/or agenda packet in an appropriate alternative format, or if you require other accommodations, please contact the Board Secretary/ADA Coordinator at 415.945.1448, at least two business days in advance of the meeting. Advance notification will enable Marin Water to make reasonable arrangements to ensure accessibility.

*Information agendas are available for review at the Civic Center Library, Corte Madera Library, Fairfax Library, Mill Valley Library, Marin Water Administration Building, and [marinwater.org](http://marinwater.org).*

Posted: 11-01-2024







# NOTICE OF THE BOARD OF DIRECTORS' REGULAR BI-MONTHLY MEETING

Tuesday, October 15, 2024 at 5:30 PM

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## MINUTES

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### LOCATIONS:

**Open Session to start at or after 6:30 p.m.**

Marin Water Board Room – 220 Nellen Avenue, Corte Madera, CA 94925

**Closed Session begins at 5:30 p.m.**

Marin Water Mt. Tam Conference Room, 220 Nellen Avenue, Corte Madera, CA 94925

### Public Participation:

The public attended this meeting in-person or remotely using one of the following methods: on a computer or smart device, <https://marinwater.zoom.us/j/88134852296>, or by phone, 1-669-444-9171 using Webinar ID #: 881 3485 2296.

### AGENDA ITEMS:

#### 1. Call to Order and Roll Call

President Ranjiv Khush called the meeting to order at 5:30 p.m.

#### DIRECTORS PRESENT

Jed Smith  
Larry Russell  
Matt Samson  
Monty Schmitt  
Ranjiv Khush

#### 2. Adoption of Agenda

Director Smith made a motion to adopt the agenda. Vice President Samson seconded the motion.

There were no public comments.

Voting Yea: Directors Smith, Russell, Samson, Schmitt, and Khush

**3. Announcement of Closed Session Item(s); Public Comments on Closed Session Item(s)**

President Khush announced the upcoming Closed Session item.

There was one (1) public comment.

The Board adjourned to Closed Session at 5:34 p.m. and went to the Mt. Tam Conference Room.

**a. Conference with Legal - Existing Litigation**

(California Government Code §54956.9)

California Native Plant Society, Marin Audubon Society, and Marin Conservation League vs. Marin Municipal Water District  
Case No. CV0004078

**4. Reconvene to Open Session; Closed Session Report Out**

The Board reconvened to Open Session at 6:37 p.m.

President Khush announced that the Closed Session adjourned at 6:30 p.m. with no reportable action.

**5. Public Comment on Non-Agenda Matters**

There were eight (8) public comments.

**6. Directors' and General Manager's Announcements**

- Vice President Samson announced that a prescribed fire event was postponed and reported that he attended the Lagunitas Creek Phase I Celebration.
- Director Smith reported that he also attended the Lagunitas Creek Phase I Celebration and visited West Point Inn.
- Director Russell reported that he attended the 2024 Water Environment Federation's Technical Exhibition and Conference and a Chili Feed for Mike McGuire. He also recognized Sonoma Water for the recent work they did at the Kastania Pump Station.

**7. Board Committee Reports - None.**

**8. Consent Items**

- a. Minutes of the Board of Directors' Regular Bi-Monthly Meeting on October 1, 2024

**RECOMMENDATION:** Approve the minutes

- b. General Manager's Report September 2024

**RECOMMENDATION:** Approve Report

- c. Second Amendment to District Lease No. 61, VB Run LLC at Lucas Valley Road, San Rafael (APN 165-010-03)

**RECOMMENDATION:** Approve and authorize the General Manager to execute Amendment No. 2 to Lease No. 61 with VB Run LLC at Lucas Valley Road, San Rafael to allow the upgrade of existing telecommunications equipment

- d. Change the Employer’s CalPERS Contribution Rate for Health Insurance Premiums to the minimum amount required pursuant to Government Code Section 22892

**RECOMMENDATION:** Adopt resolutions that will change the District’s CalPERS contribution rate paid for health insurance premiums to the minimum statutory contribution amount required pursuant to the Public Employees Medical and Hospital Care Act (PEMHCA), California Government Code section 22892 to allow the District to administer differences in retiree health care benefits not administered by CalPERS  
(Resolution No. 8793 and Resolution No. 8794)

- e. Request to Fill Field Supervisor in the Operations Division

**RECOMMENDATION:** Authorize the General Manager to recruit and hire one Field Supervisor in the Operations Division

Director Smith made the motion to approve the Consent Calendar. Vice President Samson seconded the motion.

There were no public comments.

Voting Yea: Directors Smith, Russell, Samson, Schmitt, and Khush.

**9. Regular Items (6:55 p.m. – Time Approximate)**

- a. Department of Water Resources Grant Resolutions

**RECOMMENDATION:** Approve two grant resolutions for the Department of Water Resources (DWR) to support the submittal of grant applications for the proposed Spillway Repair Project and the Phoenix and Lagunitas Valves and Actuator Replacement Project

Engineering Director Alex Anaya and Grants Program Coordinator Jaime Hailer presented this item.

Discussion followed.

There were no public comments.

Vice President Samson made the motion to approve the two grant resolutions. Director Schmitt seconded the motion. (Resolution No. 8795 and Resolution No. 8796)

Voting Yea: Directors Smith, Russell, Samson, Schmitt, and Khush

b. 2024 Annual Strategic Work Plan Quarterly Progress

**RECOMMENDATION:** Receive quarterly progress update on the 2024 Annual Strategic Work Plan

General Manager Horenstein presented this item.

The Board provided feedback throughout the presentation.

There were four (4) public comments.

This was an information item. No formal action was taken.

**10. Future Board and Committee Meetings and Upcoming Agenda Items**

a. Upcoming Meetings

The Board Secretary announced upcoming internal and external meetings.

There were no public comments.

**11. Announcement of Closed Session Item(s); Public Comments on Closed Session Item(s) - None.**

**12. Reconvene to Open Session; Closed Session Report Out - Not applicable.**

**13. Adjournment**

There being no further business, the Board of Directors' Regular Bi-Monthly Meeting adjourned on October 15, 2024 at 8:06 p.m.

\_\_\_\_\_  
Board Secretary



review. This meant that the SGTP clarifier project was recommended by CalOES out of all the projects submitted, and was the first District application to advance this far. To cover additional costs for supplemental Requests for Information requested by FEMA, the District executed a no cost Amendment No. 1 to extend the Black and Veatch agreement to March 2024. The application was still under active FEMA review at the end of March 2024, at which time the District executed Amendment No. 2 to extend the contract completion date to December 2025 and increase contract funding to a total of \$95,000 for continued grant support. The clarifier project was not ultimately selected by FEMA; however, CalOES recommend the project pivot to the open FEMA HMGP grant. Currently, the project is once again under CalOES review, with notification anticipated in early 2025 as to whether the project is selected to move to FEMA review.

Staff has found the Black and Veatch team to be very responsive, knowledgeable, and able to meet the short deadlines that often exist for competitive grant applications. While District staff is capable of completing grant applications, the turnaround time between the solicitation and the application deadline can be very short, greatly impacting current staff workloads. In order to meet these deadlines and continue to pursue all available and applicable grants, staff is requesting assistance in the form of expanding the District’s current on-call grant support contract, as the contract is approaching its not-to-exceed limit.

These additional services will also provide support for the Department of Water Resources Dam Safety and Climate Local Assistance Program. This solicitation came out in late September 2024, with an application due date of October 21, 2024. The District is electing to submit two grant applications for this program, both regarding future dam safety related projects. The October 15, 2024 Board meeting reviewed the Local Public Agency Authorizing Resolution for these applications.

Staff is requesting to extend the completion date for the contract as well as expand the scope of services to include general on-call grant application development for critical infrastructure projects, increasing the budget by \$205,000 from the current not to exceed amount of \$95,000 and a new total not to exceed amount of \$300,000.

**ENVIRONMENTAL REVIEW:** Not Applicable.

**FISCAL IMPACT:** Funding for this contract is identified in the adopted Capital budget for Fiscal Year 2024 and 2025 under the A1A16 Program Management fund center.

**ATTACHMENT(S):** None.

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Engineering	 Alex Anaya Engineering Director	 Ben Horenstein General Manager



# STAFF REPORT

**Meeting Type:** Board of Directors

**Title:** Amendment No. 1 to Professional Service Agreement with Best, Best and Krieger LLP for Environmental Law and Litigation Legal Services

**From:** Molly MacLean, General Counsel

**Through:** Ben Horenstein, General Manager

**Meeting Date:** November 6, 2024

**TYPE OF ACTION:**      X      Action                              Information                              Review and Refer

**RECOMMENDATION:** Approve Amendment No. 1 to MA-6328, professional services agreement with Best, Best and Krieger to add \$200,000 for environmental law and litigation legal services

**SUMMARY:** Staff is seeking approval to amend the professional services agreement with Best, Best and Krieger to add funding to cover environmental law and litigation legal services provided to the District, in amount not to exceed two hundred thousand dollars (\$200,000), which will include litigation support associated with *California Native Plant Society, Marin Audubon Society, and Marin Conservation League vs. Marin Municipal Water District*, recently filed against the District.

**DISCUSSION:** The General Counsel’s Office regularly retains outside legal services to support the District in specialized areas, such as labor and employment law and litigation. On April 17, 2024, the District issued a request for qualifications and circulated it to a number of law firms for legal services to support some of the environmental law work of the District, including in the areas of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the federal equivalent of CEQA. Several proposals were received from law firms specializing in this area of practice. Staff conducted interviews with multiple firms and selected Best, Best and Krieger (BBK) to provide legal services for the District on these and related issues under the direction of the District’s General Counsel. The District entered into a professional services agreement with BBK for an initial amount not to exceed seventy-five thousand dollars (\$75,000).

The District was recently served with a petition, *California Native Plant Society, Marin Audubon Society, and Marin Conservation League vs. Marin Municipal Water District*, challenging the District’s adoption of the E-Bike Trial Program and the Trail Sharing Pilot Program on District watershed lands on the basis of CEQA. Legal counsel with BBK have been providing legal support in connection with this litigation and staff is seeking to augment the initial contract amount to assure the necessary funds are available for these services. Staff is seeking the Board’s approval of Amendment No. 1, which would add a not to exceed amount of \$200,000, bringing the contract total not to exceed amount to \$275,000. The





contract has no end term, as the services will be provided on an as needed basis to support work on the CEQA litigation as well as to provide ongoing legal services on CEQA and NEPA issues, as needed.

**ENVIRONMENTAL REVIEW:** Not applicable.

**FISCAL IMPACT:** Funds for Legal Services are provided by the General Counsel Offices budget for Fiscal Year 2024-25, and will be included in the next two-year budget. Project specific services may be allocated to those projects, and general litigation services are covered under the Interdepartmental budget.

**ATTACHMENT(S):**

- 1. Proposed Amendment No.1 to MA-6328 for Legal Services
- 2. MA-6328 Professional Services Agreement for Legal Services

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
General Counsel's Office	 Molly MacLean General Counsel	 Ben Horenstein General Manager

**AMENDMENT NO. 1 TO  
AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
MARIN MUNICIPAL WATER DISTRICT and BEST, BEST & KRIEGER LLP  
(Miscellaneous Agreement No.MA - 6328)**

This Contract Amendment (“First Amendment”) is entered into by and between Marin Municipal Water District (“District”) and Best, Best & Krieger LLP (“Consultant”).

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Recitals:

- A. District and Consultant entered into the Agreement for specialized legal representation for assistance with environmental law legal services dated June 12, 2024 (“Agreement”) for an initial not to exceed amount of \$75,000.
- B. The parties desire to enter into this Amendment No. 1 to the Agreement to increase the not to exceed amount set forth in the Agreement in order to permit the utilization of additional legal services being provided under the Agreement, including but not limited to litigation support services.

Section 2. Terms:

- A. Amendment to Agreement: This First Amendment modifies the Agreement. Except for the modifications contained herein, all the terms of the Agreement shall apply.
- B. Terms:
  - 1. **Amend Section 2 entitled "Compensation", subsection (d)** to read as follows:

*Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of two hundred seventy-five thousand (\$275,000).*

In witness whereof, the Parties hereby execute this Amendment No. 1 as of the last date written below.

Dated: \_\_\_\_\_

**BEST, BEST & KRIEGER**

By \_\_\_\_\_  
Sarah E. Owsowitz, Attorney

Dated: \_\_\_\_\_

**MARIN MUNICIPAL WATER DISTRICT**  
a California Municipal Corporation

By \_\_\_\_\_  
President Ranjiv Khush, Board President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Molly MacLean, District General Counsel

**MARIN MUNICIPAL WATER DISTRICT  
PROFESSIONAL SERVICES AGREEMENT  
AGREEMENT NUMBER 6328**

This "Agreement" is made as of this 12th day of June, 2024, by and between the Marin Municipal Water District ("District"), and Best Best & Krieger LLP ("Consultant").

**R E C I T A L S**

A. District desires to retain a qualified law firm to provide specialized legal representation to the District as more particularly set forth in Exhibit A to the Agreement.

B. Consultant represents to District that it is a firm composed of highly trained professionals and is fully qualified to conduct the services described above and render advice to District in connection with said services.

C. The parties have negotiated upon the terms pursuant to which Consultant will provide such services and have reduced such terms to writing as set forth herein.

**AGREEMENT**

**NOW, THEREFORE**, District and Consultant agree as follows:

**1. SCOPE OF SERVICES**

Consultant shall provide to District the services described in Exhibit A ("Scope of Services"). Consultant shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by Consultant and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Consultant and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

**2. COMPENSATION**

a. District shall pay Consultant for services rendered pursuant to this Agreement at the rates, times and in the manner set forth in Exhibit B. In addition to paying legal fees, the District shall reimburse Consultant for all usual and customary costs and expenses incurred by Consultant, including but not limited to, process server fees, the subpoena of records, fees fixed by law or assessed by Courts or other agencies, Court Reporter fees, legal research fees, messenger and other delivery fees, postage, photocopying, parking, mileage, and other similar items.

b. Billings shall be submitted to the District's General Counsel on a monthly basis and shall include the following information:

- The date and amount of time spent by each person performing services;
- A summary description of services performed;
- Billings shall be itemized in increments of 6 minutes to indicate the

attorney doing the work, the number of hours spent, the hourly rate; and the work being done by paralegals.

- Costs shall be itemized by types and accompanied by receipts.
- Total fees and costs on the matter to date.

c. The payments prescribed herein shall constitute all compensation to Consultant for all costs of services, including, but not limited to, direct costs of labor of employees. In no event shall District be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

d. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of Seventy-Five Thousand Dollars (\$75,000.00).

**3. RECORDS RETENTION**

Consistent with the District's records retention policy, Consultant shall retain in either physical or electronic form all records (except for original time records) for a period of ten (10) years from the date of completion of services; or, alternatively, if Consultant's own internal retention policy is for a period less than that provided under the District's retention policy, Consultant shall after expiration of its own internal retention period, forward the records to District' General Counsel for retention. In no event shall Consultant destroy or otherwise purge any records without providing the District with at least thirty (30) days prior written notice. Records will be made available to the District upon request for audit purposes. Consultant will maintain both invoices of costs and primary records in order so that such auditing may occur. (Original time records will be retained for two years.)

**4. INDEMNITY**

a. Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless District, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents, in said performance of professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of District.

b. The existence or acceptance by District of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of District's rights under this Section 4, nor shall the limits of such insurance limit the liability of Consultant hereunder. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

**5. INSURANCE**

a. Consultant shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Consultant in exchange for District's agreement to make the payments prescribed hereunder. Failure by Consultant to (i) maintain or renew coverage, (ii) provide District notice of any changes, modifications, or reductions

in coverage, or (iii) provide evidence of renewal, may be treated by District as a material breach of this Agreement by Consultant, whereupon District shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Consultant to maintain required insurance coverage shall not excuse or alleviate Consultant from any of its other duties or obligations under this Agreement. In the event Consultant, with approval of District pursuant to Section 6 below, retains or utilizes any subcontractors or subconsultants in the provision of any services to District under this Agreement, Consultant shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverages in the amounts set forth in the Insurance Requirements in Attachment One.

b. Consultant agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. Consultant agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

**6. ASSIGNMENT**

Consultant shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of District, in District’s sole and absolute discretion. Consultant agrees that District shall have the right to approve any and all subcontractors and subconsultants to be used by Consultant in the performance of this Agreement before Consultant contracts with or otherwise engages any such subcontractors or subconsultants.

**7. NOTICES**

Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

For District:

Molly MacLean  
General Counsel  
220 Nellen Ave  
Corte Madera, CA 94925  
415-945-1440  
[mmaclean@marinwater.org](mailto:mmaclean@marinwater.org)

Consultant Representative:

Sarah E. Owsowitz  
1333 N. California Blvd., Suite 220  
Walnut Creek, CA 94596  
(925) 977-3308  
Sarah.owsowitz@bbklaw.com

**8. INDEPENDENT CONTRACTOR**

a. It is understood and agreed that Consultant (including Consultant’s employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Consultant nor Consultant’s assigned personnel shall be entitled to any benefits payable to employees of District. District is

not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement, and Consultant shall be issued a Form 1099 for its services hereunder. As an independent contractor, Consultant hereby agrees to indemnify and hold District harmless from any and all claims that may be made against District based upon any contention by any of Consultant’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.

b. It is further understood and agreed by the parties hereto that Consultant, in the performance of Consultant’s obligations hereunder, is subject to the control and direction of District 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 Consultant for accomplishing such results. To the extent that Consultant obtains permission to, and does, use District facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Consultant’s sole discretion based on the Consultant’s determination that such use will promote Consultant’s efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement or as occasionally necessary to perform the legal services hereunder, District does not require that Consultant use District facilities, equipment or support services or work in District locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. 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 Consultant. It is further understood and agreed that Consultant shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Consultant’s assigned personnel and subcontractors.

d. The provisions of this Section 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between District and Consultant. Consistent with all the California Rules of Professional Responsibility, Consultant may represent, perform services for, or be employed by such additional persons or companies as Consultant sees fit.

**9. ADDITIONAL SERVICES**

Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid on an hourly basis at the rates set forth in Exhibit B, or paid as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

**10. SUCCESSORS AND ASSIGNS**

District and Consultant each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

**11. TERM, SUSPENSION, TERMINATION**

a. This Agreement shall become effective on the date that it is made as 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. District shall have the right at any time to temporarily suspend Consultant's performance hereunder, in whole or in part, by giving a written notice of suspension to Consultant. If District gives such notice of suspension, Consultant shall immediately suspend its activities under this Agreement, as specified in such notice.

c. District shall have the right to terminate this Agreement at any time, in its absolute discretion and without cause, by giving a written notice of termination to Consultant. Consultant shall have the right to terminate this Agreement on 30 days' written notice to the extent permitted by the California Rules of Professional Responsibility. Upon such termination, Consultant shall submit to District an itemized statement of services performed as of the date of termination in accordance with Section 2 of this Agreement. These services may include both completed work and work in progress at the time of termination. District shall pay Consultant for any services for which compensation is owed; provided, however, District shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the services required by this Agreement. Consultant shall promptly deliver to District all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of District without additional compensation to Consultant.

d. Upon termination by either party, Consultant will be available to consult, for a reasonable period of time, with District and District's new counsel, if any, on the facts, circumstances and status of each matter previously assigned to Consultant.

**12. TIME OF PERFORMANCE**

The services described herein shall be provided during the period, or in accordance with the schedule, set forth in Exhibit A. Consultant shall complete all the required services and tasks and complete and tender all deliverables to the reasonable satisfaction of District until conclusion of the work or termination hereunder.

**13. STANDARD OF PERFORMANCE**

Consultant shall perform all services performed under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Consultant's profession in California. All products of whatsoever nature that Consultant produces under the terms of this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Consultant's profession, and shall be provided in accordance with any schedule of performance, it being understood that acceptance by District shall not operate as or be interpreted to be a waiver or release. Consultant shall assign only competent personnel to perform services under this Agreement. Consultant shall notify District in writing of any changes in Consultant's staff assigned to perform the services under this Agreement prior to any such performance. In the event that District, at any time, desires the removal of any person assigned by Consultant to perform services under this Agreement, because District, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Consultant shall remove such person immediately upon receiving such notice from District.



**14. CONFLICTS OF INTEREST**

Consultant 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 or degree with the interests of District, or that would in any way hinder Consultant's performance of services under this Agreement. Consultant 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 District. In the event of any actual or potential conflict of interest in Consultant representing another party in a matter, then Consultant must bring this to the attention of District and District will determine whether to waive any such actual or potential conflict before Consultant may represent such other party.

**15. MISCELLANEOUS**

a. No Suspension or Debarment. Consultant warrants that its attorneys are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, Consultant has the obligation to immediately inform the District.

b. Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

c. Modification. No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.

d. Compliance with Laws. Consultant shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, et seq., which require prevailing wages (in accordance with DIR determinations at [www.dir.ca.gov](http://www.dir.ca.gov)) be paid to any employee performing work covered by Labor Code sections 1720 et seq.

e. Discrimination Prohibited. With respect to the provision of services under this Agreement, Consultant agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or other protected characteristic of that person.

f. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Marin County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by

such court.

g. Waiver of Rights. Neither District acceptance of, or payment for, any service performed by Consultant, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

h. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

i. Counterparts. This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or District-approved electronic means have the same force and effect as the use of a manual signature.

j. Dispute Resolution. Any dispute or claim in law or equity between the parties arising out of this Agreement if not resolved by informal negotiation between the parties shall be mediated by the parties. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. The parties shall agree to a mutually acceptable mediator and share equally in the mediation costs. If mediation is unsuccessful, the parties may avail themselves of any other remedies.

**16. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS**

Consultant hereby represents and warrants to District that it is (a) a duly organized and validly existing limited liability partnership, formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Consultant hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Consultant in accordance with the terms hereof.

Executed as of the day and year first above stated.

**CONSULTANT:**

BEST BEST & KRIEGER LLP

*Signatures of Authorized Person:*

By: *Sarah E. Owsowitz*

Name: Sarah E. Owsowitz

Title: Attorney

**MARIN MUNICIPAL WATER DISTRICT**  
a Municipal Corporation

By: *[Signature]*

Name: *Bret Uppendahl*

Title: *Acting General Manager*

APPROVED AS TO FORM:

*[Signature]*  
GENERAL COUNSEL'S OFFICE

- Attachments:
- Attachment One - Insurance Requirements
  - Exhibit A - Scope of Services
  - Exhibit B - Compensation

**ATTACHMENT ONE  
INSURANCE REQUIREMENTS FOR  
ATTORNEY SERVICES AGREEMENTS**

**A. Insurance Policies:** Consultant shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to District.

<b>Insurance</b>	<b>Minimum Coverage Limits</b>	<b>Additional Coverage Requirements</b>
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. <b>Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.</b>
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, and non-owned autos, with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 1 million aggregate	Consultant shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Consultant, its employees, agents and subcontractors.

**B. Endorsements:**

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to District in accordance with the policy provisions.

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
    - a. For any claims related to this project, Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by District shall be excess of the Consultant's insurance and shall not contribute with it; and,
    - b. **The Marin Municipal Water District, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
- C. Verification of Coverage and Certificates of Insurance:** Consultant shall furnish District with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by District before work commences and must be in effect for the duration of the Agreement. District reserves the right to require declaration pages of all required policies and endorsements.
- D. Other Insurance Provisions:**
1. No policy required by this Agreement shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the indemnitees.
  2. All insurance coverage amounts provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
  3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Consultant or District. Self-insured retentions above \$1,000,000 must be approved by District. At District's option, Consultant may be required to provide financial guarantees, in form of a statement from Consultant's Chief Financial Officer.
  4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
  5. District reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Exhibit A****SCOPE OF SERVICES**

The primary attorneys assigned to provide the Scope of Services, and the District's primary points of contact, will be Sarah Owsowitz, Ellen H. Grover, and Brandon A. Kline. Additional attorneys may be assigned to complete tasks as necessary.

1. BBK will provide specialized legal services in the area of environmental law, specifically related to compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) for various District projects.
2. BBK will consult with the District during project development and assist in selecting the preferred project alternative; will advise the District regarding the requirements of CEQA and NEPA; will review and assist in determining the appropriate level and scope of environmental analysis; will assist in preparation of the CEQA and NEPA documentation to help assure legal compliance.
3. BBK attorneys will work collaboratively with District staff, consultants, and the General Counsel's Office, primarily at the direction of the General Counsel and will regularly confer with General Counsel in its legal representation, including strategy and direction. BBK counsel will, as needed and at the request of General Counsel, attend Board of Directors meetings to assist in providing legal counsel and guidance to the Board of Directors in support of the General Counsel's Office.
4. BBK will provide related services, upon the District's request.

**Exhibit B**

**Compensation For Legal Services**

As previously mentioned, the BBK team will be led by Sarah E. Owsowitz. In order to increase efficiency and under supervision of Sarah E. Owsowitz, work will be completed by associates and paralegals where appropriate.

In consideration for the provision of legal services, District shall compensate Consultant as follows:

**SCHEDULE OF HOURLY BILLING RATES**

<u>Counsel's Personnel:</u>	<u>Hourly Rates:*</u>
Partners	\$450/hour
Of Counsels	\$450/hour
Associates	\$325/hour
Paralegals	\$185/hour

BBK guarantees to keep the above-mentioned rates in place until January 1, 2025. On January 1, 2025, and each January 1st thereafter, all hourly rates and amounts may be increased for the change in the cost of living for the prior calendar year, as shown by the U.S. Department of Labor in its All Urban Consumers Index set forth for the San Francisco-Oakland-San Jose area, provided such adjustment shall not cause rates to increase by more than 5% in any year.



# STAFF REPORT

**Meeting Type:** Board of Directors

**Title:** Amendment No. 2 to Professional Service Agreement with Kronick, Moskovitz, Tiedemann & Girard for Water Law and Environmental Legal Services

**From:** Molly MacLean, General Counsel

**Through:** Ben Horenstein, General Manager

**Meeting Date:** November 6, 2024

**TYPE OF ACTION:**      X      Action                              Information                              Review and Refer

**RECOMMENDATION:** Approve Amendment No. 2 to MA-6200, professional services agreement with Kronick, Moskovitz, Tiedemann & Girard to add \$200,000 for water and environmental law and legal services

**SUMMARY:** Staff is seeking approval to amend the professional services agreement with Kronick, Moskovitz, Tiedemann & Girard to add funding to cover water and environmental legal services provided to the District, in amount not to exceed two hundred thousand dollars (\$200,000), which will include specialized legal support for the District’s water supply development efforts.

**DISCUSSION:** The General Counsel’s Office regularly retains outside legal services to support the District in specialized areas, such as labor and employment law and litigation. In May 2023, the District retained the legal services of Kronick, Moskovitz, Tiedemann & Girard to provide legal support in review of the District’s water rights in connection with the District’s ongoing work on water supply projects. On April 17, 2024, the District issued a request for qualifications and circulated it to a number of law firms for legal services to support some of the environmental law work of the District, including in the areas of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the federal equivalent of CEQA as may arise in connection with the District’s water resources work. Several proposals were received from law firms specializing in this area of practice. Staff conducted interviews with multiple firms and found that Kronick, Moskovitz, Tiedemann & Girard (BBK) would be best suited to provide environmental law legal services in conjunction with the water law legal services already being provided. Staff is seeking to augment the initial contract amount to assure the necessary funds are available for these services. Staff is seeking the Board’s approval of Amendment No. 2, which would add a not to exceed amount of \$200,000, bringing the contract total not to exceed amount to \$300,000. The contract has no end term, as the services will be provided on an as needed basis under the direction of the General Counsel.





**ENVIRONMENTAL REVIEW:** Not applicable.

**FISCAL IMPACT:** Funds for Legal Services are provided by the General Counsel Offices budget for Fiscal Year 2024-25, and will be included in the next two-year budget. Project specific services may be allocated to those projects, and general litigation services are covered under the Interdepartmental budget.

**ATTACHMENT(S):**

- 1. Proposed Amendment No. 2 to MA-6200 for Legal Services
- 2. Amendment No. 1 to MA-6200 for Legal Services
- 3. MA-6200 Professional Services Agreement for Legal Services

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
General Counsel's Office	 Molly MacLean General Counsel	 Ben Horenstein General Manager

**AMENDMENT NO. 2 TO  
AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
MARIN MUNICIPAL WATER DISTRICT and Kronick, Moskovitz, Tiedemann & Girard  
(Miscellaneous Agreement No.MA - 6200)**

This Contract Amendment ("First Amendment") is entered into by and between Marin Municipal Water District ("District") and Kronick, Moskovitz, Tiedemann & Girard ("Consultant").

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Recitals:

- A. District and Consultant entered into the Agreement for specialized legal representation for assistance with water rights dated May 9, 2023 ("Agreement") for an initial not to exceed amount of \$50,000.
- B. The parties entered into that certain Amendment No. 1 to MA-6200 to add additional funding to allow continuation of these legal services as needed, for a total not to exceed amount of \$100,000.
- C. The parties desire to enter into this Amendment No. 2 to the Agreement to increase the not to exceed amount set forth in the Agreement and Amendment No. 2 in order to permit the utilization of additional legal services being provided under the Agreement.

Section 2. Terms:

- A. Amendment to Agreement: This Second Amendment modifies the Agreement. Except for the modifications contained herein, all the terms of the Agreement, as amended, shall apply.
- B. Terms:
  - 1. **Amend Section 2 entitled "Compensation", subsection (d)** to read as follows:

*Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of three hundred thousand (\$300,000).*

In witness whereof, the Parties hereby execute this Amendment No. 2 as of the last date written below.

Dated: \_\_\_\_\_

**Kronick, Moskovitz, Tiedemann & Girard**

By \_\_\_\_\_  
Eric Robinson, Shareholder Attorney

Dated: \_\_\_\_\_

**MARIN MUNICIPAL WATER DISTRICT**  
a California Municipal Corporation

By \_\_\_\_\_  
President Ranjiv Khush, Board President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Molly MacLean, District General Counsel

**AMENDMENT NO. 1 TO  
AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
MARIN MUNICIPAL WATER DISTRICT and Kronick, Moskovitz, Tiedemann & Girard  
(Miscellaneous Agreement No. MA - 6200)**

This Contract Amendment ("First Amendment") is entered into by and between Marin Municipal Water District ("District") and Kronick, Moskovitz, Tiedemann & Girard ("Consultant").

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Recitals:

- A. District and Consultant entered into the Agreement for specialized legal representation for assistance with water rights dated May 9, 2023 ("Agreement").
- B. The parties desire to enter into this First Amendment to the Agreement to increase the not to exceed amount set forth in the Agreement to permit the utilization of additional legal services.

Section 2. Terms:

- A. Amendment to Agreement: This First Amendment modifies the Agreement. Except for the modifications contained herein, all the terms of the Agreement shall apply.
- B. Terms:
  - 1. Amend Section 2 entitled "Compensation", subsection (d) to read as follows:

*Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of one hundred thousand (\$100,000).*

Dated: 4/3/2024

Kronick, Moskovitz, Tiedemann & Girard

By 

Dated: 4/4/24

MARIN MUNICIPAL WATER DISTRICT

By   
Bennett Horenstein, General Manager

**MARIN MUNICIPAL WATER DISTRICT  
PROFESSIONAL SERVICES AGREEMENT  
AGREEMENT NUMBER MA - 6200**

This "Agreement" is made as of this 9th day of May, 2023, by and between the Marin Municipal Water District ("District"), and Kronick, Moskovitz, Tiedemann & Girard ("Consultant").

**RECITALS**

A. District desires to retain a qualified law firm to provide specialized legal representation to the District as more particularly set forth in Exhibit A to the Agreement.

B. Consultant represents to District that it is a firm composed of highly trained professionals and is fully qualified to conduct the services described above and render advice to District in connection with said services.

C. The parties have negotiated upon the terms pursuant to which Consultant will provide such services and have reduced such terms to writing as set forth herein.

**AGREEMENT**

**NOW, THEREFORE**, District and Consultant agree as follows:

**1. SCOPE OF SERVICES**

Consultant shall provide to District the services described in Exhibit A ("Scope of Services"). Consultant shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by Consultant and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Consultant and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

**2. COMPENSATION**

a. District shall pay Consultant for services rendered pursuant to this Agreement at the rates, times and in the manner set forth in Exhibit B. In addition to paying legal fees, the District shall reimburse Consultant for all usual and customary costs and expenses incurred by Consultant, including but not limited to, process server fees, the subpoena of records, fees fixed by law or assessed by Courts or other agencies, Court Reporter fees, legal research fees, messenger and other delivery fees, postage, photocopying, parking, mileage, and other similar items.

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b. Billings shall be submitted to the District's General Counsel on a monthly basis and shall include the following information:

- The date and amount of time spent by each person performing services;
- A summary description of services performed;
- Billings shall be itemized in increments of 6 minutes to indicate the attorney doing the work, the number of hours spent, the hourly rate; and the work being done by paralegals.
- Costs shall be itemized by types and accompanied by receipts.
- Total fees and costs on the matter to date.

c. The payments prescribed herein shall constitute all compensation to Consultant for all costs of services, including, but not limited to, direct costs of labor of employees. In no event shall District be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

d. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of fifty thousand dollars (\$50,000).

**3. RECORDS RETENTION**

Consistent with the District's records retention policy, Consultant shall retain in either physical or electronic form all records (except for original time records) for a period of ten (10) years from the date of completion of services; or, alternatively, if Consultant's own internal retention policy is for a period less than that provided under the District's retention policy, Consultant shall after expiration of its own internal retention period, forward the records to District' General Counsel for retention. In no event shall Consultant destroy or otherwise purge any records without providing the District with at least thirty (30) days prior written notice. Records will be made available to the District upon request for audit purposes. Consultant will maintain both invoices of costs and primary records in order so that such auditing may occur. (Original time records will be retained for two years.)

**4. INDEMNITY**

a. Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless District, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, or agents, in said performance of professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of District.

b. The existence or acceptance by District of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of District's rights under this Section 4, nor shall the limits of such insurance limit the liability of Consultant hereunder. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

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**5. INSURANCE**

a. Consultant shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Consultant in exchange for District's agreement to make the payments prescribed hereunder. Failure by Consultant to (i) maintain or renew coverage, (ii) provide District notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by District as a material breach of this Agreement by Consultant, whereupon District shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Consultant to maintain required insurance coverage shall not excuse or alleviate Consultant from any of its other duties or obligations under this Agreement. In the event Consultant, with approval of District pursuant to Section 6 below, retains or utilizes any subcontractors or subconsultants in the provision of any services to District under this Agreement, Consultant shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverages in the amounts set forth in the Insurance Requirements in Attachment One.

b. Consultant agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. Consultant agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

**6. ASSIGNMENT**

Consultant shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of District, in District's sole and absolute discretion. Consultant agrees that District shall have the right to approve any and all subcontractors and subconsultants to be used by Consultant in the performance of this Agreement before Consultant contracts with or otherwise engages any such subcontractors or subconsultants.

**7. NOTICES**

Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

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For District:

Molly MacLean  
General Counsel  
220 Nellen Ave  
Corte Madera, CA 94925  
415-945-1440  
[mmaclean@marinwater.org](mailto:mmaclean@marinwater.org)

Consultant Representative:

Eric Robinson  
Kronick Moskowitz Tiedemann & Girard  
1331 Garden Highway  
2<sup>nd</sup> Floor  
Sacramento, CA 95833  
(916) 321-4500  
[erobinson@kmtg.com](mailto:erobinson@kmtg.com)

**8. INDEPENDENT CONTRACTOR**

a. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Consultant nor Consultant's assigned personnel shall be entitled to any benefits payable to employees of District. District is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement, and Consultant shall be issued a Form 1099 for its services hereunder. As an independent contractor, Consultant hereby agrees to indemnify and hold District harmless from any and all claims that may be made against District based upon any contention by any of Consultant'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.

b. It is further understood and agreed by the parties hereto that Consultant, in the performance of Consultant's obligations hereunder, is subject to the control and direction of District 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 Consultant for accomplishing such results. To the extent that Consultant obtains permission to, and does, use District facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Consultant's sole discretion based on the Consultant's determination that such use will promote Consultant's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement or as occasionally necessary to perform the legal services hereunder, District does not require that Consultant use District facilities, equipment or support services or work in District locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. 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 Consultant. It is further understood and agreed that Consultant shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Consultant's assigned personnel and subcontractors.

d. The provisions of this Section 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between District and Consultant. Consistent with all the California Rules of



Professional Responsibility, Consultant may represent, perform services for, or be employed by such additional persons or companies as Consultant sees fit.

**9. ADDITIONAL SERVICES**

Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid on an hourly basis at the rates set forth in Exhibit B, or paid as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

**10. SUCCESSORS AND ASSIGNS**

District and Consultant each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

**11. TERM, SUSPENSION, TERMINATION**

a. This Agreement shall become effective on the date that it is made as 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. District shall have the right at any time to temporarily suspend Consultant's performance hereunder, in whole or in part, by giving a written notice of suspension to Consultant. If District gives such notice of suspension, Consultant shall immediately suspend its activities under this Agreement, as specified in such notice.

c. District shall have the right to terminate this Agreement at any time, in its absolute discretion and without cause, by giving a written notice of termination to Consultant. Consultant shall have the right to terminate this Agreement on 30 days' written notice to the extent permitted by the California Rules of Professional Responsibility. Upon such termination, Consultant shall submit to District an itemized statement of services performed as of the date of termination in accordance with Section 2 of this Agreement. These services may include both completed work and work in progress at the time of termination. District shall pay Consultant for any services for which compensation is owed; provided, however, District shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the services required by this Agreement. Consultant shall promptly deliver to District all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of District without additional compensation to Consultant.

d. Upon termination by either party, Consultant will be available to consult, for a reasonable period of time, with District and District's new counsel, if any, on the facts, circumstances and status of each matter previously assigned to Consultant.

**12. TIME OF PERFORMANCE**

The services described herein shall be provided during the period, or in accordance with the schedule, set forth in Exhibit A. Consultant shall complete all the required

services and tasks and complete and tender all deliverables to the reasonable satisfaction of District until conclusion of the work or termination hereunder.

**13. STANDARD OF PERFORMANCE**

Consultant shall perform all services performed under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Consultant's profession in California. All products of whatsoever nature that Consultant produces under the terms of this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Consultant's profession, and shall be provided in accordance with any schedule of performance, it being understood that acceptance by District shall not operate as or be interpreted to be a waiver or release. Consultant shall assign only competent personnel to perform services under this Agreement. Consultant shall notify District in writing of any changes in Consultant's staff assigned to perform the services under this Agreement prior to any such performance. In the event that District, at any time, desires the removal of any person assigned by Consultant to perform services under this Agreement, because District, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Consultant shall remove such person immediately upon receiving such notice from District.

**14. CONFLICTS OF INTEREST**

Consultant 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 or degree with the interests of District, or that would in any way hinder Consultant's performance of services under this Agreement. Consultant 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 District. In the event of any actual or potential conflict of interest in Consultant representing another party in a matter, then Consultant must bring this to the attention of District and District will determine whether to waive any such actual or potential conflict before Consultant may represent such other party.

**15. MISCELLANEOUS**

a. No Suspension or Debarment. Consultant warrants that its attorneys are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, Consultant has the obligation to immediately inform the District.

b. Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

c. Modification. No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.

d. Compliance with Laws. Consultant shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances,

including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, et seq., which require prevailing wages (in accordance with DIR determinations at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code sections 1720 et seq.

e. Discrimination Prohibited. With respect to the provision of services under this Agreement, Consultant agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or other protected characteristic of that person.

f. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court in Marin County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

g. Waiver of Rights. Neither District acceptance of, or payment for, any service performed by Consultant, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

h. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

i. Counterparts. This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or District-approved electronic means have the same force and effect as the use of a manual signature.

j. Dispute Resolution. Any dispute or claim in law or equity between the parties arising out of this Agreement if not resolved by informal negotiation between the parties shall be mediated by the parties. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. The parties shall agree to a mutually acceptable mediator and share equally in the mediation costs. If mediation is unsuccessful, the parties may avail themselves of any other remedies.

**16. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS**

Consultant hereby represents and warrants to District that it is (a) a duly organized and validly existing C corporation, formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Consultant hereby further

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represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Consultant in accordance with the terms hereof.

Executed as of the day and year first above stated.

**CONSULTANT:**

Kronick, Moskovitz, Tiedemann & Girard

*Signatures of Authorized Person:*

By: Eric N. Robinson

Print Name: Eric N. Robinson

Title: Shareholder Attorney

**MARIN MUNICIPAL WATER DISTRICT**  
a Municipal Corporation

By: [Signature]

Print Name: Ben Horenstein

Title: General Manager

APPROVED AS TO FORM:

[Signature]  
GENERAL COUNSEL'S OFFICE

- Attachments:
- Attachment One - Insurance Requirements
- Exhibit A - Scope of Services
- Exhibit B - Compensation

**ATTACHMENT ONE  
INSURANCE REQUIREMENTS FOR  
ATTORNEY SERVICES AGREEMENTS**

**A. Insurance Policies:** Consultant shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to District.

<b>Insurance</b>	<b>Minimum Coverage Limits</b>	<b>Additional Coverage Requirements</b>
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. <b>Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.</b>
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, and non-owned autos, with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 1 million aggregate	Consultant shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the District for all work performed by the Consultant, its employees, agents and subcontractors.

**B. Endorsements:**

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to District in accordance with the policy provisions.

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
    - a. For any claims related to this project, Consultant's insurance coverage shall be primary and any insurance or self-insurance maintained by District shall be excess of the Consultant's insurance and shall not contribute with it; and,
    - b. **The Marin Municipal Water District, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
- C. Verification of Coverage and Certificates of Insurance:** Consultant shall furnish District with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by District before work commences and must be in effect for the duration of the Agreement. District reserves the right to require complete copies of all required policies and endorsements.
- D. Other Insurance Provisions:**
1. No policy required by this Agreement shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the indemnitees.
  2. All insurance coverage amounts provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
  3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Consultant or District. Self-insured retentions above \$25,000 must be approved by District. At District's option, Consultant may be required to provide financial guarantees.
  4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
  5. District reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Exhibit A**

**Legal Counsel – Scope of Services**

The scope of work includes counseling District on matters affecting the District's water supplies, including but not limited to water rights, regulatory approvals and contracts, and any other matters as directed by District and accepted by Consultant.

**Exhibit B**

**Compensation For Legal Services**

In consideration for the provision of legal services, District shall compensate Consultant as follows:

**SCHEDULE OF HOURLY BILLING RATES**

<u>Counsel's Personnel:</u>	<u>Hourly Rates:</u> <sup>1</sup>
Shareholder/Of Counsel	\$395-\$505
Eric Robinson	\$405
William Chisum	\$400
Stan Powell	\$395
Senior Counsel	\$350-\$400
Carissa Beecham	\$385
Lauren Bernadett	\$365
Associate Attorney	\$275-\$360
Jenifer Ryan	\$345
Kaitlin Harr	\$325
Paralegal	\$205-\$225
Choquette Marrow	\$225
Lisia Anderson	\$225
Krista Patterson	\$205
Law Clerk	\$190

<sup>1</sup> Rates automatically increase by 5 percent on January 1 of each year, unless otherwise agreed by District and Consultant.





# STAFF REPORT

**Meeting Type:** Board of Directors

**Title:** Contract Amendment with Acclamation Insurance Management Services (AIMS) for Liability Claims Management

**From:** Molly MacLean, General Counsel

**Through:** Ben Horenstein, General Manager

**Meeting Date:** November 6, 2024

**TYPE OF ACTION:**      X      Action                              Information                              Review and Refer

**RECOMMENDATION:** Approve a Fifth Amendment to Miscellaneous Agreement (MA) No. 5204 with AIMS to add \$50,000 for liability claims management services through June 30, 2025

**SUMMARY:** AIMS has provided liability claims management services to the District for a number of years. District staff is requesting an additional \$50,000 to ensure AIMS can continue to provide liability claims management services through the current contract term ending June 30, 2025.

**DISCUSSION:** The District’s excess liability insurance policies require that the District have a third-party administrator to oversee the District’s liability claims program. The District has contracted with AIMS to provide claims management services for the last seventeen years. AIMS has also been tracking employment practices legal claims for the last ten years. During that time AIMS’ claims adjusters have been very responsive to the needs of the District’s Risk Management Committee, staff and District customers. AIMS staff provides quality claims management services that include: claims investigation, communications with District customers’ who have potential claims against the District, including those whose properties have been impacted by water main breaks, coordination with the District’s emergency remediation contractor, as well as with District staff and the Risk Management Committee to quickly and efficiently adjust and resolve claims on behalf of the District.

While MA 5204 and the first three amendments to the contract received Board approval, in June 2022, the General Manager executed a fourth amendment to the contract to extend the services for an additional three (3) years, through June 30, 2025. Given that the average annual cost of the AIMS’ service are approximately \$50,000, this amendment did not provide sufficient funds to cover the services during all three (3) years of the amendment. Now entering the last year of the three (3) year amendment, additional funds are required to ensure these services continue. Therefore, staff is requesting that the Board approve a further amendment to add \$50,000 in funds for these services to ensure sufficient funding for the final year of the agreement. AIMS’ services are billed on an hourly, as-

needed basis and vary depending on the number of claims received. The hourly rates will remain the same as those set forth in the fourth amendment, so no additional price increases are included.


Staff is requesting Board authorization for the General Manager to execute a fifth amendment to the AIMS’ agreement to add an additional \$50,000 for services through June 30, 2025. Prior to expiration of the contract term, staff will complete a Request for Proposals process to ensure the District continues to receive the best value for these services.

**ENVIRONMENTAL REVIEW:** Not applicable.

**FISCAL IMPACT:** The funds for these services are budgeted in the District’s interdepartmental claims budget.

**ATTACHMENT(S):**

- 1. Draft Amendment No. 5
- 2. MA – 5204 AIMS

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
General Counsel’s Office	 Molly MacLean General Counsel	 Ben Horenstein General Manager

**AMENDMENT NO. 5****TO AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN MARIN MUNICIPAL WATER DISTRICT and ACCLAMATION INSURANCE MANAGEMENT SERVICES, INC. (Miscellaneous Agreement No. 5204)**

This Contract Amendment ("Amendment No. 5") is entered into by and between Marin Municipal Water District ("District") and Acclamation Insurance Management Services, Inc. ("Consultant").

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Recitals:

- A. The District and the Consultant entered into Miscellaneous Agreement No. 5204 for Professional Services ("Contract"), dated June 28, 2013, for a term of three (3) years.
- B. On February 19, 2014, the parties executed an amendment (Amendment No. 1) to the Contract to revise Consultant's scope of work to include the tracking of employment practices matters.
- C. On June 29, 2016, the District exercised its option to extend the Contract for an additional three (3) year period with the execution of an amendment (Amendment No. 2) to the Contract.
- D. On July 1, 2019, the parties executed an amendment to extend the term of the Contract for an additional three (3) year period with the execution of an amendment (Amendment No. 3) to the Contract.
- E. On June 29, 2022, under the General Manager's authority, the parties executed Amendment No. 4 to extend the term of the Contract for an additional three (3) year period and add an additional \$100,000 for the services over the period with the execution of an amendment (Amendment No. 4) to the Contract. The current term expires June 30, 2025.
- F. For the purposes of this Amendment No. 5, the Contract, Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4 collectively constitute the agreement ("Agreement").
- G. At this time, the parties desire to add additional funds to the Agreement to ensure sufficient funding for the services over the remainder of the term.

Section 2. Terms:

- A. Amendment to Agreement: This Amendment No. 5 modifies the Agreement. Except for the modifications contained herein, all the terms of the Agreement shall apply.
- B. Terms:

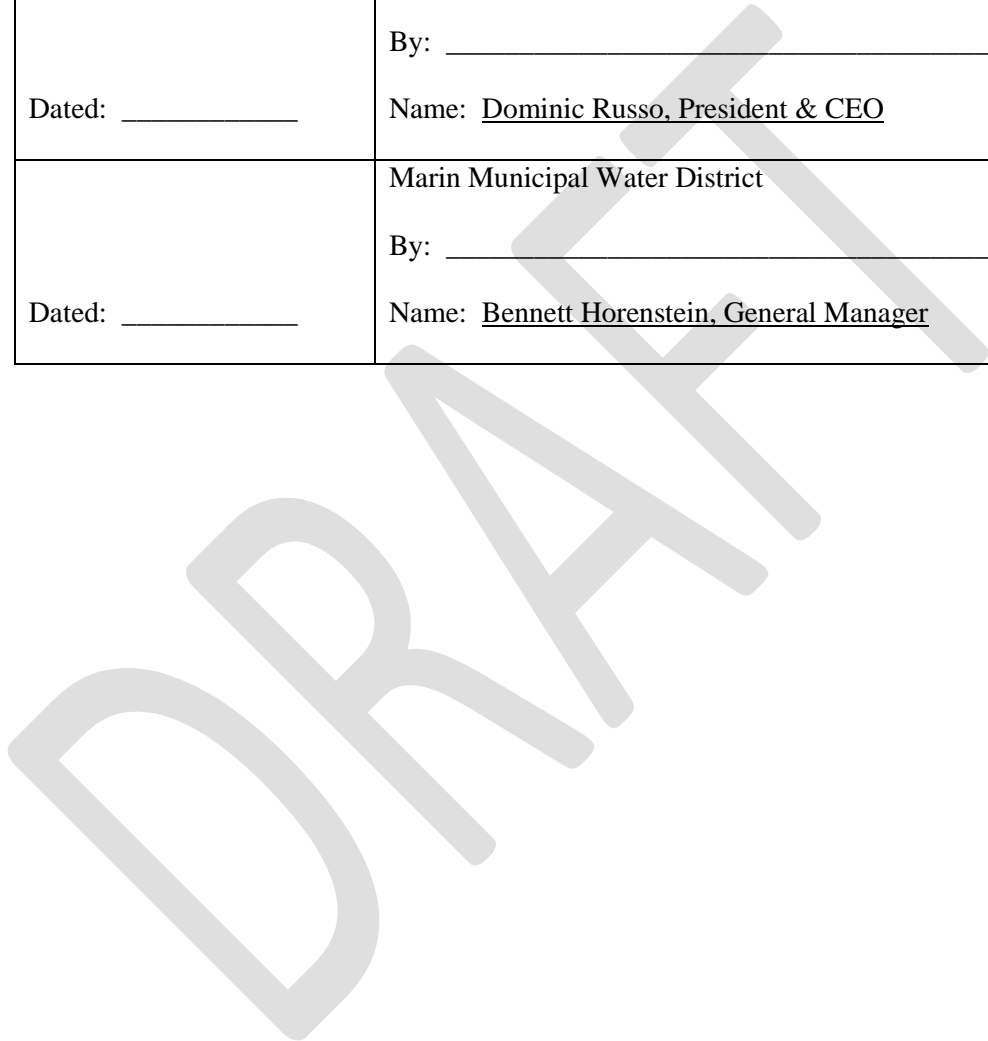
1. Amend Part A- Specific Provisions, Section 1 (b) entitled "Description of Services and Payment"

\$50,000 for services under the Agreement and read as follows:

*The fee and fee payment for such work shall be as stipulated under the fee schedule included in Attachment B of this Agreement and shall not exceed \$150,000 in total.*

Executed by the parties as follows:

Dated: _____	Acclamation Insurance Management Services, Inc. By: _____ Name: <u>Dominic Russo, President &amp; CEO</u>
Dated: _____	Marin Municipal Water District By: _____ Name: <u>Bennett Horenstein, General Manager</u>



## AGREEMENT FOR PROFESSIONAL SERVICES

The following is an agreement between **Marin Municipal Water District**, hereinafter "**MMWD**", and **ACCLAMATION INSURANCE MANAGEMENT SERVICES, INC.**, hereinafter, "**Consultant**".

**WHEREAS**, Consultant is a duly qualified consulting firm, experienced as a Liability Claims Administrator.

**WHEREAS**, in the judgment of the Board of Directors of the MMWD, it is necessary and desirable to employ the services of the Consultant for the administration of the liability claims program for MMWD.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

### PART A -- SPECIFIC PROVISIONS:

**1. DESCRIPTION OF SERVICES AND PAYMENT:** Except as modified in this agreement, the services to be provided and the payment schedule are:

- a. The scope of work covered by this agreement shall be that included in Attachment A of this agreement.
- b. The fee and fee payment for such work shall be as stipulated under the fee schedule included in Attachment B of this agreement.

### PART B -- GENERAL PROVISIONS:

**1. ASSIGNMENT/DELEGATION:** Except as above, neither party hereto shall assign, sublet or transfer any interest in or duty under this agreement without written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

**2. STATUS OF CONSULTANT:** The parties intend that the Consultant, in performing the services hereinafter specified, shall act as an independent contractor and shall have the control of the work and the manner in which it is performed. The Consultant is not to be considered an agent or employee of MMWD, and is not entitled to participate in any pension plan, insurance, bonus or similar benefits MMWD provides its employees.

**3. INDEMNIFICATION:** MMWD is relying on professional ability and training of the Consultant as a material inducement to enter into this agreement. The Consultant hereby warrants that all its work will be performed in accordance with generally accepted professional practices and standards, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of the Consultant's work by MMWD shall not operate as a waiver or release.

- a. With respect to professional services under this agreement, Consultant shall indemnify, hold harmless, release and defend MMWD, its officers, directors, agents, volunteers, and employees from and against any and all actions, claims, damages, disabilities, liabilities and expenses, including attorney's and expert fees and witness and litigation costs that may be asserted by any person or entity, including the Consultant, its officers, agents, employees and/or subcontractors, arising out of the negligent acts, errors or omissions, failure to perform or willful misconduct of the Consultant in connection with this agreement and the activities necessary to perform the services and complete the task provided for herein, but excluding liabilities due to the sole negligence or willful misconduct of MMWD.
  
- b. With respect to all other than professional services under this agreement, Consultant shall indemnify, hold harmless, release and defend MMWD, its officers, agents and employees from and against any and all actions, claims, damages, disabilities, liabilities and expenses, including attorney's and expert fees and witness costs that may be asserted by any person or entity, including the Consultant, arising out of or in connection with this agreement and the activities necessary to perform those services and complete the tasks provided for herein, but excluding liabilities due to the sole negligence or willful misconduct of MMWD.

This indemnification is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for the MMWD or its agents under workers' compensation acts, disability benefit acts or other employee benefit acts.

**4. PROSECUTION OF WORK:** The execution of this agreement shall constitute the Consultant's authority to proceed immediately with the performance of this contract. Performance of the services hereunder shall be completed by June 30, 2016. The District has the option of extending the term of this agreement for one-three year term (until June 30, 2019) provided it approves of consultant's pricing proposal for that three year term.

**5. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS:** All notices, bills and payment shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

**MMWD:** Marin Municipal Water District  
 Attn.: Mary R. Casey, General Counsel  
 220 Nellen Avenue  
 Corte Madera, CA 94925

**CONSULTANT:** Acclamation Insurance Management Services  
 Attn.: Dominic Russo, President  
 10445 Old Placerville Road  
 Sacramento, CA 95827  
 (916) 563-1900

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

**6. MERGER:** This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms of the agreement, pursuant to California Code of Civil Procedure Section 1856 and as a complete and exclusive statement of the terms of the agreement. No modification of this agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

**7. SEVERABILITY:** Each provision of this agreement is intended to be severable. If any term of any provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this agreement and shall not affect the validity of the remainder of the agreement.

**8. TERMINATION:** At any time and without cause, the MMWD shall have the right in its sole discretion, to terminate this agreement by giving written notice to the Consultant. In the event of such termination, MMWD shall pay the Consultant for services rendered to the termination date.

In addition, if the Consultant should fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this agreement, MMWD may terminate this agreement by giving the Consultant written notice of such termination, stating the reason for such termination. In such event, the Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the agreement as the services satisfactorily rendered hereunder by the Consultant bear to the total services otherwise required to be performed for such total fee, provided, however, that there shall be deducted from such amount the amount of damage, if any, sustained by MMWD by virtue of the breach of the agreement by the Consultant.

**9. TRANSFER OF RIGHTS/OWNERSHIP OF DATA:** The Consultant assigns to MMWD all rights throughout the work in perpetuity in the nature of copyright, trademark, patent, and right to ideas, in and to all versions of any documents now or later prepared by the Consultant in connection with this contract.

The Consultant agrees to take such actions as are necessary to protect the rights assigned to MMWD in this agreement, and to refrain from taking any action which would impair those rights. The Consultant's responsibilities under this contract will include, but not be limited to, placing proper notice of copyright on all versions of documents as MMWD may direct, and refraining from disclosing any versions of the reports and documents to any third party without first obtaining written permission of MMWD. The Consultant will not use, or permit another to use, any version of all documents in connection with this contract without first obtaining written permission of MMWD.

All materials resulting from the efforts of MMWD and/or the Consultant in connection with this contract, including documents, reports, calculations, maps, photographs, video tapes, computer programs, computer printouts, digital data, notes, and any other pertinent data are the exclusive property of MMWD. Reuse of these materials by the Consultant in any manner other than in conjunction with activities authorized by MMWD is prohibited without written permission of MMWD.

If the Consultant is using data provided by the District or by the County of Marin pursuant to its data-sharing agreement with MMWD, the Consultant (Licensee) acknowledges by execution of this Agreement that it has read the disclaimer(s) of liability and warranties regarding use of said shared data, copies of which are attached to this Agreement as Attachments D and E.

**10. COST DISCLOSURE:** In accordance with Government Code Section 7550, the Consultant agrees to state in a separate portion of any report provided MMWD, the numbers and amounts of all contracts and subcontracts relating to the preparation of the report.

**11. NONDISCRIMINATION:** The Consultant shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or physical handicap.

**12. EXTRA (CHANGED) WORK:** Extra work may be required. The Consultant shall not proceed nor be entitled to reimbursement for extra work unless that work has been authorized, in writing, in advance, by MMWD. The Consultant shall inform the District as soon as it determines work beyond the scope of this agreement may be necessary and/or that the work under this agreement cannot be completed for the amount specified in this agreement. Failure to notify the District shall constitute waiver of the Consultant's right to reimbursement.

**13. CONFLICT OF INTEREST:** The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this contract no person having any such interest shall be employed.

**14. INSURANCE:** The Consultant shall obtain insurance acceptable to MMWD in a company or companies with a Best's rated carrier of at least "A". The required documentation of such insurance shall be furnished to MMWD at the time the Consultant returns the executed contract. The Consultant shall not commence work nor shall it allow its employees or subcontractors or anyone to commence work until all insurance required hereunder has been submitted and approved.

The Consultant shall have and maintain at all times during the life of this agreement, up to the date of acceptance, the following policies of insurance:

- a. **Workers' Compensation Insurance:** Workers' Compensation Insurance to cover its employees, as required by the State of California, and shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code



of the State of California for all of the subcontractors' employees. All Workers' Compensation policies shall be endorsed with the following specific language:

"This policy shall not be canceled without first giving thirty (30) days prior notice to MMWD, Attn.: Oreen Delgado, Finance Manager, by certified mail."

The Workers' Compensation Insurance self-insured deductibles and retentions for both the Consultant and its subcontractors shall not exceed \$1,000.00 (One Thousand Dollars and <sup>00</sup>/<sub>100</sub>).

b. Public Liability Insurance: Personal Injury (including bodily injury) and Property Damage Insurance for all activities of the Consultant and its subcontractors arising out of or in connection with this agreement, written on a commercial general liability form which provides coverage at least as broad as ISO Commercial General Liability Occurrence Form CG 00 01 11 85 or 88 or any subsequent revision or equivalent including benefit contractual coverage, completed operations coverage, Consultant's protective coverage, and automobile coverage. The automobile coverage should be at least as broad as ISO Business Auto Form CA001 edition 187 or equivalent including employer's non-ownership liability. All deductibles or self-insured retentions shall not exceed \$5,000.00 (Five Thousand Dollars and <sup>00</sup>/<sub>100</sub>). Coverage in an amount not less than \$2,000,000.00 (Two Million Dollars and <sup>00</sup>/<sub>100</sub>) combined single limit personal injury, including bodily injury, and property damage for each occurrence is required. Each such policy shall be endorsed with the following language:

1. The Marin Municipal Water District, its officers, agents, employees and volunteers are additional insureds under this policy.
2. The insurance shall be primary as respects the insured shown in the schedule above.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the MMWD.
4. The referenced policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.
5. The inclusion of more than one insured shall not operate to impair the right of one insured against another insured, and the coverage afforded in the policy shall apply as though separate policies had been issued to each insured.

Consultant's policy shall be endorsed with "Attachment Additional Insured Endorsement" form.

The General Aggregate Limits of Insurance in the referenced policies apply separately to this contract.

c. Professional Liability Insurance: The Consultant shall procure and maintain throughout the term of this agreement, Professional Liability Insurance in an amount not less than \$1,000,000.00 (One Million Dollars and <sup>00</sup>/<sub>100</sub>). All insurance deductibles or self-insured retentions shall not exceed ~~\$1,000.00 (One Thousand Dollars and <sup>00</sup>/<sub>100</sub>)~~. All Professional Liability Insurance policies shall be endorsed with the following specific language:

\$ 25,000. ←  
DR

→ Twenty-Five  
DR

(i) This policy shall not be canceled without first giving thirty (30) days prior notice to MMWD by certified mail.

d. Blanket Fidelity Bond: Minimum limit of \$500,000.00 amended to:

(i) Protect the District from loss caused by the Claim Administrator, their agents, owners, officers, and employees.

(ii) Apply the total bond limit separately to the District.

e. Documentation: The following documentation of insurance shall be submitted to MMWD:

(i) A Certificate of Insurance for Workers' Compensation Insurance for Consultant. A copy of the required policy endorsements specified in subparagraph a. shall be attached to each such Certificate submitted.

(ii) Certificates of Liability Insurance showing the limits of insurance provided. Copies of the required endorsements specified in subparagraphs b. and c. shall be attached to each Certificate submitted.

**15. DISPUTE RESOLUTION:** Any dispute or claim in law or equity between District and Consultant arising out of this agreement, if not resolved by informal negotiation between the parties, shall be mediated by referring it to the nearest office of Judicial Arbitration and Mediation Services, Inc. (JAMS) for mediation. Each party shall provide the others with a list of four mediators. The parties shall confer on the list and select a mutually agreeable mediator. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. If the parties cannot agree to a mutually acceptable member from the JAMS panel of retired judges, a list and resumes of available mediators with substantial experience in mediating claims of the type at issue between the parties, numbering one more than there are parties, will be sent to the parties, each of whom will strike one name leaving the remaining name as the mediator. If more than one name remains, JAMS arbitrations administrator will choose a mediator from the

remaining names. The mediation process shall continue until the case is resolved until such time as the mediator makes a finding that there is no possibility of resolution.

At the sole election of the District, any dispute or claim in law or equity between District and Consultant arising out of this agreement which is not settled through mediation shall be decided by neutral binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation Services, Inc. (JAMS). The parties to an arbitration may agree in writing to use different rules and/or arbitrators.

**16. BILLING AND DOCUMENTATION:** The Consultant shall bill MMWD for work on a monthly or agreed upon basis or as articulated in Attachment B and shall include a summary of work for which payment is requested. The summary shall include time and hourly rate of each individual, a narrative description of work accomplished, and an estimate of work completed to date.

**17. REASONABLE ASSURANCES:** Each party to this agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise, with respect to performance of either party, the other may, in writing, demand adequate assurance of due performance and until the requesting party receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of the party with respect to performance under this agreement but also conduct with respect to other agreements with parties to this agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, not to exceed 30 days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

**ACCLAMATION INSURANCE MANAGEMENT SERVICES, INC.**

Dated: 6/17/13 By   
Dominic Russo, President

**MARIN MUNICIPAL WATER DISTRICT**

Dated: 6/28/13 By   
Krishna Kumar, General Manager

## SCOPE OF WORK

### Responsibilities of the Consultant

Consultant shall maintain a fully staffed claims office capable of providing comprehensive investigation and administration of auto and general liability claims.

- ◆ The Claims Administrator will respond, when required, on an after-hours emergency basis for serious incidents.
- ◆ Minimum reporting requirements are that reports will be provided on all claims open more than thirty (30) days. The first report is due thirty (30) days after receipt of the claim, and at ninety (90) day intervals until closing. Reporting requirements may vary depending on such issues as, type of claim, high publicity, or importance to the District.
- ◆ The Claims Administrator will maintain a fail safe diary system to provide ongoing file review. All files not on active diary will be identified.
- ◆ The District reserves the right to select defense counsel. It is expected that the Claims Administrator will have little involvement at the point that a claim goes to litigation, but may, upon request, assist the District's designated counsel.
- ◆ The Claims Administrator will provide for independent investigators, medical, or other experts as reasonably required by the circumstances in connection with processing any reported claim or loss. Other than defense costs, no allocated expenses will be incurred in excess of \$1,500 per claim without prior approval.
- ◆ The Claims Administrator can settle claims of up to \$10,000 with the prior approval of the General Manager, with appropriate documentation. Claims over \$10,000 may be settled with the prior approval of the Board of Directors, and only after a written investigative report has been submitted to the District.
- ◆ The Claims Administrator will set reserves on all losses assigned. The Claims Administrator will provide information as to reserving practices and procedures. Reserves in excess of \$10,000 in any one category (BI, PD, Expense) require review and approval by the District.
- ◆ The Claims Administrator will maintain a current and comprehensive file for each reported loss, which will be available for review and/or audit by designated District personnel. File will include (but not be limited to):
  1. Copies of all bills received;
  2. Copies of expenditures for bills received with documentation for differences;

3. Copies of all medical reports, investigation materials, letters, and correspondence related to the claim;
  4. Copies of all legal documents or communication for the claim;
  5. Copies of all other work products incidental to the claim.
- ◆ A monthly report that identifies each claim, loss reserve assigned, any payments made, and current status.
  - ◆ A monthly check register listing of all checks in numerical sequence, by location, stating claim number, payee, and charges covered to the trust account bank statement.
  - ◆ Continuity of the Claims Administrator representative is imperative to the District.

SCHEDULE OF FEES AND HOURLY RATES



SCHEDULE OF FEES AND HOURLY RATES

Contract Term: July 1, 2013 to June 30, 2016

Fee Schedule: Three Year Contract

	<u>YEAR 1</u>	<u>YEAR 2</u>	<u>YEAR 3</u>
Professional Services	\$82.00 per hr.	\$82.00 per hr.	\$82.00 per hr.
Photographs	3.00 per photo	3.00 per photo	3.00 per photo
Transportation	.60 per mile	.60 per mile	.60 per mile
Photo Copies	Included	Included	Included
Phone and Fax	Included	Included	Included
Secretarial	Included	Included	Included
Office Expense	Included	Included	Included
Public Relations	As Incurred	As Incurred	As Incurred

P.O. Box 2347  
 Oklaoma, CA 94321  
 (510) 673-6070  
 (510) 673-6071 fax  
 www.aims1.com  
 F.A. Lic. 3417034



**ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage: Policy \_\_\_\_\_

Policy Period \_\_\_\_\_

Automobile Liability:

Policy# \_\_\_\_\_

Policy Period \_\_\_\_\_

**INSURED:** Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

**SCHEDULE**

The Marin Municipal Water District, its officers, officials, agents, employees and volunteers (MMWD).

**WHO IS AN INSURED**

Is amended to include as an insured the organization shown in the schedule above.

1. The insurance shall be primary concerning the insured shown in the schedule above.
2. The insurance afforded by this policy shall not be cancelled except after thirty days prior written notice by certified mail return receipt requested has been given to the MMWD.
3. The referenced policy does not exclude explosion, collapse, underground excavation hazards or removal of lateral support.
4. The inclusion of more than one insured shall not operate to impair the right of one insured against another insured, and the coverage afforded in the policy shall apply as though separate policies had been issued to each insured.

**Authorized Insurance Representative**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

**COUNTY OF MARIN REQUIREMENTS****(for data provided by County of Marin)****Disclaimer of Liability and Warranties**

- A. Licensee understands and agrees that it is possible that errors and omissions will occur in data input or programming done by the County and Signatories to provide the Parcel Base Map in the form desired. The Licensee further understands and agrees that it is probable that errors and omissions will occur in record keeping processes, especially when large numbers of records are developed and maintained, and that data may not meet the Licensee's standards as to accuracy or completeness. Notwithstanding, the Licensee agrees to take the data "as is", fully expecting that there may be errors and omissions associated with the data.
- B. Licensee further understands and agrees that the County and its Signatories make absolutely no warranty whatsoever, whether expressed or implied, as to the accuracy, thoroughness, value, quality, validity, merchantability, suitability, condition or fitness for a particular purpose of the data or any programming used to obtain the data, nor as to whether the data are error-free, up-to-date, complete or based upon accurate or meaningful facts.
- C. Licensee further understands and agrees that it will forever waive any and all rights, claims, causes of action or other recourse that it might otherwise have against the County and its Signatories for any injuries or damages of any type, whether direct, indirect, incidental, consequential or otherwise, resulting from any error or omission in the data or in any programming used to obtain the data, or in any manner arising out of or related to this Agreement or the data provided hereunder. Licensee agrees that the County and its Signatories shall not be liable to Licensee for any liability, claim, loss, damage, injury or expense of any kind caused or alleged to be caused, directly or indirectly, by the inadequacy of data obtained from the County or Signatories, by any deficiency of County or Licensee systems, by any delay or failure to provide any service, or by any other interruption, disruption or loss of Licensee operations.



**MARIN MUNICIPAL WATER DISTRICT  
DATA DISCLAIMER**

(for data provided by the District)

Disclaimer of Liability and Warranties

- A. All materials provided to Licensee by the District are the exclusive property of the District. Re-use of these materials by the Licensee in any manner other than in conjunction with activities authorized by the District is prohibited without the written permission of the District.
- B. Licensee understands and agrees that it is possible that errors and omissions will occur in data input or programming done by the District to provide the data in the form desired. The Licensee further understands and agrees that it is probable that errors and omissions will occur in record keeping processes, especially when large numbers of records are developed and maintained, and that data may not meet the Licensee's standards as to accuracy or completeness. Notwithstanding, the Licensee agrees to take the data "as is", fully expecting that there may be errors and omissions associated with the data.
- C. Licensee further understands and agrees that the District makes absolutely no warranty whatsoever, whether expressed or implied, as to the accuracy, thoroughness, value, quality, validity, merchantability, suitability, condition or fitness for a particular purpose of the data or any programming used to obtain the data, nor as to whether the data are error-free, up-to-date, complete or based upon accurate or meaningful facts.
- D. Licensee further understands and agrees that it will forever waive any and all rights, claims, causes of action or other recourse that it might otherwise have against the District for any injuries or damages of any type, whether direct, indirect, incidental, consequential or otherwise, resulting from any error or omission in the data or in any programming used to obtain the data, or in any manner arising out of or related to this Agreement or the data provided hereunder. Licensee agrees that the District shall not be liable to Licensee for any liability, claim, loss, damage, injury or expense of any kind caused or alleged to be caused, directly or indirectly, by the inadequacy of data obtained from the District, by any deficiency of District or Licensee systems, by any delay or failure to provide any service, or by any other interruption, disruption or loss of Licensee operations.



During the May 23, 2024 Finance and Administration Committee (FAC) meeting, staff provided an initial broad overview of the current Board Handbook, discussed a proposed plan for updating the Handbook, and briefly previewed some areas for proposed edits, which included the incorporation of other Board policies where appropriate. At the August 22<sup>nd</sup> FAC meeting, legal staff reviewed Board Policy No. 50 – Board Ethics Policy with an eye to incorporation of the provisions of this policy into the Board Handbook to avoid redundancy and promote clarity and efficiency. Staff then walked through Sections 1 and 2 of the Board Handbook reviewing proposed edits, including the incorporation of provisions of Board Policy No. 50 where appropriate. At the September 26<sup>th</sup> FAC meeting, staff continued this review with Sections 3 and 4 of the Handbook. Proposed changes to each of these sections were included in attached redline documents for review at each subsequent FAC meeting for review and questions. Staff completed this review at the October 24<sup>th</sup> FAC with Section 5 and 6.

The Handbook is comprised of six (6) sections all covering different topics; Section 1 (Introduction and Purpose), Section 2 (Board Officers and Board Appointed Staff), Section 3 (Board Meetings), Section 4 (Conferences, Training, Reporting Requirements), Section 5 (Compensation/Benefits), and Section 6 (Other Related Information). The proposed changes include incorporation of Board Policy No. 50 where appropriate. With adoption of the 2024 revision of the Board Handbook, Board Policy No. 50 will be sunset, as all guidance will be included in the 2024 Revised Board Handbook.

The compilation of proposed revisions are included in a redline document attached to this staff report, and a clean 2024 Revised Board Handbook is attached for Board adoption.

**ENVIRONMENTAL REVIEW:** Not Applicable.

**FISCAL IMPACT:** None.

**ATTACHMENT(S):**

1. Redline of Proposed changes to the Board Handbook
2. 2024 Revised Marin Municipal Water District Board of Directors Handbook

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
General Counsel’s Office <hr/>	 <hr/> <b>Molly MacLean</b> General Counsel	 <hr/> <b>Ben Horenstein</b> General Manager



## Board of Directors Handbook Table of Contents

### SECTION 1: Introduction/Purpose and Background

#### a. ~~Introduction~~

#### a. Purpose and Background

##### i. Purpose

##### ii. Background

#### b. Governing Laws ~~&and~~ Regulations

#### c. Board Policies and Administrative Procedures

##### i. Values

##### ii. Goals

### SECTION 2: Board Officers and Board Appointed Staff

#### a. Board Officers and General Board Duties

##### i. Newly Elected Board Members Time of Taking Office

##### ii. Appointment of Officers and Duties

##### i. ~~General Board Duties~~

##### iii. Responsibilities of Public Office

#### ii. Communication to/from the Board

##### 1. Emails/-Text Messages

##### 2. Social Media

#### iii. Contact with Media

#### iv. Use of Title/-Advocacy on Non-Board Approved Matters

#### b. Board Appointed Staff

##### i. General Manager

##### ii. General Counsel

##### iii. Board Secretary

##### iv. Finance Director/Treasurer

##### v. Consulting Auditor

##### vi. Evaluation of Board Appointed Staff

#### e. District Organization and Communications Between Board Members and Staff

- i. Organization
- ii. Communications between Board Members and Staff

### SECTION 3: Board Meetings

- a. a. Scheduling Meetings
  - i. Regular Meetings



- ii. Special Meetings
- iii. Emergency Meetings
- iv. Public Hearings
- v. Closed Sessions
- vi. Committee Meetings
- b. Preparation of Agenda and Order of Business
  - ~~i. Agenda~~
  - i. Agendas
  - ii. Future Agenda Items
  - iii. Urgency Items
- c. Attendance, Conduct, Quorum ~~&and~~ Voting, Rules of Order, Brown Act
  - i. Teleconferencing
  - ii. Quorum/Board Action
  - iii. Brown Act (Open Meetings Law)
  - ~~d.iv.~~ Meeting Minutes
- d. Safeguard Confidential Information

#### SECTION 4: Conferences, Training, Reporting Requirements

- a. Conferences
- b. Mandatory Ethics and Sexual Harassment Prevention Training
- c. Public Records Act ~~Training~~
- d. ConflictConflicts of Interest/
  - d.i. Form 700
    - i. Conflict of Interest Reporting at Board Meetings
    - ii. Incompatible Offices
- e. Political Contribution/Campaign Rules
  - i. Candidate's Statement
- f. Ethics Violations

#### SECTION 5: Compensation/Benefits

- a. Board ~~Meeting and Committee Meeting~~ Compensation
- b. ~~Travel Authorization and~~ Reimbursement of Travel Expenses

#### SECTION 6: Other Related Information

- a. Human Resources
- b. Risk Management and Emergency Operations
- c. Electronic Equipment, Date and Software ~~and Data~~
- d. Community Outreach
- e. Association Memberships
- ~~f.~~ Orientation of New Board Members

# MARIN MUNICIPAL WATER DISTRICT

## BOARD OF DIRECTORS HANDBOOK

Adopted: February 2, 2021  
Revised: September 21, 2021  
Revised \_\_\_\_\_, 2024

### SECTION 1: ~~Introduction/~~ Purpose ~~Introduction and~~ Background

#### Purpose

This handbook is compiled as a guidance document to provide incumbent and newly elected members of the Marin Municipal Water District (“District”) Board of Directors (“Board”) with general information and specific authorities regarding oversight of the District. This handbook is intended to facilitate the handling of Board affairs, assist the Board in complying with open meeting laws, and is complementary to applicable laws and other requirements.

The proper operation of the District requires that Board members remain objective and responsive to the needs of the public they serve, make decisions within the proper channels of governmental structure, and not use public office for personal gain. To further these objectives, certain ethical principles govern the conduct of each member of the Marin Municipal Water District Board of Directors.

In addition to providing guidance to the Board on process, this handbook will also promote awareness of ethics, integrity and fidelity as critical elements in Board members’ conduct and in achievement of the District’s mission.

#### Background

The District is an independent special district, formed pursuant to the Municipal Water District Law of 1911 and approved by voters to provide specific services to residences within the District’s service area. The District is a single function, enterprise special district because it charges its customers for the service provided. The District is governed by a five-member Board elected by voters within a specified limited boundary or division. Each Board member must be a resident of the division from which he or she is elected. Regular elections for Board members are held every 2 even years for staggered 4-year terms (i.e., divisions I, III & IV are elected in one 2-year election cycle and divisions II & V in the other 2-year election cycle). The District contracts with the Marin County Department of Elections to facilitate all candidate filings and services for Board member elections.

The Board holds publicly noticed meetings in accordance with the Brown Act where citizens may address the Board regarding matters within the subject matter jurisdiction of the District.

### Governing Laws and Regulations

The District was formed pursuant to California Water Code Section 71000 *et seq.*, commonly known as the Municipal Water District Law of 1911. The California Constitution, the Government Code contains and other state statutes contain a number of provisions applicable to the District and Board member activities including, but not limited to: the Ralph M. Brown Act (Open Meetings Law), Public Records Act (Public Access to Information), Government Code Section 1090 and the Political Reform Act and associated regulations (Conflict of Interest), Assembly Bill 1234 (Ethics), and Assembly Bill 1661 (Sexual Harassment Prevention).



## Board Policies and Administrative Procedures

The mission of the District, as established by the Board of Directors, is to manage ~~its natural resources in a sustainable manner~~ “the lands, water, and facilities in our trust to provide its customers with reliable, high-quality water at a reasonable price and adapt and sustain these precious resources for the future.”. . . The Board communicates its direction, or its philosophy, toward fulfilling this mission by developing and periodically reviewing its values and goals, and creating and updating various policies and procedures to ensure that the District’s customers and the public are treated in a fair and consistent manner. In most instances, policy is established by an affirmative vote of a majority of the members of the Board. However, some circumstances may necessitate the approval of a supermajority of the Board. The District’s General Counsel will advise the Board of the approval requirements necessary to bind the Board to a given course of action.

Current District values and goals developed as part of the 2024-2028 Strategic Plan are listed below:

### VALUES

- ~~Promote environmental stewardship and sustainability~~
- ~~Conduct business with integrity and in an ethical manner~~

*Ensure fair, open, and responsive interactions with District Values*

- Health and Safety
  - We are committed to the health and safety of our colleagues and community.
- Stewardship
  - We recognize the essential connection between people and natural resources and manage our lands and facilities for sustained benefits now and in the future.
- Innovation
  - We strive for excellence and innovation in managing water and watersheds.
- Efficiency and Responsiveness
  - We value efficiency, cost-effectiveness, and timely service in our work with customers and communities.
- Accountability
  - We operate with the highest levels of individual and organizational accountability to each other members of and the public community.
  - ~~Promote diversity in and equitable treatment of our employees~~
- Provide Respect
  - We maintain a healthy workwelcoming environment
  - ~~Work cooperatively with other public agencies and groups~~
    - Treat all individuals with fairness that embraces differences and offers respect, dignity, and respect fairness for all people and partners.
  - ~~Continuously improve through the promotion of initiative, leadership, professional development and training~~
  - ~~Exercise responsible financial management~~

### DISTRICT GOALS

- ~~Assure that water produced is of high quality and protects public health from source to the customer's tap~~
- ~~Provide a long-term reliable water supply for District customers~~
- ~~Maintain the District's infrastructure in a cost effective manner to assure reliable operation~~
- ~~Provide a water rate structure that is fair and reasonable, and that adequately funds the long-term maintenance and capital needs of the District's supply and delivery systems~~
- ~~Promote conservation and water recycling programs and other practices which encourage the efficient use of water~~
- ~~Provide responsible stewardship of land under District management, balancing existing mandates to safeguard ecological integrity, protect against wildfire, and maintain water quality~~

- ~~Provide for visitor access and activities on watershed lands consistent with the constraints of watershed stewardship~~
- ~~Maintain excellent communications with customers and assure responsive customer service~~
- ~~Ensure a stable and talented workforce to do the District's~~ **Listening and Learning**
  - We enhance ourselves and the organization by listening to others, reflecting on our performance, sharing knowledge with others, and making informed decisions.
- **One Water**
  - We work together to anticipate the challenges ahead and achieve our mission.

Goals

- **Reliable Water Supply**
  - Provide a high quality, reliable and resilient water supply now and for the future.
- **Resilient Water System**
  - Invest in and maintain a resilient water system through effective infrastructure management and planning.
- **Watershed Stewardship**
  - Protect and manage Marin Water lands for the long-term benefits for the community and environment.
- **Fiscal Responsibility**
  - Judiciously manage customer revenue and other financial resources for operating, maintaining and upgrading the water system today and in preparation for the future.
- **Organizational Excellence**
  - Support and sustain an innovative organization that lives by its values, leads by example, delivers valued benefits for its customers and is regarded as an employer of choice.

District governing documents include but are not limited to: the Marin Municipal Water District Code, Board Policies, Administrative Policies, ~~Administrative~~Operating Procedures, and applicable state and federal laws, which collectively constitute the policies and procedures ~~which~~that District staff follow when carrying out their day-to-day duties.

District administrative and operating procedures are approved by the General Manager pursuant to the authority delegated by the Board and are implemented to ensure that the District operates in a uniform and businesslike manner, and in accordance with legal requirements and the established policies and direction of the Board.



## SECTION 2: Board Officers and Board Appointed Staff

### Board Officers and General Board Duties

#### Newly Elected Directors Time of Taking Office

Pursuant to the California Water Code section 71253, newly elected directors shall take office at noon on the first Friday in December succeeding their election. If the election results have not yet been certified by the Marin County Elections Officer by the first Friday in December, however, then the newly elected directors shall take office as soon as possible thereafter but not later than the next meeting of the Board following certification of the election results.

#### Appointment of Officers and Duties

~~At its first meeting in January of each year the~~The Board elects one of its members President and one of its members Vice President. each year. The election of board officers shall take place at the first meeting in January following a nonelection year, and at the first meeting of the board at or after which the newly elected directors take office following district elections in November.. The Board President and Vice President have no additional powers beyond those of any other Board member except that all committees of the Board are appointed by the President, with the advice and consent of other Board members. Appointment of committee chairs and vice chairs occurs in January. . When a committee chair or vice chair vacancy is created following an election, the President may request another member of the board to fill in, or may assume this duty, until such time as new committee appointments are made.

The following are the responsibilities of the Board President:

- Serve as presiding officer of all Board meetings and maintain proper and appropriate parliamentary procedure (Robert’s Rules of Order) and agenda management (e.g. ensure that actions are taken with proper motions and seconds);
- Run effective and efficient Board meetings and keep the Board discussions focused on agenda items to steadfastly move the Board toward making decisions true to its proper role and responsibility;
- Maintain proper conduct at Board meetings and diplomatically facilitate appropriate public participation in the activities of the Board in accordance with the Brown Act, while managing time and avoiding diversions from the agenda or disruptions in conducting District business;
- Allow other Board members to complete their comments on an item before offering his or her own;
- Vote, discuss, and make motions the same as other Board members; however, the President only makes motions and seconds when other Board members are reluctant to do so;

- Sign various Board-approved documents, including every original ordinance and resolution passed and adopted by the Board; and
- Act as the official representative of the District for ceremonial purposes, unless unavailable or delegated to another Board member or the General Manager.

The Vice President exercises the powers and responsibilities of the President in his or her absence.

*General Board Duties*

Responsibilities of Public Office

District Board members are dedicated to the concepts of effective and democratic governance by responsible elected officials. As such, the Board members will:

- Uphold the Constitution of the United States and the Constitution of the State of California, and carry out the laws of the nation, the state and local governmental agencies;
- Comply with applicable laws regulating their conduct, including open government, conflict of interest, and financial disclosure laws;
- Fulfill all applicable training requirements, including attending two (2) hours of ethics (AB 1234) training every two (2) years; and,
- Work in full cooperation with other public officials, unless they are legally prohibited from doing so.

District Board members promote diversity and equality in personnel matters and in contracting, consistent with state and federal laws.

- Board members, in performance of their official duties and responsibilities, will not discriminate against or harass any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, gender, sexual orientation, medical condition or disability.
- Board members will not grant any special consideration, treatment, or advantage to any person or group beyond that available to every other person or group in similar circumstances.
- Board members will cooperate in achieving the equal opportunity objectives of the District.

The Board ensures that the District maintains a healthy work environment.

- The General Manager has primary responsibility for ensuring compliance with the District’s personnel/administrative policies and procedures, and ensuring that District employees do not engage in improper activities, for investigating allegations of improper activities, and for taking appropriate corrective and disciplinary actions. The Board ensures that the General Manager is operating the District according to law and the policies approved by the Board.
- Board members will disclose to the General Manager, to the extent not expressly prohibited by law, improper activities within their knowledge. Board members will not interfere with the General Manager’s responsibilities in identifying, investigating and



correcting improper activities, unless the Board determines the General Manager is not properly carrying out these responsibilities.

- A Board Member will not directly or indirectly use or attempt to use the authority or influence of his or her position to intimidate, threaten, coerce, command or influence any other person for the purpose of preventing such person from acting in good faith to bring to the attention of the General Manager or the Board any information that, if true, would constitute: a work-related violation by a Board Member or District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board Member or District employee.

Board members exercise responsible financial management in the conduct of District business.

- The Board ensures that the District maintains a system of auditing and accounting that completely and at all times shows the financial condition of the District in accordance with generally accepted accounting principles and legal requirements.
- The Board retains an independent auditor who conducts an annual audit of the District's books, records and financial affairs. The District's Finance Director and auditor will meet with the Board at the conclusion of the audit each year to review the audit results and recommendations.
- Board members will safeguard District property, equipment, moneys, and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust.
- A Board Member will not ask or require a District employee to perform services for the personal benefit or profit of a Board Member or employee.
- Each Board Member will protect and properly use any District asset within his or her control, including information recorded on paper or in electronic form.
- Board members will maintain written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on the District's behalf.

The Board is collectively the unit of authority within the District. Apart from a Board member's normal function as a part of this unit, an individual Board member has no authority to bind the District to a specific course of action.

The Board, as governing body of the District, is charged with full jurisdiction over all water works necessary for the acquisition, storage, treatment, sale and distribution of water served to District customers. The General Manager is charged with carrying out this responsibility on a day-to-day basis. ~~Among other duties the Board has the authority to:~~

- The Board sets District policy and the General Manager is responsible for execution of policy.
- The Board provides policy direction and instructions to the General Manager on matters within the authority of the Board by majority vote of the Board during duly convened Board and Board committee meetings.

- Members of the Board deal with matters within the authority of the General Manager through the General Manager, except as it pertains to the functions of the General Counsel.

Among other duties the Board has the authority to:

- Acquire or sell the District's real ~~District~~ property, to construct and operate facilities, to purchase equipment and enter into contracts;
- Adopt and oversee annual District budgets and finances, set water rates and charges, and approve the purchase of resources needed by management to carry out District policies; and
- Appoint and conduct annual performance evaluations of the General Manager and General Counsel, and approve compensation for all District employees.

Communication to/from the Board

The tone and content of all communications should reflect the highest degree of professionalism and respect. Board members are responsible for the content of all text, audio, or images that they place or send, including those sent over the District computer network. Messages with fraudulent, harassing, abusive, obscene, vulgar, profane, offensive, or sexually suggestive content are prohibited. Messages with derogatory or inflammatory remarks related to a person's membership in any protected class are also prohibited.

When a Board member receives a complaint or inquiry from the public regarding the District's services and/or staff, the Board member should acknowledge the complaint or inquiry without making any promise or commitment as to what will happen on behalf of the District and forward the message to the General Manager. Board members are encouraged to engage the public on matters of District interest and concern, but cannot guarantee an outcome or result before the Board has acted.

Emails/ Text Messages

The District provides each Board member his or her own District email address. Routine communication should be by District email. Board members should refrain from using any

communication method that may result in a serial meeting. For example, Board members should refrain from using the “reply all” function to respond to emails sent to the Board and should not use email or other means of communication to develop a consensus on any issue within the Board’s subject matter jurisdiction outside of a public meeting. (See later reference to the Brown Act, Section 3).

Email messages related to District business, sent from either District email accounts or personal accounts, are considered “public records” and accordingly, unless exempt from disclosure pursuant to the provisions of the California Public Records Act, may be disclosed in response to a public records request. These emails may also be subpoenaed as evidence in litigation. The District reserves the right to access and disclose all messages sent over its computer network and email system for any lawful purpose. The use of personal email accounts and personal electronic devices for District business is still subject to the disclosure requirement of the Public Records Act or a subpoena. Board members should carefully consider whether the use of personal email for District business is appropriate.

Board members are responsible for checking their incoming email frequently, reading its contents and responding in a timely manner. Messages transmitted over the District email system should only involve District-related activities for the accomplishment of business-related tasks or any communication directly related to District business, administration or practices. The District email system should not be used for personal correspondence. All email messages received at or sent through the District server system, including emails sent and received by Board members’ District email addresses, are property of the District and are not private.

Board members should remain aware that the rules applicable to emails also apply to text message communications. Therefore, Board members should use good judgment when sending and receiving electronic communications of any kind, including text messages. Board members should refrain from sending any electronic communications regarding matters within the subject matter jurisdiction of the Board during Board or committee meetings. Instead, Board member comments and discussions should occur aloud during the meeting in order to ensure members of the public may properly observe their elected official’s opinions on District matters.

*Social Media*

Board members may use social media to engage in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding matters that are within the subject matter jurisdiction of the Board provided that a majority of the members of the Board do not use the internet-based social media platform to discuss among themselves business within the subject matter jurisdiction of the Board. Board members should remain aware that the phrase “discuss among themselves” is broadly defined to include any communications made, posted, or shared on an internet-based social media platform between members of the Board, including comments or use of digital icons that express reactions to communications made by other members of the Board, such as “like”. For this reason, Board members should not comment or use any digital icons (i.e., like, dislike, etc.) expressing reactions to fellow Board members’ social



media posts related to District business. Board members should also refrain from taking positions on social media regarding any matter that is pending or may become before the Board.

Board members should remain aware that using social media accounts to discuss District business may create a “public forum”, which may thereafter restrict the Board member’s right to remove public comments on the account or block other users. It is recommended that Board members who utilize social media label personal accounts as such and do not use the accounts to speak on behalf of the District. If the Board member desires to maintain an official account that is intended to speak on District issues, it is recommended that the Board member consult with the District’s Communications Department and General Counsel.

## Contact with Media

Because the public receives much of its information regarding District programs, policies and operations through the media, it is important that the District provide the media with the most complete and accurate sources of information available. Thus, the General Manager or his designee shall serve as the District’s primary spokesperson and the media’s primary source of contact with the District. Media inquiries about official District business, including requests for explanations of District policy, should be directed to the General Manager or his designee. Press releases and any other media communications are coordinated as part of the District’s communications strategy and should therefore be prepared by and at the direction of the General Manager or his designee, including opinion/editorial pieces, which are reserved to address timely or critical topics, including matters of greater urgency, sensitivity or public interest.

Any Board member communications with the media, including ~~op-ed~~the submission of opinion/editorial pieces by a Board member or members, in which the District is a subject matter of discussion shall be clearly identified as an expression of personal opinion of the individual Board member who is expressing his or her opinion to the media, in accordance with Use of Title/Advocacy on Non-Board Approved Matters and as such should not use District time or resources.

## Use of Title/ Advocacy on Non-Board Approved Matters

Elected or appointed officials may not take positions on behalf of the District without the express prior permission and direction of the Board. When Board members are asked for the District’s opinion on an issue, the response should reflect the position of the Board. Any position of the Board is developed through a collective action taken by the entire Board. If a Board member is uncertain as to the official position of the District, he/she should contact the General Manager.

If an individual Board member elects to engage in producing any correspondence, public comment or oral presentation or to engage in advocacy on matters other than in representation of a Board position, the Board member may not use his or her Board title, or otherwise suggest or imply that their positions reflect the position of the Board or the District, ~~without the express prior permission and direction of the Board.~~ If a Board member produces or engages in advocacy that does not reflect a collective action taken by the entire Board and finds that it is necessary to make reference

to their Board title, the Board member must include a disclaimer that immediately precedes and follows the opinion expressed by the individual Board member. The disclaimer must indicate that the position being expressed is that of the individual Board member and does not reflect the position of the District or the Board.

### Board Appointed Staff

#### *General Manager*

The General Manager is appointed by and reports to the Board to carry out the day-to-day activities of the District pursuant to adopted ordinances, resolutions and policies. The General Manager has full charge and control of the maintenance, operation and construction of the waterworks system of the District and authority to employ and discharge employees, except those appointed by the Board, and determine employee duties necessary to carry out these responsibilities. The General Manager shall provide a written monthly report to the Board summarizing the work performed during the month and other items of importance or interest to the Board, and approve, or appropriately delegate, all requisitions for materials, supplies,

equipment and services necessary for carrying out the work, with Board approval where required.

*General Counsel*

The General Counsel is appointed by and reports to the Board, and is the legal advisor to the District regarding all legal matters pertaining to the District. The General Counsel performs such duties in relation to the District’s legal matters as the General Manager, or Board may request. The General Counsel is authorized to retain outside counsel from time to time to represent the District in various matters.

*Board Secretary*

The Board Secretary is appointed by the Board and reports to the General Manager and attends all Board meetings and committee meetings; keeps a complete record of the proceedings including attendance; prepares and maintains official correspondence as directed; maintains custody of the District seal; countersigns all District warrants; maintains oaths of office of all appointed or elected officials and performs such other duties as may be required by the Board.

*Finance Director/Treasurer*

The Finance Director/Treasurer is appointed by the Board and reports to the General Manager and is the chief financial officer of the District. He or she supervises and administers the financial accounts, records and accounting controls in accordance with generally accepted accounting procedures regarding the financial status and requirements of the District.

*Consulting Auditor*

The Consulting Auditor shall be an independent public accountant annually retained by and reporting solely to the Board to make an examination of the District’s financial position in accordance with generally accepted accounting and auditing standards. The Consulting Auditor may perform other services as requested by the Board from time to time. The Consulting Auditor is not an employee of the District and is engaged on a fee basis for the services rendered.

*Evaluation of Board Appointed Staff*

Annually, the Board should ~~meet and discuss the~~conduct performance evaluations of the General Manager and ~~prepare a documented~~General Counsel. Any discussions among the Board regarding the performance appraisal to be shared individually with the General Manager in closed session.

~~Annually, the Board should meet and discuss the performance or the evaluation~~ of the General Counsel and ~~prepare a documented performance appraisal to be shared individually with the Manager or~~ General Counsel will occur in closed session in closed session compliance with the Brown Act.

## District Organization and Communications between Board Members and Staff

### *Organization*

The District is organized into ~~three~~five divisions with each division leader reporting directly to the General Manager. The ~~four~~five divisions are as follows:

- Administrative Services Division, including functional responsibilities of Finance, Customer Service & Meters, and Information Technology;
- Engineering Division, including functional responsibilities of Engineering, ~~and Water Conservation~~Planning, Design, Construction and Real Property;
- ~~and~~
- Water Resources Division, including the functional responsibilities of Water Supply, Water Quality, Water Laboratory Services and Water Conservation;
- Operations Division, including Water Treatment and Distribution, Distribution System Maintenance, ~~Water Quality and Laboratory Services, Safety/Emergency Response~~ and the functional responsibilities of Facilities Maintenance & Support; ~~and~~
- Watershed Division, including Watershed Maintenance, Watershed Protection, and Safety/Emergency Response.

Additionally, the District's Human Resources and Communications, & Public Affairs ~~and Watershed~~ Departments report directly to the General Manager. The General Counsel's Office reports directly to the Board and provides ongoing support to the General Manager and District staff regarding legal and related matters.

### *Communication between Board Members and Staff*

All communication between Board members and staff regarding District business should be coordinated through the General Manager, including requests from individual Board members. The General Manager will then generate a staff assignment to develop information or reports responsive to the Board member(s) request.

Responses from staff shall be communicated through the General Manager's Office or designee to the requesting Board member(s) and, if the General Manager believes that the information may be of general interest, the response may be sent to all Board members. This does not apply to requests for routine information (e.g. lake storage status, stream flows, fire conditions on the watershed, etc.). Routine information will be provided to Board members in the same way that it is provided to the general public.

## SECTION 3: Board Meetings

### Scheduling Meetings

#### *Regular Meetings*

The principal type of meeting at which District business is conducted is at a regular bi-monthly meeting of the Board. Regular bi-monthly meetings of the Board of Directors will normally be held the first and third Tuesdays of each month, to begin at or after 5p.m., ~~but normally with the typical start time~~ at ~~7~~6:30p.m., in the boardroom located at the District office (220 Nellen Avenue, Corte Madera, California) unless otherwise stated in a Board adopted calendar for the upcoming year. The Board will endeavor to adopt a Board calendar for the upcoming calendar year prior to December 31<sup>st</sup>, but not sooner than the seating of any new Directors elected in the November election. The Board Calendar will include the calendar of regular Board and committee meetings for January into the following calendar year.



~~otherwise stated in a Board adopted calendar for the upcoming year, prior to January 31st of each year.~~

Meeting notices and agendas for regular meetings are posted online at [marinwater.org](http://marinwater.org), and physically posted at the District office in Corte Madera, and at the Corte Madera, Fairfax, Mill Valley and San Rafael Civic Center public libraries on the Friday (at least 72 hours) before each meeting. Reports and other materials related to the agenda items are posted on the District's website and hard copies are available for review at the District office.

*Special Meetings*

Occasionally, special meetings of the Board are held to consider a particular topic, conduct a workshop or study session or, if necessary, hold a meeting at a time or date other than a regularly scheduled Board meeting. Agendas for special Board meetings must be posted in a public place and online at least one-day (24 hours) prior to the meeting. However, the District makes every effort to provide more than one-day (24 hours) notice prior to the meeting, when possible.

Regular and special meetings of the Board should generally be held within the boundaries of the District's jurisdiction with certain exceptions. The Board may adjourn a regular or special meeting to another place, date or time if the business considered at that particular Board meeting has not yet been completed and/or if Board deliberations would benefit from re-convening the meeting to another place, date or time.

*Emergency Meetings*

When an emergency occurs, such as a crippling disaster, work stoppage or other activity that severely impairs public health, safety or both, as determined by a majority of the Board, an emergency meeting may be called. Notice of an emergency meeting must be given to local media at least one hour prior to the meeting. However, in the case of a dire emergency such as mass destruction, terrorist act, or threatened terrorist activity posing peril so immediate and significant that providing one-hour notice may endanger public health, safety or both, as determined by a majority of the Board, notice need only be provided at or near the time that notice is provided to members of the Board.

*Public Hearings*

Public hearings are held on matters of special importance when required by law.

*Closed Sessions*

Meetings of the Board are either fully open or fully closed, and there is nothing in between. The Brown Act strongly favors open meetings and private discussions among a majority of the Board members are prohibited, unless expressly authorized by the Brown Act. Closed sessions are an exception to open meeting requirements, and the authority for such sessions is narrowly construed. The fact that material may be sensitive, embarrassing or controversial does not justify consideration in a closed session unless authorized by a specific statutory exception(s) to the

Brown Act. The most commonly cited statutory exceptions relate to litigation (including threat of), real property negotiations, public employment issues, and labor negotiations.

Closed sessions are generally held immediately prior to or following regular bi-monthly meetings of the Board but may also be scheduled at other designated times. While public comment is permitted prior to the Board convening to closed session, only individuals having an official role in the closed session subject matter may attend and the confidential information discussed during the closed session is explicitly prohibited from unauthorized disclosure. It is incumbent upon those attending closed sessions to protect the confidentiality of those discussions.

Following a closed session the Board shall reconvene in open session and publicly report out final decisions and the votes for or against any final decisions. The Board President or General Counsel generally makes these public reports.

#### *Committee Meetings*

Board committees act in an advisory capacity to the Board. Two Board members (Chair and ~~Member~~Vice Chair) are annually appointed to each committee by the Board President with the advice and consent of other Board members.

Committee meetings are typically held in the boardroom at the District office, 220 Nellen Avenue, Corte Madera, California, unless otherwise noticed. Committee meeting notices and agendas are prepared and posted in accordance with the Brown Act similar to regular Board meetings and minutes are prepared for each meeting. The minutes are included in the next committee meeting agenda packet and approved by the committee during a subsequent meeting of the committee.

The District dually notices all committee meetings as both committee meetings and special meetings of the Board. This ensures that a quorum of the Board may attend and participate in the committee meeting, while maintaining compliance with the Brown Act. If less than a quorum of the Board (less than three Board members) participates in the meeting, it is a committee meeting. When a quorum of the Board (three or more Board members) participates in the meeting, it is a Board meeting. The Board, as a practice, generally does not take final action on items during committee meetings, unless District staff determines the urgency of the item requires immediate action that cannot be delayed until a subsequent regular bi-monthly Board meeting. This practice generally allows members of the public multiple opportunities to submit comments and participate in the Board's decision-making process prior to the Board taking final action on an item.

Currently there are four Board committees:

- Communications & Water Efficiency Committee, which generally meets quarterly on the 3rd Wednesday of the month in February, May, August and November;
- Finance & Administration Committee, which meets on the 4th Thursday of each month;
- Operations Committee, which meets on the 3rd Friday of each month; and

- Watershed Committee, which generally meets quarterly on the 3rd Thursday of the month in March, June, September and December.

From time-to-time the Board may establish ad hoc committees to address issues with a limited scope and duration. The Board President may appoint Board members to ad hoc committees. These committees are not subject to the Brown Act, since a quorum of the Board (3 or more ~~Members~~members) does not attend or participate.

Additionally, Board members may be assigned to represent the District before other broad based regional groups including, such as: Tamalpais Lands Collaborative Executive Committee, Lagunitas Creek Sediment and Riparian Management Plan Technical Advisory Committee, North Bay Watershed Association, Tomales Bay Watershed Council, Sonoma County Water Agency Water Advisory Committee, North Bay Water Reuse Authority, Las Gallinas Recycled Water Committee, and Association of California Water Agencies.

## Preparation of Agenda and Order of Business

### *Agendas*

Meeting agendas specify the date, time and location of the meeting, in accordance with Brown Act requirements, and must contain a brief general description of each item of business to be transacted or discussed at the meeting. It should be clear from the agenda wording what will be discussed and what action is being proposed so members of the public can determine if they would like to observe or participate in the meeting. The Brown Act generally prohibits any Board action or substantive Board discussion of items that are not on the agenda.

Most items on the agenda originate from the General Manager and District staff. Staff maintains a detailed list of upcoming agenda items that is updated after each Board and committee meeting. Typical types of agenda items include the following:

- Policy direction from the Board;
- Public hearings;
- Items with overarching policy implications (e.g. strategic planning, budgeting, labor negotiations);
- Actions required by law;
- Actions on the overall implementation of a Board approved project or program (e.g. award of construction contracts, consideration of an environmental review document, etc.);
- Discretionary decisions for which authority has not been delegated to the General Manager; and
- Informational items to update the Board and public on District matters.



A draft agenda for regular Board meetings is developed by the General Manager and reviewed by the Board President prior to the agenda being publicly posted. The Board formally adopts the agenda for each meeting as an initial order of business after each meeting is called to order.

*Future Agenda Items*

Board members may request that items be placed on agendas during discussion of the “Future Board and Committee Meetings and Upcoming Agenda Items” portion of the agenda. A motion by a Board member and a second by another Board member will initiate bringing the item to a future meeting for discussion and consideration.

*Urgency Items*

In rare cases, a legitimate urgent need may arise that must be acted upon even though the item was not included on a posted agenda. The General Counsel shall be consulted on all urgency items. In order for the Board to take action on an urgency item, two determinations must be approved by a two-thirds vote of the Board members present (or by unanimous vote if less than two-thirds (2/3) but more than a quorum of members are present):

- There is an immediate need to take action; and
- The need for action arose after the agenda-posting deadline.

If the above requirements are met, the Board may vote to add the urgency item to the agenda.

*Attendance, Conduct, Quorum & Voting, Rules of Order, Brown Act*

Board members should strive to attend all Board and committee meetings in person. If a Board member will be absent, he or she should notify the General Manager and Board President as soon as possible.

*Teleconferencing*

A Board member may participate in meetings via teleconference when not able to attend in person. ~~For~~ Unless a Board member has an emergency circumstance or just cause, as those events are defined under section 54953 (i)(1) and (2) of the Brown Act, for each meeting that a Board member will participate by teleconference, the Board member should notify the Board Secretary of his or her teleconference location prior to the agenda being posted, so that the agenda for the meeting will properly identify the teleconference location. All teleconference locations must be accessible to the public, have a copy of the agenda posted, and allow members of the public to address the Board at the teleconference location. A quorum of the Board must be located within the District boundaries, regardless of remote participation.

Alternatively, if the Board member has need to attend the meeting remotely due to familial caregiving needs, a contagious illness, a disability or travel on District business or other physical family or medical emergency to prevents that member from participating in person, the Board

member need not provide their remote location, but should notify the Board Secretary as soon as possible. The Board member participating under the just cause or emergency provisions of the Brown Act, will need to inform the Board of the need for remote participation, must disclose whether there is any other person over 18 years old in the room with them during the meeting and must participate in the meeting via audio and visual technology.

When a Board member or members, participate via teleconference meeting all votes must be taken by roll call.

*Quorum/ Board Action*

The Board shall act only by motion, resolution or ordinance. A majority of the board shall constitute a quorum for the transaction of business; however, no ordinance, motion or resolution shall be passed to become effective without the affirmative vote of a majority of the members of the board. A supermajority of votes is necessary to consider an urgency item not previously posted on the Board meeting agenda or to take certain actions in response to an emergency

situation. The District utilizes the parliamentary procedure from Robert’s Rules of Order to conduct Board meetings.

*Brown Act (Opening Meetings Law)*

In compliance with the Ralph M. Brown Act (“Brown Act”), all meetings of the Board are to be held in open session, unless a closed session is expressly permitted by the Brown Act, and the general public is permitted to attend all open sessions. District Board members promote fair and open public processes. Board members, and persons elected but who have not yet assumed office as members of the Board, will fully comply with California’s the Brown Act. In order to ensure proper public participation and that all decisions are reached only during public meetings, Board members should refrain from participating in phone calls or emails that:

- Discuss issues within the Board’s subject matter jurisdiction and are directed to a majority of the Board members;
- Take a position or make commitments on matters yet to be decided by the Board; and/or
- Communicate his/her position on a matter pending before the Board to all other members of the Board.

*Meeting Minutes*

Draft meeting minutes are prepared by the Board Secretary and presented to the Board and/or committee for approval at the next meeting of the Board or applicable committee.

Safeguard Confidential Information

Board members will not disclose information that legally qualifies as confidential to unauthorized persons without approval of the Board of Directors. This includes information that (1) has been received for, or during, a closed session Board meeting, (2) is protected from disclosure under the attorney/client or other evidentiary privilege, or (3) is not disclosable under the California Public Records Act.

A Board member may make a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury necessary to establish the alleged illegality of a District action. Prior to disclosing confidential information, however, a Board member will first bring the matter to the attention of either the President of the Board or the full Board, in a lawful and appropriate manner, to provide an opportunity to cure an alleged violation.

SECTION 4: Conference, Training, Reporting Requirements

Conferences

In accordance with Board policy, Board members may elect to attend conferences, meetings and other functions from which the District derives specific benefit through attendance, including those affiliated with District membership in various associations. After attending the conference, meeting or training, the Board member who attended on behalf of the District should provide a brief oral

report during the Directors' and General Manager's Announcements portion of the agenda to share information about the event with fellow Board members and the public.

### Mandatory Ethics and Sexual Harassment Prevention Training

~~The Board Ethics~~This Policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members' conduct and in achievement of the District's mission. The proper operation of the District requires that Board members remain objective and responsive to the needs of the public they serve, make decisions within the proper channels of governmental structure, and not use public office for personal gain. Pursuant to ~~the Board Ethics Policy and~~ provisions of the California Government Code set forth in Assembly Bill 1234, Board members are required to receive two hours of ethics training within the first six months of taking office and every two years thereafter.

Board members must also receive two hours of sexual harassment prevention training within the first six months of taking office and every two years thereafter. The District's current Sexual Harassment Policy is intended to prevent sexual harassment in the work environment and provides procedures for resolving complaints of sexual harassment.

The Board Secretary maintains certificates of completion and a training log for all Board member training. The Board Secretary keeps Board members informed of all training requirements and applicable due dates to ensure compliance with applicable laws.

Board members are encouraged to seek other training pertinent to local public agency officers. Such training may be found online through the Institute for Local Government at [www.ca.ilg.org](http://www.ca.ilg.org).

### Public Records Act Training

All records of the District, except those exempt from disclosure pursuant to the California Public Records Act and/or other applicable laws, are public records. Any person may examine public records during regular business hours of the District or may obtain a copy of requested records in accordance with the California Public Records Act. For convenience to the public, the District has a Public Records Act Request form on its website and provides electronic records at no charge to the public.

The Board Secretary maintains a records retention policy and works with the General Counsel's Office in responding to Public Records Act requests. The Board Secretary and the General Counsel conduct periodic in-house trainings pertaining to the California Public Records Act. Board members are encouraged to participate in said training.

### Conflicts of Interest

Board members should avoid both actual conflicts of interest and the appearance of conflicts of interest in their roles as members of the Board.

- A Board member will not have a financial interest in a contract with the District, or be a purchaser at a sale by the District or a vendor at a purchase made by the District, unless his or her participation is legally authorized.
- A Board member will not participate in the discussion, deliberation or vote on a matter before the Board, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter under California law.
- A Board member will not accept any honoraria.
- A Board member will not accept gifts that exceed the limitations specified in California law. Board members will report all gifts, campaign contributions, income and financial information as required under the District's Conflict of Interest Code and the provisions of the Fair Political Practices Act and Regulations.



- A Board member will not recommend the employment of a relative to the District or to any person known by the Board member to be bidding for or negotiating a contract with the District.

~~The Board Secretary maintains certificates of completion and a training log for all Board member training. The Board Secretary keeps Board members informed of all training requirements and applicable due dates to ensure compliance with applicable laws.~~

#### Conflict of Interest/Form 700

State laws attempt to eliminate any action by a Board member that may implicate a conflict of interest. The purpose of such laws and regulations is to ensure that all actions taken are in the public interest. The Political Reform Act of 1974 requires public officials and designated employees to disclose financial interests that could cause a conflict of interest. Public officials may be required to disqualify themselves from making, participating in, or attempting to influence any decision that will materially affect their financial or economic interest. If a Board member is unsure whether or not he or she may have a disqualifying economic interest, he or she should consult the General Counsel as soon as possible.

Economic interests include, but are not limited to, those items public officials are required to report on the Form 700, Fair Political Practices Commission ("FPPC") "Statement of Economic Interest" and include sources of income, business interests and real estate investments. The Form 700 also requires the annual reporting of all gifts received that are valued at \$50 or greater in a calendar year. The Political Reform Act precludes the acceptance of any gifts withover a specified value totaling, currently more than \$500590 in a calendar year. These Form 700s are provided to Board members each calendar year, and within 30 days of assuming or leaving office, and filed with the Board Secretary who forwards them to the FPPC and makes them available for public inspection and reproduction.

### Conflict of Interest Reporting at Board Meetings

A Board member may be disqualified from participating in agenda items that present a financial conflict of interest. If a Board member is disqualified due to a financial conflict, he or she must abstain from the item, state the reason for the disqualification, and leave the room during the agenda item (unless the item is listed on the consent calendar).

### Incompatible Offices

Except as expressly permitted by law, Board members appointed or elected to another public office, the duties of which may legally require action contradictory or inconsistent with the interests of the first entity, will resign from the former Board.

### Political Contributions/Campaign Rules

The Levine Act (the Political Reform Act section 84308) Prohibits an Official from soliciting, accepting or directing campaign contribution of \$250 or more from a participant (or their agent) having any a proceeding in front of the agency. If a Board member has accepted campaign contributions within the past twelve months, he/she is prohibited from participating in the proceeding involving the donor or donor's agent, unless the Board member has cured the conflict by returning the donation within thirty days of learning of the donation or proceeding.

### Additionally:

- Board members will not solicit political funds or contributions of in-kind services at District facilities.
- A Board member will not use the District's seal, trademark, stationary, or other indicia of the District's identity or facsimile thereof in any solicitation for political contributions.

### Candidate's Statement

A Board member will not include false or misleading information in a candidate's statement for a general District election filed pursuant to Section 13307 of the Elections Code.

### Ethics Violations

A perceived ethics violation by a Board member should be referred to the District General Counsel for review and consideration of any appropriate action warranted. An ethics violation may be addressed by remedies available by law, including but not limited to:

- Adopting a resolution expressing disapproval of the conduct of the Board member who has violated this policy,
- Injunctive relief, or
- Referral of the violation to the District Attorney and/or the Grand Jury.

## SECTION 5: Compensation/Benefits

### Board Compensation

The District ~~has adopted a policy regarding Compensation of Elected or Appointed Officials to address Board member~~members receive a per diem amount as compensation.

~~Each Board member shall receive as compensation \$200 per day “for each day’s attendance at meetings of the Board or for each day’s service rendered as a Board member of the Board by request of the Board. No Board member.” (District Code §2.10.060) That per diem amount is set by ordinance of the Board. Pursuant to State law, no director may receive compensation for more than 10 days in any calendar month. The District authorizes payment to Board members at the daily compensation rate for attending Board meetings and committee meetings. In addition, pursuant to Board policy, the District authorizes payment of the daily compensation rate to Board members for attendance at other specified meetings or attendance at other District business as authorized by the General Manager.~~

Additionally, Board members receive medical and dental benefits consistent with other District employees.

~~Travel Authorization~~The District Board of Directors has adopted a Board policy regarding Compensation of Elected or Appointed Officials to address Board member compensation, Board Policy No. 42. Each Board member shall review and abide by the Board Compensation Policy.

### Reimbursement of Travel Expenses

~~In accordance with Board policy,~~ Board members may attend, travel and seek reimbursement of all normal and necessary expenses incurred while attending conferences, training, meetings and other functions from which the District derives a specific benefit through attendance. Only that travel/attendance which serves a District purpose and is deemed necessary and/or advantageous to the District shall be approved and reimbursed. Travel shall be by means most economical to the District. Board members are expected to exercise sound judgment in the incurring and submittal of travel expenses in keeping with the standards and proprieties of a visible and accountable public agency.

~~Reimbursement of costs shall be based on the minimum number of days and hours required to transact District business. Early departures and late arrivals shall be at the Board member’s own expense, except where savings to the District can be demonstrated. Reimbursement will not be allowed for travel between a Board member’s residence and the location of a meeting that does not exceed the Board member’s normal commute distance to the District’s office.~~



~~Items of a personal nature are not reimbursable, including but not limited to: movies, entertainment, premium television services, alcoholic beverages, dry cleaning, spas, gyms, barber, magazines, shoe shines, travel insurance, purchase of clothing or toiletries, loss of tickets, fines or traffic violations, excess baggage costs, spouse and/or guest expenses/accommodations, repairs to personal vehicles, and office equipment. Optional tours, banquets or other activities not related to District business offered through a conference, but as an additional cost to registration, are solely at the discretion of the Board member and will be considered a personal expense.~~

The District Board of Directors has adopted a Board Travel Reimbursement Policy, Board Policy No. 41. All Board members shall review and abide by the Board Travel Reimbursement Policy.

## SECTION 6: Other Related Information

### *Human Resources*

The Board has established a District ~~Human Resources (HR) goal to “Ensure a stable and talented workforce to do the District’s objective to “cultivate a meaningful work today and into the future.”~~environment that successfully recruits, retains, and develops an engaged, high performing, mission- and vision-focused team.” This ~~goal/objective~~ is based on District values of promoting diversity in and equitable treatment of its employees; providing a healthy work environment; and continuously improving through the promotion of initiatives, leadership and personal development and training. Ensuring District HR policy is current and consistent with this strategy is a shared responsibility between staff and the Board. Board members should be familiar with key HR documents including but not limited to: the Equal Employment Opportunity Policy, labor agreements with both represented and non-represented employees, benefit summaries, job descriptions and salary schedules.

### *Risk Management and Emergency Operations*

The District maintains a range of insurance coverage to limit financial risks, which may occur from an uncertain event or loss. The District’s insurance portfolio includes both a self-insured component and third-party insurance coverage. The third-party insurance coverage provides coverage for the following: Property Damage, General & Auto Liability (including vehicle physical damage), Public Officials Errors and Omissions (E&O) and Employee Practices Liability, Employee Fidelity, Workers’ Compensation and Cyber Liability coverage.

The Public Officials E&O coverage insures Board members and District officers against claims made against them for “breach of duty” occurring through negligence, error or unintentional omission. Violations of certain laws and regulations by a Board member, such as discrimination, harassment or fraud, may result in that individual member being personally liable for damages that may not be covered by this insurance policy.

All insurance coverage is annually reviewed and approved by the Board. Additionally, District contract language for procuring equipment, supplies and services (including consultant services), includes general provisions that reduce potential risks to the District. These contracting provisions

include, but are not limited to, the following topics: indemnification, insurance, nondiscrimination and conflict of interest.

The District maintains an active emergency preparedness program that includes an Emergency Operations Plan (EOP) to help manage District critical functions during an emergency and ensure the safety of staff. The EOP has been prepared to provide a plan of action in response to various emergencies that may involve the District and/or its facilities. The plan primarily addresses the possible emergencies of earthquake, electrical power failure, fire, flood, hazardous or toxic spills, potential water contamination, vandalism and sabotage, and vehicle or personnel accidents. The District coordinates its EOP, functions and response with first responders from other public and private entities and organizations, and the District designates staff as liaisons with general-purpose government Emergency Operations Centers as necessary. The General Manager, or his designee, may request mutual aid assistance from other local government or public agencies, or commit District resources to other agencies requesting aid. The General Manager provides regular reports to the Board on the District's response to emergency situations and presents annual reports on the District Emergency Preparedness Program. Each Board member receives a copy of the EOP, which is updated from time to time.

When an emergency situation arises, the General Manager may award necessary contracts without competitive bidding. The Board must ratify the emergency contract award at the next regular Board meeting, or within 14 days-, whichever is sooner.

#### *Electronic Equipment, Data and Software*

The District's employees are given access to the District's software, information and applications to perform the functions of the District. Information and applications developed by employees are added to the District's overall information system. The District purchased data for the District's Geographic Information System from the County of Marin.

Board members are regarded as "District employees" with respect to the use of District electronic equipment, data and software and should follow the same rules as District employees. As with any District employee, Board members should only use these materials for District business and assure no dissemination of the materials to the public. Any requests for use of District electronic data and software will be subject to approval by the General Manager.

#### *Community Outreach*

Supplementing Board member assignments to participate in broad based regional groups, the District provides extensive community outreach programs through its Water Conservation, Watershed Management and Public Information departments. Outreach activities and opportunities can be located on the District's website and through its social media accounts.

#### *Association Memberships*

The District holds memberships in and attends meetings of associations, which have applicability to District functions, and looks upon such memberships as opportunities for in-service training. Board members may participate in the following associations with which the District holds memberships: the American Water Works Association (AWWA), the Association of California Water Agencies (ACWA) and others as may be prescribed to by the ~~Water Environment~~

~~Association (WEA)-District.~~ Board members who

vote or hold a formal position in these associations recognize that they are representing the District when attending these functions.

When Board members are attending meetings on their own accord, and are not requested to attend by the Board, Board members are cautioned that they are not authorized to officially represent the District at those meetings.

*Orientation of New Board Members*

Newly elected Board members are subject to the Brown Act immediately upon being elected to office, even though their swearing in does not occur until noon on the first Friday in December, or following certification of the election results. Current and newly elected Board members should remain cognizant of this when communicating with each other or other Board members in order to prevent an unintentional serial meeting from occurring, which would constitute a violation of the Brown Act.

The Board Secretary is the point of contact for newly elected Board members regarding:

- Filing an assuming office Statement of Economic Interests Form 700 with the FPPC within 30 days of taking office;
- Completing mandatory Ethics and Harassment training;
- Procuring a suitable photograph and developing a brief biography to be posted on the District website;
- Completing employee on-boarding, payroll and benefit paperwork and setting up a District email account; and
- Providing important reading materials including the Board of Directors Handbook, District policies, recent water rate information and Cost of Service Analysis, budgets, capital improvement program information and Water Resources Plan.

The General Manager is the point of contact for newly elected Board members to tour District offices, meet staff, visit key facilities and address pertinent questions.

The General Counsel is the point of contact for all legal matters, including conflicts of interest and the Brown Act.

## Board of Directors Handbook Table of Contents

### SECTION 1: Purpose and Background

- a. Purpose and Background
  - i. Purpose
  - ii. Background
- b. Governing Laws and Regulations
- c. Board Policies and Administrative Procedures
  - i. Values
  - ii. Goals

### SECTION 2: Board Officers and Board Appointed Staff

- a. Board Officers and General Board Duties
  - i. Newly Elected Board Members Time of Taking Office
  - ii. Appointment of Officers and Duties
  - iii. Responsibilities of Public Office
- b. Communication to/from the Board
  - i. Emails/Text Messages
  - ii. Social Media
- c. Contact with Media
- d. Use of Title/Advocacy on Non-Board Approved Matters
- e. Board Appointed Staff
  - i. General Manager
  - ii. General Counsel
  - iii. Board Secretary
  - iv. Finance Director/Treasurer
  - v. Consulting Auditor
  - vi. Evaluation of Board Appointed Staff
- f. District Organization and Communications Between Board Members and Staff
  - i. Organization
  - ii. Communications between Board Members and Staff

### SECTION 3: Board Meetings

- a. Scheduling Meetings
  - i. Regular Meetings
  - ii. Special Meetings
  - iii. Emergency Meetings
  - iv. Public Hearings
  - v. Closed Sessions
  - vi. Committee Meetings
- b. Preparation of Agenda and Order of Business
  - i. Agendas
  - ii. Future Agenda Items
  - iii. Urgency Items
- c. Attendance, Conduct, Quorum and Voting, Rules of Order, Brown Act
  - i. Teleconferencing
  - ii. Quorum/Board Action
  - iii. Brown Act (Open Meetings Law)
  - iv. Meeting Minutes
- d. Safeguard Confidential Information

### SECTION 4: Conferences, Training, Reporting Requirements

- a. Conferences
- b. Mandatory Ethics and Sexual Harassment Prevention Training
- c. Public Records Act
- d. Conflicts of Interest
  - i. Form 700
  - ii. Conflict of Interest Reporting at Board Meetings
  - iii. Incompatible Offices
- e. Political Contribution/Campaign Rules
  - i. Candidate's Statement
- f. Ethics Violations

### SECTION 5: Compensation/Benefits

- a. Board Compensation
- b. Reimbursement of Travel Expenses

### SECTION 6: Other Related Information

- a. Human Resources
- b. Risk Management and Emergency Operations
- c. Electronic Equipment, Data and Software

- d. Community Outreach
- e. Association Memberships
- f. Orientation of New Board Members



# MARIN MUNICIPAL WATER DISTRICT

## BOARD OF DIRECTORS HANDBOOK

Adopted: February 2, 2021  
Revised: September 21, 2021  
Revised \_\_\_\_\_, 2024

### SECTION 1: Purpose and Background

#### Purpose

This handbook is compiled as a guidance document to provide incumbent and newly elected members of the Marin Municipal Water District (“District”) Board of Directors (“Board”) with general information and specific authorities regarding oversight of the District. This handbook is intended to facilitate the handling of Board affairs, assist the Board in complying with open meeting laws, and is complementary to applicable laws and other requirements.

The proper operation of the District requires that Board members remain objective and responsive to the needs of the public they serve, make decisions within the proper channels of governmental structure, and not use public office for personal gain. To further these objectives, certain ethical principles govern the conduct of each member of the Marin Municipal Water District Board of Directors.

In addition to providing guidance to the Board on process, this handbook will also promote awareness of ethics, integrity and fidelity as critical elements in Board members’ conduct and in achievement of the District’s mission.

#### Background

The District is an independent special district, formed pursuant to the Municipal Water District Law of 1911 and approved by voters to provide specific services to residences within the District’s service area. The District is a single function, enterprise special district because it charges its customers for the service provided. The District is governed by a five-member Board elected by voters within a specified limited boundary or division. Each Board member must be a resident of the division from which he or she is elected. Regular elections for Board members are held every 2 even years for staggered 4-year terms (i.e., divisions I, III & IV are elected in one 2-year election cycle and divisions II & V in the other 2-year election cycle). The District contracts with the Marin County Department of Elections to facilitate all candidate filings and services for Board member elections.

The Board holds publicly noticed meetings in accordance with the Brown Act where citizens may address the Board regarding matters within the subject matter jurisdiction of the District.

### Governing Laws and Regulations

The District was formed pursuant to California Water Code Section 71000 *et seq.*, commonly known as the Municipal Water District Law of 1911. The California Constitution, the Government Code and other state statutes contain a number of provisions applicable to the District and Board member activities including, but not limited to: the Ralph M. Brown Act (Open Meetings Law), Public Records Act (Public Access to Information), Government Code Section 1090 and the Political Reform Act and associated regulations (Conflict of Interest), Assembly Bill 1234 (Ethics), and Assembly Bill 1661 (Sexual Harassment Prevention).

### Board Policies and Administrative Procedures

The mission of the District, as established by the Board of Directors, is to manage “the lands, water, and facilities in our trust to provide reliable, high-quality water and adapt and sustain these precious resources for the future.”. . The Board communicates its direction, or its philosophy, toward fulfilling this mission by developing and periodically reviewing its values and goals, and creating and updating various policies and procedures to ensure that the District’s customers and the public are treated in a fair and consistent manner. In most instances, policy is established by an affirmative vote of a majority of the members of the Board. However, some circumstances may necessitate the approval of a supermajority of the Board. The District’s General Counsel will advise the Board of the approval requirements necessary to bind the Board to a given course of action.

Current District values and goals developed as part of the 2024-2028 Strategic Plan are listed below:

#### Values

- **Health and Safety**
  - We are committed to the health and safety of our colleagues and community.
- **Stewardship**
  - We recognize the essential connection between people and natural resources and manage our lands and facilities for sustained benefits now and in the future.
- **Innovation**
  - We strive for excellence and innovation in managing water and watersheds.
- **Efficiency and Responsiveness**
  - We value efficiency, cost-effectiveness, and timely service in our work with customers and communities.
- **Accountability**
  - We operate with the highest levels of individual and organizational accountability to each other and the community.
- **Respect**

- We maintain a welcoming environment that embraces differences and offers respect, dignity, and fairness for all people and partners.
- **Listening and Learning**
  - We enhance ourselves and the organization by listening to others, reflecting on our performance, sharing knowledge with others, and making informed decisions.
- **One Water**
  - We work together to anticipate the challenges ahead and achieve our mission.

### Goals

- **Reliable Water Supply**
  - Provide a high quality, reliable and resilient water supply now and for the future.
- **Resilient Water System**
  - Invest in and maintain a resilient water system through effective infrastructure management and planning.
- **Watershed Stewardship**
  - Protect and manage Marin Water lands for the long-term benefits for the community and environment.
- **Fiscal Responsibility**
  - Judiciously manage customer revenue and other financial resources for operating, maintaining and upgrading the water system today and in preparation for the future.
- **Organizational Excellence**
  - Support and sustain an innovative organization that lives by its values, leads by example, delivers valued benefits for its customers and is regarded as an employer of choice.

District governing documents include but are not limited to: the Marin Municipal Water District Code, Board Policies, Administrative Policies, Operating Procedures, and applicable state and federal laws, which collectively constitute the policies and procedures that District staff follow when carrying out their day-to-day duties.

District administrative and operating procedures are approved by the General Manager pursuant to the authority delegated by the Board and are implemented to ensure that the District operates in a uniform and businesslike manner, and in accordance with legal requirements and the established policies and direction of the Board.

## SECTION 2: Board Officers and Board Appointed Staff

### Board Officers and General Board Duties

#### *Newly Elected Directors Time of Taking Office*

Pursuant to the California Water Code section 71253, newly elected directors shall take office at noon on the first Friday in December succeeding their election. If the election results have not yet been certified by the Marin County Elections Officer by the first Friday in December, however, then the newly elected directors shall take office as soon as possible thereafter but not later than the next meeting of the Board following certification of the election results.

#### *Appointment of Officers and Duties*

The Board elects one of its members President and one of its members Vice President each year. The election of board officers shall take place at the first meeting in January following a nonelection year, and at the first meeting of the board at or after which the newly elected directors take office following district elections in November.. The Board President and Vice President have no additional powers beyond those of any other Board member except that all committees of the Board are appointed by the President, with the advice and consent of other Board members. Appointment of committee chairs and vice chairs occurs in January. . When a committee chair or vice chair vacancy is created following an election, the President may request another member of the board to fill in, or may assume this duty, until such time as new committee appointments are made.

The following are the responsibilities of the Board President:

- Serve as presiding officer of all Board meetings and maintain proper and appropriate parliamentary procedure (Robert’s Rules of Order) and agenda management (e.g. ensure that actions are taken with proper motions and seconds);
- Run effective and efficient Board meetings and keep the Board discussions focused on agenda items to steadfastly move the Board toward making decisions true to its proper role and responsibility;
- Maintain proper conduct at Board meetings and diplomatically facilitate appropriate public participation in the activities of the Board in accordance with the Brown Act, while managing time and avoiding diversions from the agenda or disruptions in conducting District business;
- Allow other Board members to complete their comments on an item before offering his or her own;
- Vote, discuss, and make motions the same as other Board members; however, the President only makes motions and seconds when other Board members are reluctant to do so;
- Sign various Board-approved documents, including every original ordinance and resolution passed and adopted by the Board; and
- Act as the official representative of the District for ceremonial purposes, unless unavailable or delegated to another Board member or the General Manager.

The Vice President exercises the powers and responsibilities of the President in his or her absence.

*Responsibilities of Public Office*

District Board members are dedicated to the concepts of effective and democratic governance by responsible elected officials. As such, the Board members will:

- Uphold the Constitution of the United States and the Constitution of the State of California, and carry out the laws of the nation, the state and local governmental agencies;
- Comply with applicable laws regulating their conduct, including open government, conflict of interest, and financial disclosure laws;
- Fulfill all applicable training requirements, including attending two (2) hours of ethics (AB 1234) training every two (2) years; and,
- Work in full cooperation with other public officials, unless they are legally prohibited from doing so.

District Board members promote diversity and equality in personnel matters and in contracting, consistent with state and federal laws.

- Board members, in performance of their official duties and responsibilities, will not discriminate against or harass any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, gender, sexual orientation, medical condition or disability.
- Board members will not grant any special consideration, treatment, or advantage to any person or group beyond that available to every other person or group in similar circumstances.
- Board members will cooperate in achieving the equal opportunity objectives of the District.

The Board ensures that the District maintains a healthy work environment.

- The General Manager has primary responsibility for ensuring compliance with the District's personnel/administrative policies and procedures, and ensuring that District employees do not engage in improper activities, for investigating allegations of improper activities, and for taking appropriate corrective and disciplinary actions. The Board ensures that the General Manager is operating the District according to law and the policies approved by the Board.
- Board members will disclose to the General Manager, to the extent not expressly prohibited by law, improper activities within their knowledge. Board members will not interfere with the General Manager's responsibilities in identifying, investigating and correcting improper activities, unless the Board determines the General Manager is not properly carrying out these responsibilities.

- A Board Member will not directly or indirectly use or attempt to use the authority or influence of his or her position to intimidate, threaten, coerce, command or influence any other person for the purpose of preventing such person from acting in good faith to bring to the attention of the General Manager or the Board any information that, if true, would constitute: a work-related violation by a Board Member or District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board Member or District employee.

Board members exercise responsible financial management in the conduct of District business.

- The Board ensures that the District maintains a system of auditing and accounting that completely and at all times shows the financial condition of the District in accordance with generally accepted accounting principles and legal requirements.
- The Board retains an independent auditor who conducts an annual audit of the District's books, records and financial affairs. The District's Finance Director and auditor will meet with the Board at the conclusion of the audit each year to review the audit results and recommendations.
- Board members will safeguard District property, equipment, moneys, and assets against unauthorized use or removal, as well as from loss due to criminal act or breach of trust.
- A Board Member will not ask or require a District employee to perform services for the personal benefit or profit of a Board Member or employee.
- Each Board Member will protect and properly use any District asset within his or her control, including information recorded on paper or in electronic form.
- Board members will maintain written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on the District's behalf.

The Board is collectively the unit of authority within the District. Apart from a Board member's normal function as a part of this unit, an individual Board member has no authority to bind the District to a specific course of action.

The Board, as governing body of the District, is charged with full jurisdiction over all water works necessary for the acquisition, storage, treatment, sale and distribution of water served to District customers. The General Manager is charged with carrying out this responsibility on a day-to-day basis.

- The Board sets District policy and the General Manager is responsible for execution of policy.
- The Board provides policy direction and instructions to the General Manager on matters within the authority of the Board by majority vote of the Board during duly convened Board and Board committee meetings.

- Members of the Board deal with matters within the authority of the General Manager through the General Manager, except as it pertains to the functions of the General Counsel.

Among other duties the Board has the authority to:

- Acquire or sell the District’s real property, to construct and operate facilities, to purchase equipment and enter into contracts;
- Adopt and oversee annual District budgets and finances, set water rates and charges, and approve the purchase of resources needed by management to carry out District policies; and
- Appoint and conduct annual performance evaluations of the General Manager and General Counsel, and approve compensation for all District employees.

### Communication to/from the Board

The tone and content of all communications should reflect the highest degree of professionalism and respect. Board members are responsible for the content of all text, audio, or images that they place or send, including those sent over the District computer network. Messages with fraudulent, harassing, abusive, obscene, vulgar, profane, offensive, or sexually suggestive content are prohibited. Messages with derogatory or inflammatory remarks related to a person’s membership in any protected class are also prohibited.

When a Board member receives a complaint or inquiry from the public regarding the District’s services and/or staff, the Board member should acknowledge the complaint or inquiry without making any promise or commitment as to what will happen on behalf of the District and forward the message to the General Manager. Board members are encouraged to engage the public on matters of District interest and concern, but cannot guarantee an outcome or result before the Board has acted.

#### *Emails/ Text Messages*

The District provides each Board member his or her own District email address. Routine communication should be by District email. Board members should refrain from using any communication method that may result in a serial meeting. For example, Board members should refrain from using the “reply all” function to respond to emails sent to the Board and should not use email or other means of communication to develop a consensus on any issue within the Board’s subject matter jurisdiction outside of a public meeting. (See later reference to the Brown Act, Section 3).

Email messages related to District business, sent from either District email accounts or personal accounts, are considered “public records” and accordingly, unless exempt from disclosure pursuant to the provisions of the California Public Records Act, may be disclosed in response to a public records request. These emails may also be subpoenaed as evidence in litigation. The District reserves the right to access and disclose all messages sent over its computer network and email system for any lawful purpose. The use of personal email accounts and personal electronic devices for District business is still subject to the disclosure requirement of the Public Records

Act or a subpoena. Board members should carefully consider whether the use of personal email for District business is appropriate.

Board members are responsible for checking their incoming email frequently, reading its contents and responding in a timely manner. Messages transmitted over the District email system should only involve District-related activities for the accomplishment of business-related tasks or any communication directly related to District business, administration or practices. The District email system should not be used for personal correspondence. All email messages received at or sent through the District server system, including emails sent and received by Board members' District email addresses, are property of the District and are not private.

Board members should remain aware that the rules applicable to emails also apply to text message communications. Therefore, Board members should use good judgment when sending and receiving electronic communications of any kind, including text messages. Board members should refrain from sending any electronic communications regarding matters within the subject matter jurisdiction of the Board during Board or committee meetings. Instead, Board member comments and discussions should occur aloud during the meeting in order to ensure members of the public may properly observe their elected official's opinions on District matters.

*Social Media*

Board members may use social media to engage in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding matters that are within the subject matter jurisdiction of the Board provided that a majority of the members of the Board do not use the internet-based social media platform to discuss among themselves business within the subject matter jurisdiction of the Board. Board members should remain aware that the phrase "discuss among themselves" is broadly defined to include any communications made, posted, or shared on an internet-based social media platform between members of the Board, including comments or use of digital icons that express reactions to communications made by other members of the Board, such as "like". For this reason, Board members should not comment or use any digital icons (i.e., like, dislike, etc.) expressing reactions to fellow Board members' social media posts related to District business. Board members should also refrain from taking positions on social media regarding any matter that is pending or may become before the Board.

Board members should remain aware that using social media accounts to discuss District business may create a "public forum", which may thereafter restrict the Board member's right to remove public comments on the account or block other users. It is recommended that Board members who utilize social media label personal accounts as such and do not use the accounts to speak on behalf of the District. If the Board member desires to maintain an official account that is intended to speak on District issues, it is recommended that the Board member consult with the District's Communications Department and General Counsel.



## Contact with Media

Because the public receives much of its information regarding District programs, policies and operations through the media, it is important that the District provide the media with the most complete and accurate sources of information available. Thus, the General Manager or his designee shall serve as the District's primary spokesperson and the media's primary source of contact with the District. Media inquiries about official District business, including requests for explanations of District policy, should be directed to the General Manager or his designee. Press releases and any other media communications are coordinated as part of the District's communications strategy and should therefore be prepared by and at the direction of the General Manager or his designee, including opinion/editorial pieces, which are reserved to address timely or critical topics, including matters of greater urgency, sensitivity or public interest.

Any Board member communications with the media, including the submission of opinion/editorial pieces by a Board member or members, in which the District is a subject matter of discussion shall be clearly identified as an expression of personal opinion of the individual Board member who is expressing his or her opinion to the media in accordance with *Use of Title/Advocacy on Non-Board Approved Matters* and as such should not use District time or resources.

## Use of Title/ Advocacy on Non-Board Approved Matters

Elected or appointed officials may not take positions on behalf of the District without the express prior permission and direction of the Board. When Board members are asked for the District's opinion on an issue, the response should reflect the position of the Board. Any position of the Board is developed through a collective action taken by the entire Board. If a Board member is uncertain as to the official position of the District, he/she should contact the General Manager.

If an individual Board member elects to engage in producing any correspondence, public comment or oral presentation or to engage in advocacy on matters other than in representation of a Board position, the Board member may not use his or her Board title, or otherwise suggest or imply that their positions reflect the position of the Board or the District. If a Board member produces or engages in advocacy that does not reflect a collective action taken by the entire Board and finds that it is necessary to make reference to their Board title, the Board member must include a disclaimer that immediately precedes and follows the opinion expressed by the individual Board member. The disclaimer must indicate that the position being expressed is that of the individual Board member and does not reflect the position of the District or the Board.

## Board Appointed Staff

### *General Manager*

The General Manager is appointed by and reports to the Board to carry out the day-to-day activities of the District pursuant to adopted ordinances, resolutions and policies. The General Manager has full charge and control of the maintenance, operation and construction of the waterworks system of the District and authority to employ and discharge employees, except

those appointed by the Board, and determine employee duties necessary to carry out these responsibilities. The General Manager shall provide a written monthly report to the Board summarizing the work performed during the month and other items of importance or interest to the Board, and approve, or appropriately delegate, all requisitions for materials, supplies, equipment and services necessary for carrying out the work, with Board approval where required.

*General Counsel*

The General Counsel is appointed by and reports to the Board, and is the legal advisor to the District regarding all legal matters pertaining to the District. The General Counsel performs such duties in relation to the District's legal matters as the General Manager, or Board may request. The General Counsel is authorized to retain outside counsel from time to time to represent the District in various matters.

*Board Secretary*

The Board Secretary is appointed by the Board and reports to the General Manager and attends all Board meetings and committee meetings; keeps a complete record of the proceedings including attendance; prepares and maintains official correspondence as directed; maintains custody of the District seal; countersigns all District warrants; maintains oaths of office of all appointed or elected officials and performs such other duties as may be required by the Board.

*Finance Director/Treasurer*

The Finance Director/Treasurer is appointed by the Board and reports to the General Manager and is the chief financial officer of the District. He or she supervises and administers the financial accounts, records and accounting controls in accordance with generally accepted accounting procedures regarding the financial status and requirements of the District.

*Consulting Auditor*

The Consulting Auditor shall be an independent public accountant annually retained by and reporting solely to the Board to make an examination of the District's financial position in accordance with generally accepted accounting and auditing standards. The Consulting Auditor may perform other services as requested by the Board from time to time. The Consulting Auditor is not an employee of the District and is engaged on a fee basis for the services rendered.

*Evaluation of Board Appointed Staff*

Annually, the Board should conduct performance evaluations of the General Manager and General Counsel. Any discussions among the Board regarding the performance or the evaluation of the General Manager or General Counsel will occur in closed session in compliance with the Brown Act.

# District Organization and Communications between Board Members and Staff

## *Organization*

The District is organized into five divisions with each division leader reporting directly to the General Manager. The five divisions are as follows:

- Administrative Services Division, including functional responsibilities of Finance, Customer Service & Meters, and Information Technology;
- Engineering Division, including functional responsibilities of Engineering, Planning, Design, Construction and Real Property;
- Water Resources Division, including the functional responsibilities of Water Supply, Water Quality, Water Laboratory Services and Water Conservation;
- Operations Division, including Water Treatment and Distribution, Distribution System Maintenance, and the functional responsibilities of Facilities Maintenance & Support; and
- Watershed Division, including Watershed Maintenance, Watershed Protection, and Safety/ Emergency Response.

Additionally, the District's Human Resources and Communications & Public Affairs Departments report directly to the General Manager. The General Counsel's Office reports directly to the Board and provides ongoing support to the General Manager and District staff regarding legal and related matters.

## *Communication between Board Members and Staff*

All communication between Board members and staff regarding District business should be coordinated through the General Manager, including requests from individual Board members. The General Manager will then generate a staff assignment to develop information or reports responsive to the Board member(s) request.

Responses from staff shall be communicated through the General Manager's Office or designee to the requesting Board member(s) and, if the General Manager believes that the information may be of general interest, the response may be sent to all Board members. This does not apply to requests for routine information (e.g. lake storage status, stream flows, fire conditions on the watershed, etc.). Routine information will be provided to Board members in the same way that it is provided to the general public.

## SECTION 3: Board Meetings

### Scheduling Meetings

#### *Regular Meetings*

The principal type of meeting at which District business is conducted is at a regular bi-monthly meeting of the Board. Regular bi-monthly meetings of the Board of Directors will normally be held the first and third Tuesdays of each month, to begin at or after 5p.m., with the typical start time at 6:30p.m., in the boardroom located at the District office (220 Nellen Avenue, Corte Madera, California) unless otherwise stated in a Board adopted calendar for the upcoming year. The Board will endeavor to adopt a Board calendar for the upcoming calendar year prior to December 31<sup>st</sup>, but not sooner than the seating of any new Directors elected in the November election. The Board Calendar will include the calendar of regular Board and committee meetings for January into the following calendar year.

Meeting notices and agendas for regular meetings are posted online at [marinwater.org](http://marinwater.org), and physically posted at the District office in Corte Madera, and at the Corte Madera, Fairfax, Mill Valley and San Rafael Civic Center public libraries on the Friday (at least 72 hours) before each meeting. Reports and other materials related to the agenda items are posted on the District's website and hard copies are available for review at the District office.

#### *Special Meetings*

Occasionally, special meetings of the Board are held to consider a particular topic, conduct a workshop or study session or, if necessary, hold a meeting at a time or date other than a regularly scheduled Board meeting. Agendas for special Board meetings must be posted in a public place and online at least one-day (24 hours) prior to the meeting. However, the District makes every effort to provide more than one-day (24 hours) notice prior to the meeting, when possible.

Regular and special meetings of the Board should generally be held within the boundaries of the District's jurisdiction with certain exceptions. The Board may adjourn a regular or special meeting to another place, date or time if the business considered at that particular Board meeting has not yet been completed and/or if Board deliberations would benefit from re-convening the meeting to another place, date or time.

#### *Emergency Meetings*

When an emergency occurs, such as a crippling disaster, work stoppage or other activity that severely impairs public health, safety or both, as determined by a majority of the Board, an emergency meeting may be called. Notice of an emergency meeting must be given to local media at least one hour prior to the meeting. However, in the case of a dire emergency such as mass destruction, terrorist act, or threatened terrorist activity posing peril so immediate and significant that providing one-hour notice may endanger public health, safety or both, as determined by a majority of the Board, notice need only be provided at or near the time that notice is provided to members of the Board.

### *Public Hearings*

Public hearings are held on matters of special importance when required by law.

### *Closed Sessions*

Meetings of the Board are either fully open or fully closed, and there is nothing in between. The Brown Act strongly favors open meetings and private discussions among a majority of the Board members are prohibited, unless expressly authorized by the Brown Act. Closed sessions are an exception to open meeting requirements, and the authority for such sessions is narrowly construed. The fact that material may be sensitive, embarrassing or controversial does not justify consideration in a closed session unless authorized by a specific statutory exception(s) to the Brown Act. The most commonly cited statutory exceptions relate to litigation (including threat of), real property negotiations, public employment issues, and labor negotiations.

Closed sessions are generally held immediately prior to or following regular bi-monthly meetings of the Board but may also be scheduled at other designated times. While public comment is permitted prior to the Board convening to closed session, only individuals having an official role in the closed session subject matter may attend and the confidential information discussed during the closed session is explicitly prohibited from unauthorized disclosure. It is incumbent upon those attending closed sessions to protect the confidentiality of those discussions.

Following a closed session the Board shall reconvene in open session and publicly report out final decisions and the votes for or against any final decisions. The Board President or General Counsel generally makes these public reports.

### *Committee Meetings*

Board committees act in an advisory capacity to the Board. Two Board members (Chair and Vice Chair) are annually appointed to each committee by the Board President with the advice and consent of other Board members.

Committee meetings are typically held in the boardroom at the District office, 220 Nellen Avenue, Corte Madera, California, unless otherwise noticed. Committee meeting notices and agendas are prepared and posted in accordance with the Brown Act similar to regular Board meetings and minutes are prepared for each meeting. The minutes are included in the next committee meeting agenda packet and approved by the committee during a subsequent meeting of the committee.

The District dually notices all committee meetings as both committee meetings and special meetings of the Board. This ensures that a quorum of the Board may attend and participate in the committee meeting, while maintaining compliance with the Brown Act. If less than a quorum of the Board (less than three Board members) participates in the meeting, it is a committee meeting. When a quorum of the Board (three or more Board members) participates in the meeting, it is a Board meeting. The Board, as a practice, generally does not take final action on items during committee meetings, unless District staff determines the urgency of the item

requires immediate action that cannot be delayed until a subsequent regular bi-monthly Board meeting. This practice generally allows members of the public multiple opportunities to submit comments and participate in the Board's decision-making process prior to the Board taking final action on an item.

Currently there are four Board committees:

- Communications & Water Efficiency Committee, which generally meets quarterly on the 3rd Wednesday of the month in February, May, August and November;
- Finance & Administration Committee, which meets on the 4th Thursday of each month;
- Operations Committee, which meets on the 3rd Friday of each month; and
- Watershed Committee, which generally meets quarterly on the 3rd Thursday of the month in March, June, September and December.

From time-to-time the Board may establish ad hoc committees to address issues with a limited scope and duration. The Board President may appoint Board members to ad hoc committees. These committees are not subject to the Brown Act, since a quorum of the Board (3 or more members) does not attend or participate.

Additionally, Board members may be assigned to represent the District before other broad based regional groups, such as: Tamalpais Lands Collaborative Executive Committee, Lagunitas Creek Sediment and Riparian Management Plan Technical Advisory Committee, North Bay Watershed Association, Tomales Bay Watershed Council, Sonoma County Water Agency Water Advisory Committee, North Bay Water Reuse Authority, Las Gallinas Recycled Water Committee, and Association of California Water Agencies.

## Preparation of Agenda and Order of Business

### *Agendas*

Meeting agendas specify the date, time and location of the meeting, in accordance with Brown Act requirements, and must contain a brief general description of each item of business to be transacted or discussed at the meeting. It should be clear from the agenda wording what will be discussed and what action is being proposed so members of the public can determine if they would like to observe or participate in the meeting. The Brown Act generally prohibits any Board action or substantive Board discussion of items that are not on the agenda.

Most items on the agenda originate from the General Manager and District staff. Staff maintains a detailed list of upcoming agenda items that is updated after each Board and committee meeting. Typical types of agenda items include the following:

- Policy direction from the Board;
- Public hearings;
- Items with overarching policy implications (e.g. strategic planning, budgeting, labor negotiations);
- Actions required by law;

- Actions on the overall implementation of a Board approved project or program (e.g. award of construction contracts, consideration of an environmental review document, etc.);
- Discretionary decisions for which authority has not been delegated to the General Manager; and
- Informational items to update the Board and public on District matters.

A draft agenda for regular Board meetings is developed by the General Manager and reviewed by the Board President prior to the agenda being publicly posted. The Board formally adopts the agenda for each meeting as an initial order of business after each meeting is called to order.

#### *Future Agenda Items*

Board members may request that items be placed on agendas during discussion of the “Future Board and Committee Meetings and Upcoming Agenda Items” portion of the agenda. A motion by a Board member and a second by another Board member will initiate bringing the item to a future meeting for discussion and consideration.

#### *Urgency Items*

In rare cases, a legitimate urgent need may arise that must be acted upon even though the item was not included on a posted agenda. The General Counsel shall be consulted on all urgency items. In order for the Board to take action on an urgency item, two determinations must be approved by a two-thirds vote of the Board members present (or by unanimous vote if less than two-thirds (2/3) but more than a quorum of members are present):

- There is an immediate need to take action; and
- The need for action arose after the agenda-posting deadline.

If the above requirements are met, the Board may vote to add the urgency item to the agenda.

#### *Attendance, Conduct, Quorum and Voting, Rules of Order, Brown Act*

Board members should strive to attend all Board and committee meetings in person. If a Board member will be absent, he or she should notify the General Manager and Board President as soon as possible.

#### *Teleconferencing*

A Board member may participate in meetings via teleconference when not able to attend in person. Unless a Board member has an emergency circumstance or just cause, as those events are defined under section 54953 (i)(1) and (2) of the Brown Act, for each meeting that a Board member will participate by teleconference, the Board member should notify the Board Secretary of his or her teleconference location prior to the agenda being posted, so that the agenda for the meeting will properly identify the teleconference location. All teleconference locations must be accessible to the public, have a copy of the agenda posted, and allow members of the public to

address the Board at the teleconference location. A quorum of the Board must be located within the District boundaries, regardless of remote participation.

Alternatively, if the Board member has need to attend the meeting remotely due to familial caregiving needs, a contagious illness, a disability or travel on District business or other physical family or medical emergency to prevents that member from participating in person, the Board member need not provide their remote location, but should notify the Board Secretary as soon as possible. The Board member participating under the just cause or emergency provisions of the Brown Act, will need to inform the Board of the need for remote participation, must disclose whether there is any other person over 18 years old in the room with them during the meeting and must participate in the meeting via audio and visual technology.

When a Board member or members, participate via teleconference meeting all votes must be taken by roll call.

*Quorum/ Board Action*

The Board shall act only by motion, resolution or ordinance. A majority of the board shall constitute a quorum for the transaction of business; however, no ordinance, motion or resolution shall be passed to become effective without the affirmative vote of a majority of the members of the board. A supermajority of votes is necessary to consider an urgency item not previously posted on the Board meeting agenda or to take certain actions in response to an emergency situation. The District utilizes the parliamentary procedure from Robert’s Rules of Order to conduct Board meetings.

*Brown Act (Opening Meetings Law)*

In compliance with the Ralph M. Brown Act (“Brown Act”), all meetings of the Board are to be held in open session, unless a closed session is expressly permitted by the Brown Act, and the general public is permitted to attend all open sessions. District Board members promote fair and open public processes. Board members, and persons elected but who have not yet assumed office as members of the Board, will fully comply with California’s the Brown Act. In order to ensure proper public participation and that all decisions are reached only during public meetings, Board members should refrain from participating in phone calls or emails that:

- Discuss issues within the Board’s subject matter jurisdiction and are directed to a majority of the Board members;
- Take a position or make commitments on matters yet to be decided by the Board; and/or Communicate his/her position on a matter pending before the Board to all other members of the Board.

*Meeting Minutes*

Draft meeting minutes are prepared by the Board Secretary and presented to the Board and/or committee for approval at the next meeting of the Board or applicable committee.



## Safeguard Confidential Information

Board members will not disclose information that legally qualifies as confidential to unauthorized persons without approval of the Board of Directors. This includes information that (1) has been received for, or during, a closed session Board meeting, (2) is protected from disclosure under the attorney/client or other evidentiary privilege, or (3) is not disclosable under the California Public Records Act.

A Board member may make a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury necessary to establish the alleged illegality of a District action. Prior to disclosing confidential information, however, a Board member will first bring the matter to the attention of either the President of the Board or the full Board, in a lawful and appropriate manner, to provide an opportunity to cure an alleged violation.

## SECTION 4: Conference, Training, Reporting Requirements

### Conferences

In accordance with Board policy, Board members may elect to attend conferences, meetings and other functions from which the District derives specific benefit through attendance, including those affiliated with District membership in various associations. After attending the conference, meeting or training, the Board member who attended on behalf of the District should provide a brief oral report during the Directors' and General Manager's Announcements portion of the agenda to share information about the event with fellow Board members and the public.

### Mandatory Ethics and Sexual Harassment Prevention Training

This Policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members' conduct and in achievement of the District's mission. The proper operation of the District requires that Board members remain objective and responsive to the needs of the public they serve, make decisions within the proper channels of governmental structure, and not use public office for personal gain. Pursuant to provisions of the California Government Code set forth in Assembly Bill 1234, Board members are required to receive two hours of ethics training within the first six months of taking office and every two years thereafter.

Board members must also receive two hours of sexual harassment prevention training within the first six months of taking office and every two years thereafter. The District's current Sexual Harassment Policy is intended to prevent sexual harassment in the work environment and provides procedures for resolving complaints of sexual harassment.

The Board Secretary maintains certificates of completion and a training log for all Board member training. The Board Secretary keeps Board members informed of all training requirements and applicable due dates to ensure compliance with applicable laws.

Board members are encouraged to seek other training pertinent to local public agency officers. Such training may be found online through the Institute for Local Government at [www.ca.ilg.org](http://www.ca.ilg.org).

### Public Records Act

All records of the District, except those exempt from disclosure pursuant to the California Public Records Act and/or other applicable laws, are public records. Any person may examine public records during regular business hours of the District or may obtain a copy of requested records in accordance with the California Public Records Act. For convenience to the public, the District has a Public Records Act Request form on its website and provides electronic records at no charge to the public.

The Board Secretary maintains a records retention policy and works with the General Counsel's Office in responding to Public Records Act requests. The Board Secretary and the General Counsel conduct periodic in-house trainings pertaining to the California Public Records Act. Board members are encouraged to participate in said training.

### Conflicts of Interest

Board members should avoid both actual conflicts of interest and the appearance of conflicts of interest in their roles as members of the Board.

- A Board member will not have a financial interest in a contract with the District, or be a purchaser at a sale by the District or a vendor at a purchase made by the District, unless his or her participation is legally authorized.
- A Board member will not participate in the discussion, deliberation or vote on a matter before the Board, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter under California law.
- A Board member will not accept any honoraria.
- A Board member will not accept gifts that exceed the limitations specified in California law. Board members will report all gifts, campaign contributions, income and financial information as required under the District's Conflict of Interest Code and the provisions of the Fair Political Practices Act and Regulations.
- A Board member will not recommend the employment of a relative to the District or to any person known by the Board member to be bidding for or negotiating a contract with the District.

### Form 700

State laws attempt to eliminate any action by a Board member that may implicate a conflict of interest. The purpose of such laws and regulations is to ensure that all actions taken are in the public interest. The Political Reform Act of 1974 requires public officials and designated employees to disclose financial interests that could cause a conflict of interest. Public officials may be required to disqualify themselves from making, participating in, or attempting to

influence any decision that will materially affect their financial or economic interest. If a Board member is unsure whether or not he or she may have a disqualifying economic interest, he or she should consult the General Counsel as soon as possible.

Economic interests include, but are not limited to, those items public officials are required to report on the Form 700, Fair Political Practices Commission (“FPPC”) “Statement of Economic Interest” and include sources of income, business interests and real estate investments. The Form 700 also requires the annual reporting of all gifts received that are valued at \$50 or greater in a calendar year. The Political Reform Act precludes the acceptance of any gifts over a specified value, currently more than \$590 in a calendar year. These Form 700s are provided to Board members each calendar year, and within 30 days of assuming or leaving office, and filed with the Board Secretary who forwards them to the FPPC and makes them available for public inspection and reproduction.

*Conflict of Interest Reporting at Board Meetings*

A Board member may be disqualified from participating in agenda items that present a financial conflict of interest. If a Board member is disqualified due to a financial conflict, he or she must abstain from the item, state the reason for the disqualification, and leave the room during the agenda item (unless the item is listed on the consent calendar).

*Incompatible Offices*

Except as expressly permitted by law, Board members appointed or elected to another public office, the duties of which may legally require action contradictory or inconsistent with the interests of the first entity, will resign from the former Board.

*Political Contributions/Campaign Rules*

The Levine Act (the Political Reform Act section 84308) Prohibits an Official from soliciting, accepting or directing campaign contribution of \$250 or more from a participant (or their agent) having any a proceeding in front of the agency. If a Board member has accepted campaign contributions within the past twelve months, he/she is prohibited from participating in the proceeding involving the donor or donor’s agent, unless the Board member has cured the conflict by returning the donation within thirty days of learning of the donation or proceeding.

Additionally:

- Board members will not solicit political funds or contributions of in-kind services at District facilities.
- A Board member will not use the District’s seal, trademark, stationary, or other indicia of the District’s identity or facsimile thereof in any solicitation for political contributions.

*Candidate’s Statement*

A Board member will not include false or misleading information in a candidate’s statement for a general District election filed pursuant to Section 13307 of the Elections Code.

## Ethics Violations

A perceived ethics violation by a Board member should be referred to the District General Counsel for review and consideration of any appropriate action warranted. An ethics violation may be addressed by remedies available by law, including but not limited to:

- Adopting a resolution expressing disapproval of the conduct of the Board member who has violated this policy,
- Injunctive relief, or
- Referral of the violation to the District Attorney and/or the Grand Jury.

## SECTION 5: Compensation/Benefits

### Board Compensation

The District Board members receive a per diem amount as compensation “for each day’s attendance at meetings of the Board or for each day’s service rendered as a member of the Board by request of the Board.” (District Code §2.10.060) That per diem amount is set by ordinance of the Board. Pursuant to State law, no director may receive compensation for more than 10 days in any calendar month. Additionally, Board members receive medical and dental benefits consistent with other District employees.

The District Board of Directors has adopted a Board policy regarding Compensation of Elected or Appointed Officials to address Board member compensation, Board Policy No. 42. Each Board member shall review and abide by the Board Compensation Policy.

### Reimbursement of Travel Expenses

Board members may attend, travel and seek reimbursement of all normal and necessary expenses incurred while attending conferences, training, meetings and other functions from which the District derives a specific benefit through attendance. Only that travel/attendance which serves a District purpose and is deemed necessary and/or advantageous to the District shall be approved and reimbursed. Travel shall be by means most economical to the District. Board members are expected to exercise sound judgment in the incurring and submittal of travel expenses in keeping with the standards and proprieties of a visible and accountable public agency.

The District Board of Directors has adopted a Board Travel Reimbursement Policy, Board Policy No. 41. All Board members shall review and abide by the Board Travel Reimbursement Policy.

## SECTION 6: Other Related Information

### *Human Resources*

The Board has established a District objective to “cultivate a meaningful work environment that successfully recruits, retains, and develops an engaged, high performing, mission- and vision-focused team.” This objective is based on District values of promoting diversity in and equitable treatment of its employees; providing a healthy work environment; and continuously improving

through the promotion of initiatives, leadership and personal development and training. Ensuring District HR policy is current and consistent with this strategy is a shared responsibility between staff and the Board. Board members should be familiar with key HR documents including but not limited to: the Equal Employment Opportunity Policy, labor agreements with both represented and non-represented employees, benefit summaries, job descriptions and salary schedules.

*Risk Management and Emergency Operations*

The District maintains a range of insurance coverage to limit financial risks, which may occur from an uncertain event or loss. The District's insurance portfolio includes both a self-insured component and third-party insurance coverage. The third-party insurance coverage provides coverage for the following: Property Damage, General & Auto Liability (including vehicle physical damage), Public Officials Errors and Omissions (E&O) and Employee Practices Liability, Employee Fidelity, Workers' Compensation and Cyber Liability coverage.

The Public Officials E&O coverage insures Board members and District officers against claims made against them for "breach of duty" occurring through negligence, error or unintentional omission. Violations of certain laws and regulations by a Board member, such as discrimination, harassment or fraud, may result in that individual member being personally liable for damages that may not be covered by this insurance policy.

All insurance coverage is annually reviewed and approved by the Board. Additionally, District contract language for procuring equipment, supplies and services (including consultant services), includes general provisions that reduce potential risks to the District. These contracting provisions include, but are not limited to, the following topics: indemnification, insurance, nondiscrimination and conflict of interest.

The District maintains an active emergency preparedness program that includes an Emergency Operations Plan (EOP) to help manage District critical functions during an emergency and ensure the safety of staff. The EOP has been prepared to provide a plan of action in response to various emergencies that may involve the District and/or its facilities. The plan primarily addresses the possible emergencies of earthquake, electrical power failure, fire, flood, hazardous or toxic spills, potential water contamination, vandalism and sabotage, and vehicle or personnel accidents. The District coordinates its EOP, functions and response with first responders from other public and private entities and organizations, and the District designates staff as liaisons with general-purpose government Emergency Operations Centers as necessary. The General Manager, or his designee, may request mutual aid assistance from other local government or public agencies, or commit District resources to other agencies requesting aid. The General Manager provides regular reports to the Board on the District's response to emergency situations and presents annual reports on the District Emergency Preparedness Program. Each Board member receives a copy of the EOP, which is updated from time to time.

When an emergency situation arises, the General Manager may award necessary contracts without competitive bidding. The Board must ratify the emergency contract award at the next regular Board meeting, or within 14 days, whichever is sooner.

*Electronic Equipment, Data and Software*

The District's employees are given access to the District's software, information and applications to perform the functions of the District. Information and applications developed by employees are added to the District's overall information system. The District purchased data for the District's Geographic Information System from the County of Marin.

Board members are regarded as "District employees" with respect to the use of District electronic equipment, data and software and should follow the same rules as District employees. As with any District employee, Board members should only use these materials for District business and assure no dissemination of the materials to the public. Any requests for use of District electronic data and software will be subject to approval by the General Manager.

*Community Outreach*

Supplementing Board member assignments to participate in broad based regional groups, the District provides extensive community outreach programs through its Water Conservation, Watershed Management and Public Information departments. Outreach activities and opportunities can be located on the District's website and through its social media accounts.

*Association Memberships*

The District holds memberships in and attends meetings of associations, which have applicability to District functions, and looks upon such memberships as opportunities for in-service training. Board members may participate in the following associations with which the District holds memberships: the American Water Works Association (AWWA), the Association of California Water Agencies (ACWA) and others as may be prescribed to by the District. Board members who vote or hold a formal position in these associations recognize that they are representing the District when attending these functions.

When Board members are attending meetings on their own accord, and are not requested to attend by the Board, Board members are cautioned that they are not authorized to officially represent the District at those meetings.

*Orientation of New Board Members*

Newly elected Board members are subject to the Brown Act immediately upon being elected to office, even though their swearing in does not occur until noon on the first Friday in December, or following certification of the election results. Current and newly elected Board members should remain cognizant of this when communicating with each other or other Board members in order to prevent an unintentional serial meeting from occurring, which would constitute a violation of the Brown Act.

The Board Secretary is the point of contact for newly elected Board members regarding:

- Filing an assuming office Statement of Economic Interests Form 700 with the FPPC within 30 days of taking office;

- Completing mandatory Ethics and Harassment training;
- Procuring a suitable photograph and developing a brief biography to be posted on the District website;
- Completing employee on-boarding, payroll and benefit paperwork and setting up a District email account; and
- Providing important reading materials including the Board of Directors Handbook, District policies, recent water rate information and Cost of Service Analysis, budgets, capital improvement program information and Water Resources Plan.

The General Manager is the point of contact for newly elected Board members to tour District offices, meet staff, visit key facilities and address pertinent questions.

The General Counsel is the point of contact for all legal matters, including conflicts of interest and the Brown Act.





The Project will take place in the locations described in Table 1 and shown on the map provided in Attachment 2.

**Table 1**  
**Pipeline Replacement Locations**

STREET	LENGTH	INSTALLATION DATE	EXISTING SIZE & TYPE*
Drake Avenue	5,390 ft	1959	8" CIP
Cole Drive	994 ft	1959	6" CIP
Eureka Street	653 ft	1959	6" CIP
Pacheco Street	742 ft	1959	6" CIP
Dutton Court	640 ft	1959	6" CIP
Waldo Court	382 ft	1961	6" CIP
Phillips Drive	399 ft	1962	6" AC

\*CIP = Cast Iron Pipe, AC = Asbestos Cement

These street segments were evaluated for the installation of recycled water piping. The nearest existing recycled water pipeline is approximately 12.0 miles away located on intersection of San Pedro Road and Sequoia Road in the community of Los Ranchitos. The closest waste water treatment plant, Mill Valley Sewage Treatment Plant, is located approximately 3.5 miles away in Mill Valley however their facilities are not equipped to provide tertiary recycled water.

On September 24, 2024, the District opened three (3) bids, as shown in Table 2, for the Marin City Phase I Pipeline Replacement Project. Maggiora & Ghilotti, Inc. submitted the lowest responsive and responsible bid in the amount of \$2,594,594. Therefore, staff recommends that the Board of Directors approve a resolution awarding Contract No. 2019 to Maggiora & Ghilotti, Inc. in the amount of \$2,594,594 and authorize the General Manager to execute any necessary amendments to Contract No. 2019, which do not exceed \$260,000.

**Table 2**  
**Bid Results**  
**Marin City Phase I Pipeline Replacement Project**

Bid Rank	Contractor Name	Bid Amount
1.	Maggiora & Ghilotti, Inc.	\$2,594,594.00
2.	D&D Pipelines, Inc.	\$2,868,953.00
3.	Corcus Construction, Inc.	\$4,391,858.00

*Engineer's Estimate: \$2,800,000*

**Budget:**

Contract Award:	\$2,594,594
Contingency (10%):	\$260,000
Materials:	\$920,000
District Labor/Inspection:	\$250,000
County Pavement Reimbursement:	\$44,998.20
<b>Total Budget:</b>	<b>\$4,069,592.20</b>
<b>Budget Category:</b>	<b>A1A02A</b>

**Project Implementation:**

Project Advertisement:	September 10, 2024
Bid Opening:	September 24, 2024
Project Award:	November 6, 2024
Estimated Completion Date:	November 1, 2025
Duration:	360 days



**ENVIRONMENTAL REVIEW:** The Project was presented to the Board of Directors on July 21, 2023 during a regularly scheduled Board meeting. The Board approved the filing of the Notice of Exemption by the Director of Engineering. The project was found to be Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15302(c), replacement or reconstruction of existing pipelines involving no or negligible expansion of capacity. The Notice of Exemption was filed with the County of Marin on August 2, 2023.

**FISCAL IMPACT:** The District was awarded a Bay Area Integrated Regional Water Management (IRWM) Proposition 1 Round 2 grant in the amount of \$6,408,000. The IRWM grant selected Marin City and San Rafael to receive funding for water resiliency projects. Marin City Phase I Pipeline Replacement Project will be cost shared with grant funding from the IRWM and the District’s Capital Program.

The total cost to complete the Marin City Phase I Pipeline Replacement Project is estimated at \$4,069,592.20

**ATTACHMENT(S):**

1. Proposed Resolution
2. Site Map
3. Reimbursement Agreement – County of Marin

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Engineering	 <hr/> <b>Alex Anaya</b> Engineering Director	 <hr/> <b>Ben Horenstein</b> General Manager

**MARIN MUNICIPAL WATER DISTRICT**

**RESOLUTION NO.**

**A RESOLUTION OF THE BOARD OF THE MARIN MUNICIPAL WATER DISTRICT  
APPROVING AWARD OF CONSTRUCTION CONTRACT NO. 2019 TO MAGGIORA &  
GHILOTTI, INC. FOR THE MARIN CITY PHASE I PIPELINE REPLACEMENT PROJECT**

**WHEREAS**, on September 10, 2024, the District advertised Contract No. 2019, Marin City Phase I Pipeline Replacement Project (GC25005), which will replace approximately 9,200 feet of piping; and

**WHEREAS**, the District received and publicly opened three (3) bids on September 24, 2024, of which Maggiora & Ghilotti, Inc. bid \$2,594,594 was the lowest responsive and responsible bid.

**NOW, THEREFORE, THE BOARD OF DIRECTORS RESOLVES THAT:**

1. The bid of \$2,594,594 submitted by Maggiora & Ghilotti, Inc. for the Marin City Phase I Pipeline Replacement Project under Contract No. 2019 (“Contract”) was the lowest responsive and responsible bid submitted therefor, and said bid is hereby accepted.
2. A Contract for this project be awarded to said low bidder, and the General Manager is authorized and directed to execute said Contract on behalf of the District upon receipt of a performance bond, payment bond, proof of insurance, and the executed contract for the work from said bidder.
3. The General Manager is authorized to execute any and all future amendments to the Contract, which he deems necessary, without further Board approval, so long as those amendments to the Contract do not exceed \$260,000.
4. Upon complete execution of said Contract, the bonds and/or checks of the other bidders are to be returned to said other bidders, and all bids other than that of Maggiora & Ghilotti, Inc. are to be rejected.
5. The project is Categorically Exempt from review under Section 15302(c) of the CEQA Guidelines inasmuch as it is the replacement of existing water pipeline involving negligible or no expansion of capacity.

**PASSED AND ADOPTED** this 6th day of November, 2024, by the following vote of the Board of Directors.

AYES:

NOES:

ABSENT:

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**Ranjiv Khush**  
**President, Board of Directors**

**ATTEST:**

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**Terrie Gillen**  
**Board Secretary**

# MARIN CITY - PHASE I PIPELINE REPLACEMENT PROJECT

Section 8. Item #g.

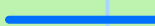


Attachment 2

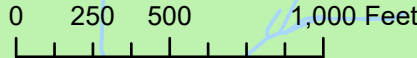


TANK



## Legend

-  MARIN CITY - PHASE I - PIPELINE REPLACEMENT PROJECT
-  MARIN CITY PUMP STATION
-  MARIN CITY WATER STORAGE TANK



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**COOPERATIVE AGREEMENT BY AND BETWEEN THE MARIN MUNICIPAL  
WATER DISTRICT  
AND THE COUNTY OF MARIN**

This Agreement is made this \_\_day of \_\_\_\_\_, 2024\_ (“Effective Date”) by and between the Marin Municipal Water District (hereafter “**DISTRICT**”) and the County of Marin (hereafter “**COUNTY**”).

**RECITALS**

A. DISTRICT and COUNTY support the coordinated paving efforts of Pacheco Street and Eureka Street that is being trenched by the DISTRICT for the installation of its pipeline and can be prioritized for paving by the COUNTY.

B. DISTRICT has the Marin City Phase I Pipeline Replacement Project (“PIPELINE PROJECT”), which proposes to install its new water main on Pacheco Street and Eureka Street and would require T-grind restoration of the COUNTY roadway;

C. DISTRICT and COUNTY have calculated the dollar value of the T-grind restoration for the PIPELINE PROJECT as \$44,998.20. A plan of the restoration limits of the PIPELINE PROJECT is attached to this Agreement and incorporated herein as Exhibit A (hereafter the “Work”), which forms the basis for the determination of the cost of the Work. T-grind is defined by milling the top two inches of existing asphalt and replacing it with a new two-inch layer of hot mix asphalt with a 8-foot width for pipe mainline and 6-foot width along service laterals for both Pacheco Street and Eureka Street upon completion of new pipeline installation in connection with the PIPELINE PROJECT.

D. COUNTY proposes to design and construct a project to pave the full width of Pacheco Street and Eureka Street (“COUNTY PROJECT”).

E. DISTRICT and COUNTY by this Agreement, seek to coordinate the PIPELINE PROJECT and COUNTY PROJECT to save costs and avoid duplicative paving projects.

F. DISTRICT and COUNTY have mutually agreed to share the cost of the COUNTY PROJECT provided the District not pay more than would have been necessary if the DISTRICT PROJECT included County standard paving restoration.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DISTRICT and COUNTY mutually agree as follows:

1. DISTRICT agrees that it shall:
  - a. Act in the best interest of COUNTY always with respect to this Agreement.
  - b. Notify COUNTY once DISTRICT has completed the PIPELINE PROJECT for which DISTRICT will install a two-inch pave plug for any trenching associated with the PIPELINE PROJECT in lieu of full land T-grind paving.
  - c. Complete the PIPELINE PROJECT no later than December 31, 2025 to allow County access to begin COUNTY PROJECT.
  - d. Reimburse COUNTY for the area of Marin County Unified Construction Standards T-grind limits multiplied by the DISTRICT's 'Unit Price'. The 'Unit Price' will be the average of the last three publicly bid DISTRICT projects for which T-grind paving was performed. The 'Unit Price' averaged by the DISTRICT is \$3.90 per square foot of paving. The COUNTY agrees with this 'Unit Price'. The DISTRICT restoration limit is 11,538 square feet, as shown in Exhibit A setting forth the Work, which totals \$44,998.20.
  - e. Reimburse COUNTY in the amount of \$44,998.20 within thirty (30) days after the COUNTY notices the DISTRICT of completion of the COUNTY PROJECT.
  
2. COUNTY agrees that it shall:
  - a. Act in the best interest of DISTRICT always with respect to this Agreement.
  - b. Accept the agreed upon reimbursement amount of \$44,998.20 in exchange for the DISTRICT to install a two-inch plug pave in lieu of the paving that otherwise would have been required under COUNTY standards.
  
3. By entering into this Agreement, DISTRICT and COUNTY mutually understand and agree to the following:
  - a. The final cost is based on constructed quantities established by the T-grind limits identified on the PIPELINE PROJECT plans and as set forth in Exhibit A.
  - b. COUNTY will notify the DISTRICT within thirty (30) days after the COUNTY PROJECT Notice of Completion is filed requesting

reimbursement in the agreed amount of \$44,998.20 for the work associated with the pavement restoration as identified by the PIPELINE PROJECT T-grind limits.

- c. Upon completion and approval of the work under this Agreement, each agency will resume maintenance responsibility in accordance with their respective requirements of state law.
4. This Agreement shall terminate upon completion of the construction of the COUNTY PROJECT and receipt of reimbursement by DISTRICT or by mutual agreement of the parties.
  5. This Agreement constitutes the entire Agreement, supersedes all prior written or oral understandings, and may not be extended past the aforementioned term or amended without written consent from both parties.
  6. Indemnification, Release, Waiver.
    - a. To the fullest extent permitted by law, COUNTY shall indemnify and hold harmless DISTRICT, its board members, officers, agents and employees from any and all claims, demands, injury, and/or liability, direct or indirect, incurred by reason of any negligent act or willful misconduct of COUNTY, its officers, agents, employees, and sub-contractors, under or in connection with this Agreement.
    - b. To the fullest extent permitted by law, DISTRICT shall indemnify and hold harmless COUNTY, its board members, officers, agents and employees from any and all claims, demands, injury, and/or liability, direct or indirect, incurred by reason of any negligent act or willful misconduct of DISTRICT, its officers, agents, employees, and sub-contractors, under or in connection with this Agreement.
    - c. In the event of claims or litigation arising out of the PIPELINE PROJECT, the COUNTY PROJECT or this Agreement, the parties agree to work cooperatively in defense of same. This Section 6 shall survive the termination of this Agreement.
  7. Severability: Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
  8. Dispute Resolution: Any dispute or claim in law or equity between DISTRICT and COUNTY arising out of this Agreement shall be resolved by negotiation between the



parties. If no resolution is achieved, the parties agree to formal negotiations by a mediator mutually chosen and paid for by both parties.

[SIGNATURES ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereby have executed this Agreement on the first date written above.

COUNTY OF MARIN

MARIN MUNICIPAL WATER DISTRICT

\_\_\_\_\_  
President of the Board of Supervisors

\_\_\_\_\_  
Board President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Clerk for the County

By: \_\_\_\_\_  
Board Secretary

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Attorney for the County

ATTACHMENTS – Exhibit A  
APPROVED AS TO FORM:

BY:  
\_\_\_\_\_  
\_\_\_\_\_  
General Counsel





**ENVIRONMENTAL REVIEW:** Not Applicable.

**FISCAL IMPACT:** The fully burdened annual salary with benefits for the existing Information Systems Analyst Supervisor is \$248,104. The fully burdened annual salary with benefits for the new Records Manager position is \$265,471. This is an increase of 7.0%. Salary and benefits and is included in the Engineering Division budget. Filling this position will not increase the total number of budgeted full time equivalents (FTE) within the District.

**ATTACHMENT(S):** None.

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Engineering		
	<b>Alex Anaya</b> Engineering Director	<b>Ben Horenstein</b> General Manager



# STAFF REPORT

**Meeting Type:** Board of Directors  
**Title:** Purchase of SCADA Replacement Equipment to Replace Outdated Equipment at the Bon Tempe Treatment Plant  
**From:** Darren Machado, Director of Operations  
**Through:** Ben Horenstein, General Manager  
**Meeting Date:** November 6, 2024

**TYPE OF ACTION:**      X      Action                              Information                              Review and Refer

**RECOMMENDATION:** Authorize the General Manager to execute a purchase order for replacement SCADA Equipment from Graybar to replace the outdated SCADA Equipment at the Bon Tempe Treatment Plant in the amount of \$159,576

**SUMMARY:** As water treatment plant automated control technology advances, equipment must be upgraded to maintain functionality, efficiency and availability. Most controls upgrades are in the form of electrical components which must be replaced more often than traditional water components like pipes and valves due to shorter lifecycles and becoming functionally obsolete. The Supervisory Control and Data Acquisition (SCADA) system that District Operators use to run the Bon Tempe Treatment Plant is hosted on numerous Programmable Logic Controllers and support equipment. To perpetuate reliability, planned replacement of existing controls equipment was implemented using a phased approach. The first phase, which included purchase of replacement Programmable Logic Controls, was carried out in July of this year. This second phase of replacement includes remote Input-Outputs, and other appurtenant devices.

**DISCUSSION:** Bon Tempe Treatment Plant is a conventional surface water treatment plant that uses staged clarification, flocculation, and sedimentation processes. While these treatment processes are widely known to reliably produce high quality finished water, advances in water treatment technologies and monitoring requirements have changed notably since Bon Tempe Treatment Plant was first brought online in 1954.

While operation of the treatment process was once done completely by Treatment Plant Operators, technology developed over the last 40 years has reduced the manual operations processes by using programmable equipment and remote monitoring. Currently, processes can be automated using sensors that monitor flow, pressure, voltage, current, electrical charge, chemical residual or other

water quality characteristics. Operators interact with the Bon Tempe Treatment Plant through a SCADA system, which is customized software that allows operators to interface with the remote sensors.

The SCADA software is implemented through the installation of Programmable Logic Controller (PLC) and Input-Output (I/O) equipment that are utilized to provide communication between the Operator and the remote equipment. Programming was introduced to the Bon Tempe Treatment Plant in 1982 with the first version of PLCs. Since then, various components have been upgraded through maintenance, and once with a planned overhaul. Currently, Bon Tempe Treatment Plant is running on its' second generation of PLCs installed around 2005. The PLCs, including appurtenant hardware like controllers, hot standby units, remote I/Os, and Ethernet cards, were discontinued in 2022 and new installations can no longer be purchased. According to the manufacturer, replacement parts for the existing units will soon become unavailable.



In July of 2024, Operations purchased replacement PLCs for the Bon Tempe Treatment Plant under a first phase of an overall controls program upgrade. To complete the upgrade, parts included in this purchase will allow for completion of the second phase of planned improvements. Installation will be completed by District staff over several days during planned treatment plant shutdowns.

Staff is recommending the Board authorize the General Manager to purchase replacement Input-Outputs in support of the SCADA X80 Upgrade Phase 2 project from Graybar for the Bon Tempe Treatment Plant in the amount of \$159,576.

**ENVIRONMENTAL REVIEW:** Not applicable.

**FISCAL IMPACT:** Funding for this operational maintenance item was identified in the adopted 2024/25 Capital Budget. The cost of the equipment purchase is \$159,576.

**ATTACHMENT(S):** None.

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Operations Division	 Darren Machado Director of Operations	 Ben Horenstein General Manager





Factors software. The proposed agreement is structured as a five-year commitment with annual payments due on the anniversary date of the agreement each year.

**DISCUSSION:** This staff report details the software as a service (SaaS) subscriptions required to implement core HR, time-entry, employee self-service, and payroll functions on SAP’s SuccessFactors platform. It also includes the SAP Integration Suite, which is required to integrate these new cloud services with the District’s legacy SAP installation. Lastly, as a SaaS subscription, SAP Support is also included and key to reducing the overall management and systems administration burden on District staff.

There are several benefits to the District in adopting this phased approach:

**Minimal Disruption:** Implementation during Phase Zero will be done in parallel with the current SAP system and daily operations will not be adversely impacted. With exception of a very short “cutover” window, which will include training, staff will be largely unaffected by any changes.

**Addresses Current Pain Points:** The processes addressed in Phase Zero (HR and Payroll) pose significant challenges on the current system – creating a great deal of extra work every cycle and involving a great deal of manual entry, which introduces further errors.

**Introduces Self-Service Capabilities for All Employees:** A key benefit of this phase will be the introduction of self-service capabilities found in the SuccessFactors Employee Central solution. This will empower staff to perform a variety of HR related functions, including viewing pay stubs and accrual balances, without the need for paper forms or manual processes.

**Generates Momentum:** The implementation of Phase Zero provides the opportunity to create momentum around the ERP modernization program. Since this new functionality will impact the entire organization, it will set the stage for all subsequent phases. The modern web based user interface and dramatically improved self-service capabilities will provide an initial example of additional upgrades in the coming months.

**Manageable Scope:** Lastly, the scope of this phase was specifically chosen as it can be easily managed and allows the ERP modernization team to develop the skills and acquire the knowledge necessary for success in the phases to follow.

Entering into this subscription agreement with SAP aligns with the District’s strategic goals of modernization, enhanced security, and operational efficiency. The ERP modernization team is committed to ensuring a smooth transition and leveraging the full potential of SAP/SuccessFactors cloud services to benefit the District. The proposed SAP Cloud Services subscription includes the following:

- Employee Central: Core HR, benefits administration and self-service portal
- Employee Central Payroll: Payroll pre-processing and processing
- Payroll Tax Calculations: Tax updates and tax rate table management
- Time Tracking: Time entry and time tracking, both via the web and mobile

- Integration Suite: SAP’s integration platform for interoperability and automation

**ENVIRONMENTAL REVIEW:** Not Applicable.

**FISCAL IMPACT:** As shown in the table below, the proposed agreement is projected to cost \$200,646 in FY 2024/25 for all HR and Payroll modules along with professional services for tenant onboarding in the first year. The annual charges will increase by 3.3 percent each year, and over the five years of the agreement, the total cost is expected to be \$1,026,300. Final costs in future years are dependent on the total number of users and cloud services utilization. Funds for the SAP modernization project are included in the current Information Technology budget.

Agreement Year	Subscriptions Included	Annual Payment
Year 1	Core HR, EC, EC Payroll, Tax Calculation, Time Tracking, Integration Suite, SAP Preferred Success, Tenant Onboarding Services	\$200,646
Year 2	Core HR, EC, EC Payroll, Tax Calculation, Time Tracking, Integration Suite, SAP Preferred Success	\$196,742
Year 3	Core HR, EC, EC Payroll, Tax Calculation, Time Tracking, Integration Suite, SAP Preferred Success	\$202,956
Year 4	Core HR, EC, EC Payroll, Tax Calculation, Time Tracking, Integration Suite, SAP Preferred Success	\$209,654
Year 5	Core HR, EC, EC Payroll, Tax Calculation, Time Tracking, Integration Suite, SAP Preferred Success	\$216,572

<b>Total Projected SAP/SuccessFactors Agreement (5 Years)</b>	<b>\$</b>	<b>1,026,300</b>
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**ATTACHMENT(S):**

1. SAP Cloud Order Form
2. SAP SuccessFactors HCM Suite Supplemental Terms and Conditions (Schedule A)
3. Support Schedule for Cloud Service (Schedule B)
4. Service Level Agreement for Cloud Services (Schedule C)
5. Data Processing Agreement for SAP Services “DPA” (Schedule D)
6. General Terms and Conditions for Cloud Services “GTC” (Schedule E)

DEPARTMENT OR DIVISION	DIVISION MANAGER	APPROVED
Finance		
	<b>Bret Uppendahl</b> Finance Director	<b>Ben Horenstein</b> General Manager

**Attachment 1**

Section 8. Item #j.

**SAP Cloud Order Form**

Between **SAP America, Inc.**  
**3999 West Chester Pike**  
**Newtown Square, PA 19073**  
**United States**  
**("SAP")**

And **Marin Municipal Water District**  
**220 Nellen Avenue**  
**CORTE MADERA, CA,94925**  
**United States**  
**("Customer")**

**Customer ID: 503871**  
**Case ID: 3062856470**

**1. EFFECTIVE DATE**

1.1. This Order Form as issued by SAP is a binding offer by SAP. It only becomes effective upon SAP's receipt of this Order Form signed by Customer ("**Effective Date**") on or prior to 11/14/2024.

**2. CLOUD SERVICES**

2.1. Cloud Service Order and Support

2.1.1. Customer subscribes to and SAP will provide the Cloud Services during the Subscription Term in accordance with the Usage Metrics and volume each as set forth in Schedule 1 or Customer receives Cloud Credits to activate cloud services from a specific price list.

2.1.2. Unless otherwise stated in Schedule 1 or in the applicable Supplement or otherwise chosen by Customer in an administrative cockpit provided by SAP, SAP will provide Customer with "SAP Enterprise Support Cloud Editions" for the Cloud Services as set forth in the Cloud Support Schedule.

2.2. Subscription Term

2.2.1. The initial subscription term of the Order Form will begin on the (first) Product Start Date and will be effective until the (last) Product End Date as set forth in Schedule 1 ("**Initial Subscription Term**").

2.2.2. Unless the Supplement states otherwise, the Initial Subscription Term and any renewal Subscription Term will automatically renew for terms of 12 months ("each a "**Renewal Subscription Term**"). Auto-renewal will not occur if Customer notifies SAP at least 1 month or SAP notifies Customer at least 6 months prior to the end of any Subscription Term of its intent to not renew the Order Form.

**3. PAYMENT TERMS AND INVOICING**

3.1. Customer shall pay all fees due to SAP within 30 days of date of invoice. Unpaid fees will accrue interest at the maximum legal rate. Customer purchase orders are for administrative convenience and not a condition of payment. Payment is not dependent upon completion of any implementation or other services.

3.2. Unless the Supplement states otherwise, fees for the Cloud Services will be invoiced by SAP and paid by Customer yearly in advance.

3.3. The fee for the Initial Subscription Term is set forth in Schedule 1 as Total Net Fee. SAP may increase the fees for the Cloud Services and Cloud Credits in accordance with this Order Form.

- 3.4. If applicable, fees for non-recurring services will be invoiced by SAP on a one-time basis and paid by Customer upon commencement of the first Product Start Date.
- 3.5. Customer shall reimburse SAP for all appropriately documented travel and related expenses pre-approved by Customer and incurred by SAP in performing any support for the Cloud Service.
- 3.6. SAP may provide invoices to the email address provided by Customer below as main contact.

**4. AUTHORIZED ADMINISTRATORS**

4.1. Customer contacts for order confirmation and system notices are:

Main contact name:	Raj Kewal
Main contact e-mail:	rajesh.kewal@marinwater.org
Technical administrator name:	Brad Taylor
Technical administrator e-mail:	btaylor@marinwater.org

4.2. The following token can be used by Customer to select a different or additional Technical Administrator and gain access to SAP support web sites:

User Onboarding Token: 4fbfb44-2d70-43d2-869c-f282c351badc

User Onboarding Website: <https://account.sap.com/manage/onboarding/4fbfb44-2d70-43d2-869c-f282c351badc>

4.3. Customer Location and Tax Determination

Customer has provided the following primary access location:

Marin Municipal Water District  
 220 Nellen Avenue, 94925 CORTE MADERA, CA, United States

This is the primary (but not the only) location from which Customer will access the Cloud Service. If Customer does not provide a primary access location, SAP will incorporate a default primary access location to Customer's sold-to address as indicated in the preamble of this Order Form. Customer agrees and understands that the calculation of Taxes is in accordance with applicable jurisdictional laws of the primary access location, and payment of such Taxes is the responsibility of Customer. Valid direct pay permits or tax exemption certificates relevant to the primary access location must be provided to SAP prior to execution of this Order Form.

**5. SUBSCRIPTION CLOUD SERVICES**

5.1. Application

This Section applies only to Subscription Cloud Services as defined below.

5.2. Specific Definitions

5.2.1. "**Subscription Cloud Services**" means all Cloud Services subscribed to under this Order Form, except for Subscription Plus Excess Use Cloud Services, CPEA Cloud Services, Cloud Platform Voucher, BTPEA Cloud Services, Pay-As-You-Go Cloud Services, AI Units and Joule AI Services, if any.

5.2.2. "**Excess Use**" means any use of a Subscription Cloud Service that exceeds the Usage Metrics and volume stated in Schedule 1 in this Order Form.

5.3. Excess Use

Fees for Excess Use accrue from the date the Excess Use began. Customer shall execute an additional Order Form to document subscriptions for additional Usage Metrics and volume. Customer shall pay for Excess Use based on SAP's prices on the date the Excess Use began.

5.4. Fee Changes

The Cloud Services shall be subject to an annual fee increase of 3.3% effective on each anniversary of 11/15/2024. This increase shall apply in addition to the Annual Fee stated in Schedule 1 in this Order Form or the increased Annual Fee, as applicable. Not raising fees is not a waiver of SAP's right to do so.

**6. ADDITIONAL TERMS**

The Agreement is subject to the following modifications:

**6.1. Product Development Schedule**

The Product Development Schedule published at <http://sap.com/agreements-cloud-product-development-schedule> (which will be provided by SAP upon request upon or before execution of the Agreement) is incorporated into and becomes an integral part of the Agreement.

**6.2. Publicity**

SAP may include Customer's name and subscribed Cloud Services in SAP customer lists and earnings communications.

**7. PROFESSIONAL SERVICES****7.1. Professional Services Agreement**

7.1.1. In addition to the Cloud Services described in this Order Form, SAP shall provide distinct Professional Services (also "**Services**") as listed in Schedule 1.

7.1.2. For subscription-based Services, the Subscription Term (or remainder thereof) set forth in Section "**Subscription Term**" applies to the delivery of the Services. Subscription-based Services shall be co-terminus with the respective Cloud Services. For non subscription-based Services, the delivery schedule and term are set forth in the Scope Document.

7.1.3. SAP delivers the Services according to the following terms and conditions, listed in order of precedence, and collectively referred to as the "**Services Agreement**" which is separate from the Agreement for Cloud Services:

(a) This Professional Services section

(b) Scope Document (see: <https://www.sap.com/about/trust-center/agreements/services/scope-documents.html>)

(c) Data Processing Agreement for Cloud Services, SAP Support and SAP Services (see: <https://www.sap.com/data-processing-agreements>)

(d) SAP Services General Terms and Conditions ("**Services GTC**") (see: <https://www.sap.com/about/trust-center/agreements/services/sap-professional-services.html>)

**7.1.4. Review and Exclusions**

The Section "Review" in this Order Form applies to the Services Agreement. For purposes of this Services Agreement, the Section "Change Request Procedures" of the applicable GTC does not apply.

**7.2. Fees and Payment Terms**

7.2.1. The Services fees for the Services as specified in the Scope Document are at the fixed price as defined in Schedule 1.

7.2.2. The Section "Fee Changes" for Subscription Cloud Services in this Order Form applies to Services fees if Services are provided on a recurring basis.

7.2.3. Customer must pay the Services fees in accordance with the Section "Payment Terms and Invoicing" of this Order Form.

**7.3. Services Location**

Unless otherwise identified for a particular Service, the Customer's office location identified in the header of this Order Form will be considered the location of Customer's receipt of Services provided hereunder. Customer understands that the calculation of Taxes may be affected by this receipt of Service Location.

**7.4. Legal and Regulatory Matters**

SAP will not provide any advisory services regarding any Customer's compliance with tax, legal, or other regulatory matters. SAP Services will be limited to technical assistance based on requirements as specified by Customer. Customer is solely responsible for determining and validating its compliance with tax, legal and other regulatory matters.

**8. EXPORT RESTRICTIONS**

Customer may not use the Cloud Services, Documentation and other Cloud Materials in any country where these may not be used according to the export control and trade sanctions laws of the United States, the EU, Germany or any other applicable export control and trade sanctions laws. Customer may not permit the use of the Cloud Services, Documentation and other Cloud Materials to any end user with whom transactions are prohibited in accordance with the terms of the Agreement. Further information on SAP's Export Control and Sanctions Compliance can be found at: <https://www.sap.com/about/agreements/export-statements.html>.

**9. REFERENCED DOCUMENTS**

This Order Form is governed by and incorporates the following documents in effect as of the Effective Date. All documents are listed in order of precedence, and collectively referred to as the "Agreement":

Document 1: This Order Form including Schedule 1 ("Order Form")

Document 2: Supplemental Terms and Conditions for Cloud Services ("Supplement") Attached as Schedule A

Document 3: Support Schedule for Cloud Services ("Cloud Support Schedule") Attached as Schedule B

Document 4: Service Level Agreement for Cloud Services ("SLA") published under Attached as Schedule C

Document 5: Data Processing Agreement for Cloud Services, SAP Support and SAP Services ("DPA") Attached as Schedule D

Document 6: General Terms and Conditions for Cloud Services ("GTC") Attached as Schedule E

Customer has had the opportunity to review the GTC and the incorporated documents prior to executing this Order Form. SAP recommends that Customer prints copies of these documents for Customer's records. All defined terms in the GTC used in this Order Form have the meaning stated in the GTC. All references in the Supplements to "Service" mean "Cloud Service", and to "Named Users" mean "Authorized Users."

Accepted by:

Marin Municipal Water District  
(Customer)

\_\_\_\_\_  
Name:  
\_\_\_\_\_  
Title:  
\_\_\_\_\_  
Date:  
\_\_\_\_\_

**Schedule 1  
Pricing Summary**

From 11/15/2024 To 11/14/2029

SAP Cloud Service	Usage Metric	Usage Metric Limitation	Annual Fee	Product Start Date	Product End Date	Total Fee in USD
SAP SFSF EC, core HR	1 User	250	15,120.00	11/15/2024	11/14/2029	75,600.00
SAP SFSF Employee Central payroll	1 User	1,000	72,000.00	11/15/2024	11/14/2029	360,000.00
SAP U.S. Payroll Tax Calculation by BSI	1 User	1,000	26,000.00	11/15/2024	11/14/2029	130,000.00
SAP SFSF Time Tracking	1 User	250	7,710.00	11/15/2024	11/14/2029	38,550.00
SAP Integration Suite, standard edition	1 Tenant	1	42,000.00	11/15/2024	11/14/2029	210,000.00
SAP PrefSuccess HCM	% of Net Recurring Fee	1	27,366.00	11/15/2024	11/14/2029	136,830.00

Total Net Fee	950,980.00
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Period 1 From 11/15/2024 To 11/14/2025	200,646.00
Period 2 From 11/15/2025 To 11/14/2026	190,196.00
Period 3 From 11/15/2026 To 11/14/2027	190,196.00
Period 4 From 11/15/2027 To 11/14/2028	190,196.00
Period 5 From 11/15/2028 To 11/14/2029	190,196.00
Total Net Fee	950,980.00

**Professional Services**

Services	Service Start Date	Total Fee in USD
Enablement serv. Integration Suite	11/15/2024	10,450.00



Total Net Fee	10,450.00
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The amounts set out above are subject to fee changes as set forth in the Order Form.

The amounts set out above are net amounts. Applicable taxes are not included. This is not a tax invoice.

For Subscription Cloud Services, Usage Metric Limitation/Volume shows the maximum quantity that Customer may use over a 12-month period.

**Attachment 2**

Section 8. Item #j.

**Schedule A****SAP SuccessFactors HCM Suite Supplemental Terms and Conditions**

This Supplement is part of an agreement for SAP Cloud Services between SAP and Customer and applies only to the SAP SuccessFactors product(s) for which Customer is subscribed (the “Cloud Service”). Any documents referenced in this Supplement are available from SAP upon request.

**1. USAGE METRICS**

- 1.1. **Gigabyte.** Gigabyte is the amount of capacity in the Cloud Service. For this Cloud Service, memory capacity is counted. Unless otherwise indicated herein, the Usage Metric entitlement in the Order Form is retained throughout the Subscription Term.
- 1.2. **Message.** Message means an electronic communication exchanged via the capabilities of the Cloud Service. If a Message is larger than 250 kilobytes, any amount in excess of 250 kilobytes will be charged as one additional Message for each 250 kilobytes or portion thereof.
- 1.3. **Tenant.** Tenant is a customer-specific instance of the Cloud Service. Unless otherwise indicated herein, the Usage Metric entitlement in the Order Form is retained throughout the Subscription Term.
- 1.4. **Transaction.** Transaction is any message, job, action, response, and/or task processed via the Cloud Service. For the SAP SuccessFactors Onboarding Cloud Service, each completed onboarding (including rehiring), cross boarding, and offboarding transaction is counted. For the SAP SuccessFactors Recruiting Cloud Service, each internal or external candidate moved to the “Hired” status is counted.
- 1.5. **User.** Users are individuals authorized to access the Cloud Service. For this Cloud Service, an individual with a unique active profile and whose data is processed by the Cloud Service is counted. Unless otherwise indicated herein, the Usage Metric entitlement in the Order Form is retained throughout the Subscription Term.

**2. ADDITIONAL TERMS****2.1. Disaster Recovery.**

- 2.1.1. SAP will provide Customer, at no additional charge, with the following capabilities: (i) offsite database backups to disk (i.e., weekly full / nightly incremental / archive logs multiple times daily to separate storage array); and (ii) commercially reasonable efforts to restore productive tenants from backups as soon as possible in case of a disaster resulting in loss of the production data center.
- 2.1.2. Customer’s productive tenants for Employee Central, Employee Central Payroll, Performance and Goals, Compensation, Succession and Development, Onboarding (excluding Onboarding 1.0), Time Tracking, Opportunity Marketplace, Learning, and Validated Learning Cloud Services that are hosted in a data center listed in the then-current [SAP SuccessFactors Disaster Recovery Overview](#) include (i) Recovery Point Objective (RPO): no more than 4 hours of data loss; and (ii) Recovery Time Objective (RTO): administrator access to data and full service restoration within 24 hours.
- 2.2. **Storage.** Customer will reasonably cooperate with SAP to optimize Customer’s use of the Cloud Service, including the storage of Customer Data in the Cloud Service. Additional limits may be identified with specific Cloud Services below.
- 2.3. **SAP Cloud Platform Identity Authentication and SAP Cloud Platform Identity Provisioning.** Subscriptions to SAP SuccessFactors Cloud Services include use of SAP Cloud Platform Identity Authentication and SAP Cloud Platform Identity Provisioning. SAP Cloud Platform Identity Authentication may only be used for user authentication to SAP Cloud services. SAP Cloud Platform Identity Provisioning may only be used for provisioning users from SAP Cloud services to SAP Cloud Platform Identity Authentication.
- 2.4. **SAP SuccessFactors Foundation.** There is a 500 GB base storage limit per instance that applies to the attachment storage framework of the SAP SuccessFactors Foundation Cloud Service.
- 2.5. **SAP SuccessFactors Workforce Analytics.** In order to use SAP SuccessFactors Workforce Analytics Cloud Service, Customer may be required to order additional one-time implementation Services, either via a partner or SAP directly, as available, for data extraction, integration, and modelling activities, subject to additional services fees.

**2.6. SAP SuccessFactors Onboarding.**

- 2.6.1. If E-Verify (applicable for US based customers only) is included, Customer must sign a separate Memorandum of Understanding between the United States Department of Homeland Security, Customer, and SAP's Affiliate, SuccessFactors Inc., designating SuccessFactors Inc. as its Web Services E-Verify Employer Agent.
- 2.6.2. Customers using SAP SuccessFactors Onboarding with external HRIS systems may import such external HRIS user records into SAP SuccessFactors Employee Central as read only. These read only records may only be used for the express purpose of Onboarding, and do not count as usage of SAP SuccessFactors Employee Central.

**2.7. SAP SuccessFactors Employee Central Payroll.**

- 2.7.1. SAP does not provide specific documentation for the payroll engine of SAP SuccessFactors Employee Central Payroll Cloud Service. Instead, Customer may use the documentation available for the on-premise SAP ERP HCM Software, if and to the extent applicable to the Payroll engine functionality. No other rights except as required to use SAP SuccessFactors Employee Central Payroll are conferred to Customer even if technically accessible or described in the documentation.
- 2.7.2. Subscriptions to the SAP SuccessFactors Employee Central Payroll Cloud Service include the use of the SAP Secure Login Client. The SAP Secure Login Client may only be used for the purpose of accessing SAP GUI-based administrative user interfaces of the SAP SuccessFactors Employee Central Payroll Cloud Service.
- 2.7.3. Customer is also granted access to the generally available implementation handbook, currently published on the SAP Help Portal ([https://help.sap.com/docs/SAP\\_SUCCESSFACTORS\\_HCM\\_SUITE](https://help.sap.com/docs/SAP_SUCCESSFACTORS_HCM_SUITE)).

**2.8. SAP SuccessFactors Employee Central Service Center.**

- 2.8.1. SAP Service Cloud is included with a ratio of 1 agent user to 300 employees.
- 2.8.2. SAP Cloud Portal for employee self-service is included as follows: one (1) test tenant; and one (1) SAP Cloud Platform Virtual Machine.
- 2.8.3. Integration of Employee Central with Cloud for Service and SAP Cloud Portal is included.

- 2.9. SAP SuccessFactors Employee Central, core HR option, functional use.** SAP SuccessFactors Employee Central, core HR option, functional use is available only for the following categories of individuals: This Cloud Service is only available for (i) non-employees (includes contingent/contractors); (ii) Former employees whose records continue to be maintained; (iii) individual with a limited or temporary employee relationship during the course of a year or 12-month period, (iv) Employees with read-only access to Employee Central but whose records are maintained within SAP ERP HCM or another core HR system, and (v) employees whose records are actively managed by Customer, but who do not have access to the SuccessFactors Cloud Service.

**2.10. SAP SuccessFactors Learning, Content Storage.**

- 2.10.1. Content storage included with the SAP SuccessFactors Learning or Validated Learning Cloud Service includes content bandwidth and 25 GB of eLearning content storage.
- 2.10.2. Content storage for the SAP SuccessFactors Learning or Validated Learning Cloud Service includes infrastructure, including web server and disc space, and uses Akamai as the Content Delivery Network (CDN) provider. If Customer cannot support Akamai as its CDN, Content storage cannot be provisioned to Customer.
- 2.10.3. SAP will provide one SFTP Content account per Customer.
- 2.11. **SAP SuccessFactors Learning, Functional Use.** SAP SuccessFactors Learning or Validated Learning, functional use, is available only for the following categories of individuals: This Cloud service is only available for non-employees and individuals with a limited or temporary employment relationship during the course of a year or 12-month period. In addition, individuals whose records are actively managed by the customer, but who do not have access to the Cloud service will also be counted.
- 2.12. Users with functional use rights must be identified in the SAP SuccessFactors Learning Cloud Service by Customer separately from other Users.

**2.13. SAP SuccessFactors Work Zone.**

- 2.13.1. The SAP SuccessFactors Work Zone Cloud Service has a base storage limit of 1000 GB per instance. If Customer subscribes to SAP Work Zone, data storage add-on, such storage limit shall increase, in units of 500 GB, as set forth in the applicable Order Form.
- 2.13.2. Comment fields or free text entry fields in the SAP SuccessFactors Work Zone Cloud Service are not designed to collect or store personal data, therefore no sensitive or personal data should be entered in them. The Data Processing Agreement for Cloud Services referenced in the Order Form does not apply to personal data contained in such fields.
- 2.13.3. SAP SuccessFactors Work Zone includes (i) SAP Build Process Automation, standard users in an equivalent quantity to Customer's SAP SuccessFactors Work Zone user licenses, (ii) two (2) SAP Build Process Automation, advanced user licenses, (iii) two (2) SAP Business Application Studio user licenses, and (iv) one (1) SAP Custom Domain.
- 2.13.4. SAP SuccessFactors Work Zone includes a native mobile application that is included with the Cloud Service subscription.

**2.14. SAP Integration Suite for SAP SuccessFactors solutions.**

- 2.14.1. The Cloud Service requires that one end of the integration be an SAP SuccessFactors solution.
- 2.14.2. The Cloud Service includes two (2) tenants and an aggregate of 100,000 Messages per month.
- 2.14.3. Usage includes SAP Integration Suite, Basic edition capabilities exclusively.
- 2.14.4. Customer shall ensure that it has all necessary license rights for any SAP and/or third-party solutions integrated using the Cloud Service.
- 2.14.5. If Customer has a subscription to Employee Central, SAP Cloud Platform Integration option, use of such product shall be subject to the supplemental terms referenced in the Order Form governing such subscription.

**2.15. SAP SuccessFactors HCM Suite, advanced encryption add-on.**

- 2.15.1.1. For this Cloud Service, all existing productive and non-productive instances that Customer elects to connect to the Cloud Service are counted as Tenants. The metric entitlement is not time-bound and does not deplete with usage, unless otherwise specified. This Cloud Service can only be connected to SAP SuccessFactors HCM Core platform Tenants, and does not entitle Customer to any additional Tenants.
- 2.15.2. This Cloud Service supports data refreshes from (i) encrypted Tenant to encrypted Tenant, and (ii) non-encrypted Tenant to encrypted Tenant only. Data refreshes from an encrypted Tenant to a non-encrypted Tenant are not supported.
- 2.15.3. If the master key is revoked or disabled by Customer, the application database will shut down and services dependent on the application database will become inaccessible, and no one, including SAP, will be able to access encrypted data or perform any operation that requires access to the application database. Customer must provide the correct master key to SAP to restore services and application database access, or to restore from backup.

**2.16. Embedded Launch Activities.** Embedded Launch Activities are included for a first-time subscription of applicable SAP SuccessFactors Cloud Services. Further specifications to the Embedded Launch Activities are available in the [SAP SuccessFactors Embedded Launch Activities Specifications](#) documentation.

- 2.16.1. Customer is entitled to a Demo Environment (consisting of one each of a BizX, LMS, J2W and RPOS instance) pre-configured with available SAP Best Practices and some sample data in English.
- 2.16.2. The Demo environment may be requested at any point after the start of the contract period. Once requested, it will be available for a duration of 9 months. The availability of the Demo environment can be extended (for 3 months) on Customer request.
- 2.16.3. The pre-configuration and sample data of the Customer assigned Demo environment will not be updated / refreshed. Customer may not change any configuration in the Demo environment.

The Demo environment will be created in a Non-Production Environment. Therefore, Disaster Recovery for this environment is not available.

- 2.17. **Test Tenants in Production Environments.** The Data Processing Agreement for Cloud Services referenced in the Order Form shall apply to all tenants of SAP SuccessFactors HCM Suite in Production environments, provided that (i) Customer implements and maintains all Production environment security controls, and (ii) if Customer uses a test tenant in a Production environment for the processing of personal data, Customer is responsible for justifying such additional processing of personal data under all applicable data protection laws.

**Schedule B**

Section 8. Item #j.

**SUPPORT SCHEDULE FOR CLOUD SERVICES**

This Support Schedule is part of the Agreement for Cloud Services between SAP and Customer.

**1. DEFINITIONS**

- 1.1. **"Go-Live"** marks the point in time from when, after set-up of the Cloud Services for Customer, the Cloud Services can be used by Customer for processing real data in live operation mode and for running Customer's internal business operations in accordance with its agreement for such Cloud Services.
- 1.2. **"Local Business Hours"** means 8 a.m. (08:00) to 6 p.m. (18:00) Monday to Friday excluding local holidays, in accordance with local time zone applicable to the Customer's address.
- 1.3. **"SAP's Customer Support Website"** means SAP's customer facing support website (see: <https://support.sap.com> unless a different support website is listed in the Agreement or <https://support.sap.com/contactus>). In selected Cloud Services, support can also be accessed via the application itself.

**2. SCOPE OF SUPPORT AND SUCCESS OFFERINGS**

2.1. General

2.1.1. SAP offers the following:

- a) SAP Enterprise Support, cloud editions: Foundational engagement support as part of the Cloud Service with focus on customer interaction and case resolution.
- b) SAP Preferred Success: An add-on to SAP Enterprise Support, cloud editions that includes strategic guidance, solution-specific best practices and success programs to help drive consumption and value realization.-
- c) SAP Enterprise Support, cloud editions is included in the subscription fees for the Cloud Services stated in the Order Form unless alternative support terms are agreed. SAP Preferred Success may be purchased for eligible Cloud Services for an additional fee, as an add-on to SAP Enterprise Support, cloud editions. SAP Preferred Success is not available, and not provided, for any third-party cloud services purchased through SAP.

2.1.2. Beginning on the effective date of Customer's agreement for Cloud Services, Customer may contact SAP's support organization as the primary point of contact for support services.

2.1.3. Customer Interaction Center languages: SAP provides initial telephone contact for Customer Contacts through the SAP one support phone number "CALL-1-SAP" (see CALL-1-SAP page: <https://support.sap.com/contactus>) or via other solution specific hotlines in the following languages: English (24x7) and, depending on local office hours and availability, in German, French, Italian, Spanish, Polish, Russian (during European office hours); Japanese, Chinese, Korean, Bahasa (during Asia/Pacific office hours); Portuguese and Spanish (during Latin America office hours). Issues which lead to a support case which is processed by specialized technical or third party support engineers worldwide are handled in English only.

2.2. Mission Critical Support

<b>Feature</b>	<b>SAP Enterprise Support, cloud editions</b>	<b>SAP Preferred Success</b>
24x7 mission critical support for P1 and P2 cases (English only)	Global case handling by SAP for issues related to support, including Service Level Agreements for Initial Response, Ongoing Communications and Corrective Action Targets (as set forth in Section 3 below).	24x7 prioritized case handling and enhanced Initial Response and Corrective Action Targets (as set forth in Section 3 below).
Non-mission critical support for P3 and P4 cases (English only)	Available during Local Business Hours(as set forth in Section 3 below).	Enhanced Initial Response Targets (as set forth in Section 3 below).

Feature	SAP Enterprise Support, cloud editions	SAP Preferred Success
24x7 Customer interaction center	Support center that customers may contact for general support related inquiries through the contact channels described in Section 2.1.3.	Delivered as part of SAP Enterprise Support, cloud editions.
Global support backbone	SAP's knowledge database and extranet where SAP makes available content and services to customers and partners of SAP only. This includes SAP's Customer Support Website.	
End-to-end supportability	Support for cases that occur in integrated business scenarios consisting of SAP Cloud Services or both SAP Cloud Services and SAP Software with a valid SAP support agreement.	

2.3. Learning and Empowerment

Feature	SAP Enterprise Support, cloud editions	SAP Preferred Success
Remote SAP support content and services	Remote support content and services (e.g., Meet-the-Expert sessions) in various formats which may include live and recorded webinars, tutorials, best practices, self-paced learning materials and workshop-style interactive remote sessions. Content and session schedules are stated on SAP's Customer Support Website in the <a href="#">SAP Enterprise Support Academy</a> section. Scheduling, availability and delivery methodology is at SAP's discretion.	Access to demo systems, live sessions with instructors, examinations and certifications specific to the Cloud Service for up to 5 Customer Contacts.  SAP Preferred Success exclusive learning content related to the Cloud Service in various formats which may include live and recorded webinars, best practices, and workshop-style interactive remote sessions.  Scheduling, availability and delivery methodology is at SAP's discretion.
Release update information	Generally available documented summaries, webinars and videos provided by SAP to inform and instruct customers on new product release changes.  Self-service through web and community.	Release guidance specific to the Cloud Service.

2.4. Collaboration

Feature	SAP Enterprise Support, cloud editions	SAP Preferred Success
SAP support advisory services	Access to experts who help customers with support-related requests and advise on the appropriate SAP Enterprise Support content and services for their needs.	Delivered as part of SAP Enterprise Support, cloud editions.
Support via chat	Available during business hours in English language for non-Mission Critical Support issues, where available for the Cloud Service.	

<b>Feature</b>	<b>SAP Enterprise Support, cloud editions</b>	<b>SAP Preferred Success</b>
Support via web and platform for social business collaboration	Access to SAP's Customer Support Website, including social media-based empowerment and collaboration, with peers and SAP experts.	Access to exclusive SAP Preferred Success collaboration platform.
Support and success reporting	SAP Enterprise Support reporting: A report or dashboard analyzing and documenting the status of support services and achievements hereunder.	Reports, dashboards, or other reporting components and capabilities regarding the overall engagement, full customer lifecycle, and productive use of the solution, including relevant feature adoption, technical and product usage and status of support services and achievements hereunder, specific to the Cloud Service.
Preferred Success resources and guidance		Access to success resources to provide guidance on onboarding, product adoption and usage, best practices and operational excellence. This may include a customer success partner as the primary contact for ongoing success management, success planning, technical guidance and mentorship, and support case oversight throughout the Customer lifecycle. Assignment of a customer success partner is at SAP's discretion.
Regular checkpoint		Periodic review of Cloud Service, success plan, critical issues, reporting and best practices. May include in-person delivery, at SAP's discretion.
Success Plan		A success plan outlines steps towards achieving key business milestones and objectives throughout the customer lifecycle. Focus topics include challenges, consumption, adoption and cycle planning.

2.5. Innovation and Value Realization

<b>Feature</b>	<b>SAP Enterprise Support, cloud editions</b>	<b>SAP Preferred Success</b>
Proactive checks proposed by SAP	Support services, providing recommendations for the specific customer situation. Such services are delivered remotely upon Customer request.	Expert-led checks, providing recommendations based on SAP best practices or recommended configuration(s).
Product roadmaps	Self-service through web.	Delivered as part of SAP Enterprise Support, cloud editions.
Refresh of test instance	Self-service or request through web for initiating the refresh as offered and required by respective solution.	Access to SAP assistance with managing the refreshing of test instances up to 2 times per year, where applicable.



2.6. Application Lifecycle Management

Feature	SAP Enterprise Support, cloud editions	SAP Preferred Success
Application lifecycle management ("ALM")	Software or online services for application lifecycle management made available by SAP. Feature scope and availability details are set forth on SAP's Customer Support Website (see: <a href="https://support.sap.com/en/alm">https://support.sap.com/en/alm</a> ) and usage rights (see: <a href="https://support.sap.com/en/alm/usage-rights">https://support.sap.com/en/alm/usage-rights</a> ).	Delivered as part of SAP Enterprise Support, cloud editions.

3. CUSTOMER RESPONSE LEVELS

3.1. SAP responds to submitted support cases as described in the table below.

Priority	Definition	Response Level
P1	<p>Very High</p> <p>A case should be categorized with the priority <b>"very high"</b> if the problem has very serious consequences for normal business processes or IT processes related to core business processes. Urgent work cannot be performed.</p> <p>This is generally caused by the following circumstances:</p> <ul style="list-style-type: none"> <li>a) a productive service is completely down;</li> <li>b) the imminent system Go-Live or upgrade of a production system cannot be completed;</li> <li>c) the customer's core business processes are seriously affected</li> </ul> <p>A workaround is not available for each circumstance.</p> <p>The case requires immediate processing because the malfunction may cause serious losses.</p>	<p>Initial Response: Within 1 hour of case submission.</p> <p>Ongoing Communication: Unless otherwise communicated by SAP, once every hour.</p> <p>Corrective Action Target: SAP to provide for cases either a resolution; or workaround; or action plan within 4 hours.</p>
P2	<p>High</p> <p>A case should be categorized with the priority <b>"high"</b> if normal business processes are seriously affected. Necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the SAP service that are required immediately.</p> <p>The case is to be processed as quickly as possible because a continuing malfunction can seriously disrupt the entire productive business flow.</p>	<p>Initial Response: Within 4 hours of case submission for SAP Enterprise Support, cloud edition customers and within 2 hours of case submission for SAP Preferred Success customers.</p> <p>Ongoing Communication: Unless otherwise communicated by SAP, once every 6 hours.</p> <p>Corrective Action Target: SAP to provide for cases either a resolution; or workaround; or action plan within 3 business days for SAP Preferred Success customers only.</p>
P3	<p>Medium</p> <p>A case should be categorized with the priority <b>"medium"</b> if normal business processes are affected. The problem is caused by incorrect or inoperable functions in the SAP service.</p>	<p>Initial Response: Within 1 business day of case submission for SAP Enterprise Support, cloud edition customers, and within 4 business hours of case being received for SAP Preferred Success customers.</p> <p>Ongoing Communication: Unless otherwise communicated by SAP, once every 3 business days</p>

Priority	Definition	Response Level
		for non-defect Issues and 10 business days for product defect issues.  A non-defect issue is a reported support case that does not involve a defect in the applicable Cloud Service and does not require engineering, development or operations personnel to resolve.
P4	Low  A case should be categorized with the priority " <b>low</b> " if the problem has little or no effect on normal business processes. The problem is caused by incorrect or inoperable functions in the SAP service that are not required daily or are rarely used.	Initial Response: Within 2 business days of case submission for SAP Enterprise Support, cloud editions customers and within 1 business day of case submission for SAP Preferred Success customers.  Ongoing Communication: Unless otherwise communicated by SAP, once every week.

- 3.2. The following types of cases are excluded from customer response levels as described above:
- a) cases regarding a release, version or functionalities of Cloud Services developed specially for Customer (including those developed by SAP Custom Development or by SAP subsidiaries or individual content services);
  - b) the root cause behind the case is not a malfunction but missing functionality (development request);
  - c) the case is a consulting or how-to request.

**4. CUSTOMER RESPONSIBILITIES**

4.1. Customer Contact

4.1.1. Customer shall designate at least 2 and up to 5 qualified English-speaking contact persons per Cloud Service (each a "**Customer Contact**"). Customer Contacts include designated support contact, authorized support contact, key user, application administrator or system administrators whose roles within specific Cloud Services are authorized to contact or access the Customer Interaction Center, SAP Support Advisory Services and Mission Critical Support services.

4.1.2. The Customer Contact is responsible for managing all business-related tasks of the Cloud Service related to Customer's business, such as:

- a) support end users and manage their cases. This includes searching for known solutions in available documentation and liaising with SAP in the event of new problems;
- b) manage background jobs and the distribution of business tasks across users (if available);
- c) manage and monitor connections to Customer's third-party systems (if available);
- d) support the adoption of the Cloud Service.

4.2. Contact Details

Customer will provide contact details (in particular, e-mail address and telephone number) by which the Customer Contact or the authorized representative of the Customer Contact can be contacted at any time. Customer will update its Customer Contacts for a Cloud Service through SAP's Customer Support Website. Only authorized Customer Contacts may contact SAP's support organization.

4.3. Cooperation

Customer Contact shall reasonably cooperate with SAP to resolve support cases, and will have adequate technical expertise and knowledge of its configuration of the Cloud Services to provide relevant information to enable SAP to reproduce, troubleshoot and resolve the experienced error.

## Schedule C

## SERVICE LEVEL AGREEMENT FOR CLOUD SERVICES

**1. DEFINITIONS**

- 1.1. **“Credit”** means 2% of the Monthly Subscription Fees for the affected subscription-based Cloud Service or the monthly Cloud Credits (as defined in the Order Form) consumed for the affected consumption-based Cloud Service, for each 1% below the System Availability SLA, not to exceed 100% of the fees paid or Cloud Credit consumed by the Customer for the relevant Month for the affected Cloud Service.
- 1.2. **“Downtime”** means the Total Minutes in the Month during which the production version of the Cloud Service is not available, except for Excluded Downtimes.
- 1.3. **“Excluded Downtime”** means the Total Minutes in the Month attributable to a Maintenance Window; or any Major Upgrade Window for which the Customer has been notified at least 5 business days in advance; or unavailability caused by factors outside of SAP’s reasonable control, such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised.
- 1.4. **“Maintenance Window”** means the weekly maintenance windows for the Cloud Service identified on <https://support.sap.com/maintenance-windows>. SAP may update the Maintenance Window from time to time in accordance with the Agreement.
- 1.5. **“Major Upgrade Window”** means the extended upgrade maintenance windows for the Cloud Service identified on <https://support.sap.com/maintenance-windows>. SAP may update the Major Upgrade Window from time to time in accordance with the Agreement.
- 1.6. **“Month”** means a calendar month.
- 1.7. **“Monthly Subscription Fees”** means the monthly (or 1/12 of the annual fee) subscription fees paid for the applicable Cloud Service which did not meet the System Availability SLA.
- 1.8. **“System Availability Percentage”** is calculated and defined as follows:
- $$\left( \frac{\text{Total Minutes in the Month} - \text{Excluded Downtime} - \text{Downtime}}{\text{Total Minutes in the Month} - \text{Excluded Downtime}} \right) * 100$$
- 1.9. **“System Availability SLA”** means a 99.7% System Availability Percentage during each Month for the production version of the Cloud Service.
- 1.10. **“Total Minutes in the Month”** are measured 24 hours at 7 days per week during a Month.
- 1.11. **“UTC”** means Coordinated Universal Time standard is the start time for the applicable Maintenance Window and Major Upgrade Window.

**2. SYSTEM AVAILABILITY SLA AND CREDITS****2.1. Credit**

If SAP fails to meet the System Availability SLA for a particular Month, Customer may claim a Credit, which Customer may apply to a future invoice for the Cloud Service that did not meet the System Availability SLA (subject to Sections 2.1.1 and 2.1.2 below).

- 2.1.1. Claims for a Credit must be made in good faith and through a documented submission of a support case within 30 business days after the end of the relevant Month in which SAP did not meet the System Availability SLA for the Cloud Service.
- 2.1.2. Customers who have not subscribed to the Cloud Service directly from SAP must claim the Credit from their applicable SAP partner.

**2.2. System Availability Report**

SAP will provide Customer with a monthly report describing the System Availability Percentage for the Cloud Service either by email following a request to Customer’s assigned SAP account manager; through the Cloud Service; or through an online portal made available to Customer, if and when such online portal is available.

**3. CHANGES TO WINDOWS**

- 3.1. SAP shall provide Customer 1 month’s advance notice before changing its Maintenance and Major Upgrade Windows (unless such change is a reduction in the duration of the applicable Maintenance or Major Upgrade Windows). If Customer wishes to be notified of changes to Maintenance Windows and Major Upgrade Windows via email, it must subscribe to receive notifications at <https://support.sap.com/maintenance-windows>.

## Schedule D

## DATA PROCESSING AGREEMENT FOR SAP SERVICES ("DPA")

## 1. DEFINITIONS

- 1.1. **"Audit Reports and Certifications"** mean documents available under: <https://www.sap.com/about/trust-center/certification-compliance/compliance-finder.html> or any subsequent website notified to Customer.
- 1.2. **"Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution as defined in the Agreement.
- 1.3. **"Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data; for the purposes of this DPA, where Customer acts as processor for another controller, it shall in relation to SAP be deemed as additional and independent Controller with the respective controller rights and obligations under this DPA.
- 1.4. **"Data Protection Law"** means the applicable legislation protecting the fundamental rights and freedoms of natural persons and their right to privacy with regard to the processing of Personal Data under the Agreement.
- 1.5. **"Data Subject"** means an identified or identifiable natural person as defined by Data Protection Law.
- 1.6. **"EEA"** means the European Economic Area, namely the European Union Member States along with Iceland, Liechtenstein and Norway.
- 1.7. **"GDPR"** means the General Data Protection Regulation 2016/679.
- 1.8. **"List of Subprocessors"** means a compilation of the name, address and role of each Subprocessor SAP uses to provide SAP Services which is in general published under: <https://support.sap.com/en/my-support/trust-center/subprocessors.html> or any subsequent website notified to Customer.
- 1.9. **"My Trust Center"** means information available on the SAP support portal (see: <https://support.sap.com/en/my-support/trust-center.html>) or the SAP agreements website (see: <https://www.sap.com/about/trust-center/agreements.html>) or any subsequent website(s) made available by SAP to Customer.
- 1.10. **"New SCC Relevant Transfer"** means a transfer (or an onward transfer) to a Third Country of Personal Data that is either subject to GDPR or to applicable Data Protection Law and where any required adequacy means under GDPR or applicable Data Protection Law can be met by entering into the New Standard Contractual Clauses.
- 1.11. **"New Standard Contractual Clauses"** means the unchanged standard contractual clauses, published by the European Commission, reference 2021/914 or any subsequent final version thereof as adopted by SAP. To avoid doubt Modules 2 and 3 shall apply as set out in Section 8.3.
- 1.12. **"Personal Data"** means any information relating to a Data Subject. For the purposes of the DPA, it includes only personal data which is:
- a) processed by SAP as part of the Cloud Service; or
  - b) supplied to or accessed by SAP or its Subprocessors in order to provide support under the applicable Agreement or in connection with SAP Services.
- 1.13. **"Personal Data Breach"** means cases of a confirmed:
- a) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or unauthorized third-party access to Personal Data; or
  - b) similar incident involving Personal Data, in each case for which a Controller is required under Data Protection Law to provide notice to competent data protection authorities or Data Subjects.
- 1.14. **"Processor"** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller, be it directly as processor of a controller or indirectly as subprocessor of a processor which processes personal data on behalf of the controller.
- 1.15. **"SAP Support"** means support services as defined in the applicable Agreement.

- 1.16. **"Schedule"** means the numbered Appendix with respect to the Standard Contractual Clauses (2010) and the numbered Annex with respect to the New Standard Contractual Clauses.
- 1.17. **"Services"** means implementation services, consulting services and/or other related services as defined in the Agreement and may also be referred to in the Agreement as **"Consulting Services"** or **"Professional Services"**.
- 1.18. **"Standard Contractual Clauses (2010)"** means the Standard Contractual Clauses (processors) published by the European Commission, reference 2010/87/EU.
- 1.19. **"Subprocessor"** or **"sub-processor"** means SAP Affiliates, SAP SE, SAP SE Affiliates and third parties engaged by SAP, SAP SE or SAP SE's Affiliates in connection with the SAP Services which process Personal Data in accordance with this DPA.
- 1.20. **"Technical and Organizational Measures"** means the technical and organizational measures for the relevant SAP Service published on the My Trust Center (see: <https://www.sap.com/about/trust-center/agreements/cloud/cloud-services.html?search=Technical%20Organizational%20Measures>).
- 1.21. **"Third Country"** means any country, organization or territory not acknowledged by the European Union under Article 45 of GDPR as a safe country with an adequate level of data protection.

## 2. BACKGROUND

### 2.1. Application

- 2.1.1. This document ("**DPA**") is incorporated into and forms part of an Agreement between SAP and Customer about SAP Services. For the purpose of this DPA, SAP Services are defined as Cloud Service, Services or SAP Support in the Agreement and are subject to its terms.
- 2.1.2. This DPA sets forth the terms and conditions related to the processing of Personal Data by SAP and its Subprocessors in connection with delivering SAP Services.
- 2.1.3. This DPA does not apply to non-production environments of the SAP Services made available by SAP. Customer shall not store Personal Data in such environments.

### 2.2. Structure

Schedules 1 and 2 are incorporated into this DPA. They set out the agreed subject-matter, the nature and purpose of the processing, the type of Personal Data, categories of data subjects and the applicable technical and organizational measures.

### 2.3. Governance

- 2.3.1. SAP acts as a Processor and Customer and those entities that Customer permits to use the SAP Services act as Controllers under the DPA.
- 2.3.2. Customer acts as a single point of contact and shall obtain any relevant authorizations, consents and permissions for the processing of Personal Data in accordance with this DPA, including, where applicable approval by Controllers to use SAP as a Processor. Where authorizations, consent, instructions or permissions are provided by Customer these are provided not only on behalf of the Customer but also on behalf of any other Controller. Where SAP informs or gives notice to Customer, such information or notice is deemed received by those Controllers permitted by Customer to use the SAP Services or furnish Personal Data. Customer shall forward such information and notices to the relevant Controllers.

## 3. SECURITY OF PROCESSING

### 3.1. Applicability of the Technical and Organizational Measures

SAP has implemented and will apply the Technical and Organizational Measures. Customer has reviewed the appropriateness of such measures before it executes an Agreement that incorporates this DPA.

### 3.2. Changes

- 3.2.1. SAP applies the Technical and Organizational Measures to SAP's entire customer base hosted out of the same data center or receiving the same SAP Services. SAP will review the Technical and Organizational Measures as necessary and may change the Technical and Organizational Measures at any time without notice so long as it maintains a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Data.
- 3.2.2. SAP will publish updated versions of the Technical and Organizational Measures on My Trust Center and where available Customer may subscribe to receive e-mail notification of such updated versions.

## 4. OBLIGATIONS

### 4.1. Instructions from Customer

SAP will process Personal Data only in accordance with documented instructions from Customer. The Agreement (including this DPA) constitutes such documented instructions. SAP will use reasonable efforts to follow any additional reasonable Customer instructions, as long as technically feasible. If SAP will not comply with an instruction or is of the opinion that an instruction infringes Data Protection Law, SAP will immediately notify Customer (e-mail permitted).

### 4.2. Processing on Legal Requirement

SAP may also process Personal Data where required to do so by applicable law. In such a case, SAP shall inform Customer of that legal requirement before processing unless that law prohibits such information on important grounds of public interest.

### 4.3. Personnel

To process Personal Data, SAP and its Subprocessors shall only grant access to authorized personnel who have committed themselves to confidentiality. SAP and its Subprocessors will regularly train personnel having access to Personal Data in applicable data security and data privacy measures.

### 4.4. Cooperation

- 4.4.1. At Customer's request, SAP will reasonably cooperate with Customer and Controllers in dealing with requests from Data Subjects or regulatory authorities regarding SAP's processing of Personal Data or any Personal Data Breach. If SAP receives a request from a Data Subject in relation to the Personal Data processing hereunder, SAP will promptly notify Customer (where the Data Subject has provided information to identify the Customer) via e-mail and shall not respond to such request itself but instead ask the Data Subject to redirect its request to Customer.

- 4.4.2. In the event of a dispute with a Data Subject as it relates to SAP's processing of Personal Data under this DPA, the Parties shall keep each other informed and, where appropriate, reasonably co-operate with the aim of resolving the dispute amicably with the Data Subject.

- 4.4.3. SAP shall provide functionality for production systems that supports Customer's ability to correct, delete or anonymize Personal Data from a Cloud Service, or restrict its processing in line with Data Protection Law. Where such functionality is not provided, SAP will correct, delete or anonymize any Personal Data, or restrict its processing, in accordance with the Customer's instruction and Data Protection Law.

### 4.5. Personal Data Breach Notification

SAP will notify Customer without undue delay after becoming aware of any Personal Data Breach and provide reasonable information in its possession to assist Customer to meet Customer's obligations to report a Personal Data Breach as required under Data Protection Law. SAP may provide such information in phases as it becomes available. Such notification shall not be interpreted or construed as an admission of fault or liability by SAP.

### 4.6. Data Protection Impact Assessment

If, pursuant to Data Protection Law, Customer (or its Controllers) are required to perform a data protection impact assessment or prior consultation with a regulator, at Customer's request, SAP will provide such

documents as are generally available for the SAP Services (for example, this DPA, the Agreement, Audit Reports and Certifications). Any additional assistance shall be mutually agreed between the Parties.

## **5. DATA EXPORT AND DELETION**

### **5.1. Export and Retrieval**

If and to the extent SAP hosts Personal Data in a Cloud Service, during the Subscription Term of such Cloud Service and subject to the Agreement, Customer can access its Personal Data at any time. Customer may use SAP's self-service export tools and retrieve its Personal Data in a structured, commonly used and machine-readable format.

### **5.2. Deletion**

5.2.1. Before the Subscription Term of the Cloud Service expires, Customer shall perform one final data export which constitutes a final return of Personal Data from the Cloud Service.

5.2.2. At the end of the Agreement, Customer hereby instructs SAP to delete the Personal Data remaining with SAP (if any) within a reasonable time period in line with Data Protection Law (not to exceed 6 months), unless applicable law requires retention.

## **6. CERTIFICATIONS AND AUDITS**

### **6.1. SAP Resources**

SAP provides Audit Reports and Certifications free of charge, online or upon request. Additional verifications that require SAP resources are limited and subject to the following Sections.

### **6.2. Limitations**

6.2.1. Customer or its independent third party auditor (reasonably acceptable to SAP excluding any third party auditor who is either a competitor of SAP or not suitably qualified) may be permitted to conduct an audit under Sections 6.3 and 6.4. Customer shall provide at least 60 days advance notice of any audit unless mandatory Data Protection Law or a competent data protection authority requires shorter notice.

6.2.2. The frequency (not to exceed once every 12 months), timeframe and scope of any audit shall be mutually agreed between the parties acting reasonably and in good faith. Customer audits shall be limited to remote audits where possible. Customer shall provide the results of any audit to SAP. Customer shall bear the costs of any Customer initiated audit unless such audit reveals a material breach by SAP of this DPA, then SAP shall bear its own expenses of an audit. If an audit determines that SAP has breached its obligations under the DPA, SAP will promptly remedy the breach at its own cost.

### **6.3. Cloud Services Customer Audit**

6.3.1. Customer may audit SAP's control environment and IT security practices relevant to Personal Data processed by SAP, that require SAP resources equivalent to a maximum of 3 business days if:

- a) SAP has not provided sufficient evidence of its compliance with the Technical and Organizational Measures through providing a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate), such as a valid SSAE18/ISAE3402 and/or ISAE3000 (e.g. SOC2 or C5) or an equally accepted regional or local certification or attestation; or
- b) a Personal Data Breach has occurred; or
- c) an audit is formally requested by Customer's data protection authority or provided under mandatory Data Protection Law.

### **6.4. SAP Support and Services Customer Audit**

Customer may audit SAP's service and support delivery centers and IT security practices relevant to Personal Data processed by SAP that require SAP resources equivalent to a maximum of 1 business day if:

- a) SAP has not provided sufficient evidence of its compliance with the Technical and Organizational Measures through providing a certification as to compliance with ISO 27001 or other standards (scope as defined in the certificate); or
- b) a Personal Data Breach has occurred; or
- c) an audit is formally requested by Customer's data protection authority or provided under mandatory Data Protection Law.

#### 6.5. Other Controller Audit

Any other Controller may assume Customer's rights under this Section 6 only if it applies directly to the Controller and such audit is permitted and coordinated by Customer. Customer shall use all reasonable means to combine audits of multiple other Controllers to avoid multiple audits.

### 7. SUBPROCESSORS

#### 7.1. Permitted Use

SAP is granted a general authorization to subcontract the processing of Personal Data to Subprocessors, provided that:

- a) SAP or SAP SE on its behalf shall engage Subprocessors under a written (including in electronic form) contract consistent with the terms of this DPA in relation to the Subprocessor's processing of Personal Data. SAP shall be liable for any breaches by the Subprocessor in accordance with the terms of the Agreement;
- b) SAP will evaluate the security, privacy and confidentiality practices of a Subprocessor prior to its selection in order to establish that it is capable of providing the level of protection of Personal Data required by this DPA; and
- c) SAP provides to Customer the List of Subprocessors by publishing it on My Trust Center or by making it available to Customer in writing (email permitted) upon Customer's written request.

#### 7.2. New Subprocessors

SAP's use of Subprocessors is at its discretion, provided that:

- a) SAP will inform Customer in advance (by email or posting on My Trust Center) of any intended additions or replacements to the list of Subprocessors including name, address and role of the new Subprocessor. Customer agrees to register on the My Trust Center and subscribe to its applicable and available List of Subprocessors. If Customer does not object, Customer is deemed to have accepted the new Subprocessor.
- b) Customer may object to a new Subprocessor by notifying SAP in writing within 5 business days of SAP's information for Services and in case of SAP Support and Cloud Services within 30 calendar days and explaining the reasonable ground(s) for its objection.
- c) If Customer objects SAP may choose: (i) not to use the Subprocessor; or (ii) to take reasonable measures to remedy Customer's grounds for its objection and use the Subprocessor or (iii) if this is not possible, use the Subprocessor. If Customer continues to have a legitimate objection, Customer may only terminate the affected SAP Service using the new Subprocessor, however termination of SAP Support shall also comply with the termination provision of the respective SAP Support agreement. Such termination shall take effect at the time determined by the Customer in its written termination notice provided Customer accepts the use of the proposed Subprocessor during the remainder of the Agreement until the effective termination date.
- d) If Customer objects but neither of the options under 7.2.(c) (i) or (ii) are pursued and SAP has not received any notice of termination, Customer is deemed to have accepted the new Subprocessor.
- e) Any termination under this Section shall be deemed to be without fault by either party and shall be subject to the terms of the Agreement.



### 7.3. Emergency Replacement

SAP may replace a Subprocessor without advance notice where the reason for the change is outside of SAP's reasonable control and prompt replacement is required for security or other urgent reasons. In this case, SAP will inform Customer of the replacement Subprocessor as soon as possible following its appointment. Section 7.2 applies accordingly.

## 8. INTERNATIONAL PROCESSING

### 8.1. Conditions for International Processing

SAP shall be entitled to process Personal Data, including by using Subprocessors, in accordance with this DPA outside the country in which the Customer is located as permitted under Data Protection Law.

### 8.2. Applicability of the Standard Contractual Clauses (2010)

8.2.1. Where for the period up to and including 26 September 2021, Personal Data of a Controller that is subject to GDPR is processed in a Third Country, or where Personal Data of a Swiss or United Kingdom based Controller or another Controller is processed in a Third Country and such international processing requires an adequacy means under the laws of the country of the Controller and the required adequacy means can be met by entering into the Standard Contractual Clauses (2010), then:

- a) if applicable, SAP and Customer enter into the Standard Contractual Clauses (2010);
- b) Customer joins the Standard Contractual Clauses (2010) entered into by SAP or SAP SE and the Subprocessor as an independent owner of rights and obligations; or
- c) other Controllers whose use of the SAP Services have been authorized by Customer under the applicable Agreement may also enter into Standard Contractual Clauses (2010) with SAP or the relevant Subprocessors in the same manner as Customer in accordance with Sections 8.2.1 (a) and (b) above.

8.2.2. The Standard Contractual Clauses (2010) shall be governed by the law of the country in which the relevant Controller is established.

8.2.3. Where applicable Data Protection Law adopts the New Standard Contractual Clauses as meeting any required adequacy means as an alternative or update to the Standard Contractual Clauses (2010) then the New Standard Contractual Clauses shall apply in accordance with Section 8.3.

### 8.3. Applicability of New Standard Contractual Clauses

8.3.1. The following shall apply with effect from 27 September 2021 and shall solely apply in respect of New SCC Relevant Transfers:

8.3.1.1. Where SAP is not located in a Third Country and acts as a data exporter, SAP (or SAP SE on its behalf) has entered into the New Standard Contractual Clauses with each Subprocessor as the data importer. Module 3 (Processor to Processor) of the New Standard Contractual Clauses shall apply to such New SCC Relevant Transfers.

8.3.1.2. Where SAP is located in a Third Country:

SAP and Customer hereby enter into the New Standard Contractual Clauses with Customer as the data exporter and SAP as the data importer which shall apply as follows:

- a) Module 2 (Controller to Processor) shall apply where Customer is a Controller; and
- b) Module 3 (Processor to Processor) shall apply where Customer is a Processor. Where Customer act as Processor under Module 3 (Processor to Processor) of the New Standard Contractual Clauses, SAP acknowledges that Customer acts as Processor under the instructions of its Controller(s).

Other Controllers or Processors whose use of the Cloud Services has been authorized by Customer under the Agreement may also enter into the New Standard Contractual Clauses with SAP in the same manner as Customer in accordance with Section (b) above. In such case, Customer enters into the New Standard Contractual Clauses on behalf of the other Controllers or Processors.

- 8.3.2. With respect to a New SCC Relevant Transfer, on request from a Data Subject to the Customer, Customer may make a copy of Module 2 or 3 of the New Standard Contractual Clauses entered into between Customer and SAP (including the relevant Schedules), available to Data Subjects.
- 8.3.3. The governing law of the New Standard Contractual Clauses shall be the law of Germany.
- 8.4. Relation of the Standard Contractual Clauses to the Agreement
- Nothing in the Agreement shall be construed to prevail over any conflicting clause of the Standard Contractual Clauses (2010) or the New Standard Contractual Clauses. For the avoidance of doubt, where this DPA further specifies audit and Subprocessor rules, such specifications also apply in relation to the Standard Contractual Clauses (2010) and the New Standard Contractual Clauses.
- 8.5. Third Party Beneficiary Right under the New Standard Contractual Clauses
- 8.5.1. Where Customer is located in a Third Country and acting as a data importer under Module 2 or Module 3 of the New Standard Contractual Clauses and SAP is acting as Customer's sub-processor under the applicable Module, the respective data exporter shall have the following third party beneficiary right:
- 8.5.2. In the event that Customer has factually disappeared, ceased to exist in law or has become insolvent (in all cases without as successor entity that has assumed the legal obligations of the Customer by contract or by operation of law), the respective data exporter shall have the right to terminate the affected SAP Service solely to the extent that the data exporter's Personal Data is processed. In such event, the respective data exporter also instructs SAP to erase or return the Personal Data.

## 9. DOCUMENTATION; RECORDS OF PROCESSING

Each party is responsible for its compliance with its documentation requirements, in particular maintaining records of processing where required under Data Protection Law. Each party shall reasonably assist the other party in its documentation requirements. Customer shall provide and maintain information on all Controllers (e.g. legal name and address) using the SAP Services in electronic format (e.g. in the Order Form) as reasonably requested by SAP, in order to enable SAP to comply with any obligations relating to maintaining records of processing.

### Schedule 1 Description of the Processing

This Schedule 1 applies to describe the Processing of Personal Data for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

#### 1. A. LIST OF PARTIES

- 1.1. Under the Standard Contractual Clauses (2010)
- 1.1.1. Data Exporter
- The data exporter is the Customer who has concluded the Agreement with SAP for the provision of SAP Services as further described under the relevant Agreement. The data exporter allows other Controllers to also use the SAP Service, these other Controllers are also data exporters.
- 1.1.2. Data Importer
- 1.1.2.1. In respect of Cloud Services
- SAP and its Subprocessors that provide and support the Cloud Service are data importers under the Standard Contractual Clauses (2010).
- 1.1.2.2. In respect of other SAP Services
- SAP and its Subprocessors provide the SAP Service as defined under the relevant Agreement concluded by the data exporter that includes Standard Contractual Clauses (2010) are data importers.

1.2. Under the New Standard Contractual Clauses

1.2.1. Module 2: Transfer Controller to Processor

Where SAP is located in a Third Country, Customer is the Controller and SAP is the Processor, then Customer is the data exporter and SAP is the data importer.

1.2.2. Module 3: Transfer Processor to Processor

Where SAP is located in a Third Country, Customer is a Processor and SAP is a Processor, then Customer is the data exporter and SAP is the data importer.

**2. B. DESCRIPTION OF TRANSFER**

2.1. Data Subjects

Unless provided otherwise by the data exporter, transferred Personal Data relates to the following categories of Data Subjects: employees, contractors, Business Partners or other individuals having Personal Data stored, transmitted to, made available to, accessed or otherwise processed by the data importer.

2.2. Data Categories

The transferred Personal Data concerns the following categories of data:

Customer determines the categories of data and/or data fields which could be transferred per SAP Service as stated in the relevant Agreement. For Cloud Services, Customer can configure the data fields during implementation of the Cloud Service or as otherwise provided by the Cloud Service. The transferred Personal Data typically relates to the following categories of data: name, phone numbers, e-mail address, address data, system access / usage / authorization data, company name, contract data, invoice data, plus any application-specific data transferred or entered into the SAP Service by Authorized Users and may include financial data such as bank account data, credit or debit card data.

2.3. Special Data Categories (if agreed)

2.3.1. The transferred Personal Data may comprise special categories of personal data set out in the Agreement ("**Sensitive Data**"). SAP has taken Technical and Organizational Measures as set out in Schedule 2 to ensure a level of security appropriate to protect also Sensitive Data.

2.3.2. The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):

- a) training of personnel;
- b) encryption of data in transit and at rest ;
- c) system access logging and general data access logging.

2.3.3. In addition, the Cloud Services provide measures for handling of Sensitive Data as described in the Documentation.

2.4. Purposes of the data transfer and further processing; Nature of the processing

2.4.1. For Cloud Services

2.4.1.1. The transferred Personal Data is subject to the following basic processing activities:

- a) use of Personal Data to set up, operate, monitor and provide the Cloud Service (including operational and technical Support);
- b) continuous improvement of service features and functionalities provided as part of the Cloud Service including automation, transaction processing and machine learning;
- c) provision of Consulting Services;
- d) communication to Authorized Users;
- e) storage of Personal Data in dedicated Data Centers (multi-tenant architecture);

- f) release, development and upload of any fixes or upgrades to the Cloud Service;
  - g) back up and restoration of Personal Data stored in the Cloud Service;
  - h) computer processing of Personal Data, including data transmission, data retrieval, data access;
  - i) network access to allow Personal Data transfer;
  - j) monitoring, troubleshooting and administering the underlying Cloud Service infrastructure and database;
  - k) security monitoring, network-based intrusion detection support, penetration testing; and
  - l) execution of instructions of Customer in accordance with the Agreement.
- 2.4.1.2. The purpose of the transfer is to provide and support the Cloud Service. SAP and its Subprocessors may support the Cloud Service data centers remotely. SAP and its Subprocessors provide support when a Customer submits a support ticket as further set out in the Agreement.
- 2.4.2. For other SAP Services
- The transferred Personal Data is subject to the basic processing activities as set out in the Agreement which may include:
- a) accessing systems containing Personal Data in order to provide SAP Support and Services;
  - b) use of Personal Data to provide the SAP Service;
  - c) continuous improvement of service features and functionalities provided as part of the SAP Service including automation, transaction processing and machine learning;
  - d) storage of Personal Data;
  - e) computer processing of Personal Data for data transmission;
  - f) execution of instructions of Customer in accordance with the Agreement;
- 2.4.3. For SAP Support: SAP or its Subprocessors provide support when a Customer submits a support ticket because the Software is not available or not working as expected. They answer phone calls and perform basic troubleshooting, and handle support tickets in a tracking system.
- 2.4.4. For Services: SAP or its Subprocessors provide Services subject to the Order Form Services and the applicable Scope Document.
- 2.5. The purpose of the transfer is to provide and support the relevant SAP Service. SAP and its Subprocessors may provide or support the SAP Service remotely.
- 2.6. The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis):
- Personal Data will be transferred on an ongoing basis for the duration of the Agreement.
- 2.7. The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period:
- Personal Data will be retained by SAP as set out in Section 5 above.
- 2.8. For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing:
- SAP will transfer Personal Data to Subprocessors as stated in the applicable List of Subprocessors for the duration of the Agreement.
- 3. C. COMPETENT SUPERVISORY AUTHORITY**
- 3.1. In respect of the New Standard Contractual Clauses:
- 3.1.1. Module 2: Transfer Controller to Processor
  - 3.1.2. Module 3: Transfer Processor to Processor
- 3.2. Where Customer is the data exporter, the supervisory authority shall be the competent supervisory authority that has supervision over the Customer in accordance with Clause 13 of the New Standard Contractual Clauses.

### **Schedule 2 Technical and Organizational Measures**

This Schedule 2 applies to describe the applicable technical and organizational measures for the purposes of the Standard Contractual Clauses (2010), New Standard Contractual Clauses and applicable Data Protection Law.

SAP will apply and maintain the Technical and Organizational Measures.

To the extent that the provisioning of the Cloud Service comprises New SCC Relevant Transfers, the Technical and Organizational Measures set out in Schedule 2 describe the measures and safeguards which have been taken to fully take into consideration the nature of the personal data and the risks involved. If local laws may affect the compliance with the clauses, this may trigger the application of additional safeguards applied during transmission and to the processing of the personal data in the country of destination (if applicable: encryption of data in transit, encryption of data at rest, anonymization, pseudonymization).

## Attachment 6

Section 8. Item #j.

## Schedule E

## GENERAL TERMS AND CONDITIONS FOR CLOUD SERVICES (“GTC”)

## 1. DEFINITIONS

- 1.1. **“Affiliate”** means any legal entity in which SAP SE or Customer, directly or indirectly, holds more than 50% of the entity’s shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2. **“Agreement”** means the agreement as defined in the applicable Order Form.
- 1.3. **“Authorized User”** means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of Customer, Customer’s Affiliates, or Customer’s and Customer’s Affiliates’ Business Partners.
- 1.4. **“Business Partner”** means a legal entity that requires use of a Cloud Service in connection with Customer’s and its Affiliates’ internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer and its Affiliates.
- 1.5. **“Cloud Service”** means any distinct, hosted, supported and operated on-demand solution provided by SAP under an Order Form.
- 1.6. **“Confidential Information”** means all information which the disclosing party protects against unrestricted disclosure to others that the disclosing party or its representatives designates as confidential, internal and/or proprietary at the time of disclosure, should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure.
- 1.7. **“Customer Data”** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include SAP’s Confidential Information.
- 1.8. **“Documentation”** means SAP’s then-current technical and functional documentation relating to the Cloud Services located at <https://help.sap.com> or which SAP makes available to Customer as part of the Cloud Service, including technical and functional specifications as updated from time to time in accordance with the Agreement.
- 1.9. **“Export Laws”** means all applicable import, export control and sanctions laws, including without limitation, the laws of the United States, the EU, and Germany.
- 1.10. **“Feedback”** means input, comments or suggestions regarding SAP’s business and technology direction, and the possible creation, modification, correction, improvement or enhancement of the Cloud Service.
- 1.11. **“Intellectual Property Rights”** means patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, whether registered or unregistered, including applications (or rights to apply) and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.12. **“Order Form”** means the ordering document for a Cloud Service that references the GTC.
- 1.13. **“Professional Services”** means implementation services, consulting services or other related services provided under an Order Form and may also be referred to in the Agreement as “Consulting Services”.
- 1.14. **“Representatives”** means a party’s Affiliates, employees, contractors, sub-contractors, legal representatives, accountants, or other professional advisors.
- 1.15. **“SAP Materials”** means any materials (including statistical reports) provided, developed or made available by SAP (independently or with Customer’s cooperation) in the course of performance under the Agreement, including in the delivery of any support or Professional Services to Customer. SAP Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service. SAP Materials may also be referred to in the Agreement as “Cloud Materials”.

- 1.16. **"SAP SE"** means SAP SE, the parent company of SAP.
- 1.17. **"Subscription Term"** means the initial subscription term and if applicable any renewal subscription term of a Cloud Service identified in the Order Form.
- 1.18. **"Taxes"** means all transactional taxes, levies and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, property tax, excise tax, service tax or similar taxes.
- 1.19. **"Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Cloud Service as set forth in an Order Form.

## 2. USAGE RIGHTS AND RESTRICTIONS

### 2.1. Grant of Rights

SAP grants to Customer a non-exclusive and non-transferable right to use the Cloud Service (including its implementation and configuration), SAP Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Customer may use the Cloud Service world-wide, except Customer shall not use the Cloud Service from countries where such use is prohibited by Export Laws. Permitted uses and restrictions of the Cloud Service also apply to SAP Materials and Documentation.

### 2.2. Authorized Users

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.

### 2.3. Verification of Use

Customer will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and volume. SAP may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

### 2.4. Suspension of Cloud Service

SAP may suspend or limit use of the Cloud Service if:

- a) continued use may result in material harm to the Cloud Service or its users; or
- b) to comply with laws and regulations applicable to SAP, its Affiliates' or subcontractors.

SAP will promptly notify Customer of the suspension or limitation. SAP will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

### 2.5. Third Party Web Services

The Cloud Service may include integrations with web services made available by third parties (other than SAP SE or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third party web services are not part of the Cloud Service and the Agreement does not apply to them. SAP is not responsible for the content of these third party web services.

### 2.6. Mobile Access to Cloud Service

Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app stores. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

### 2.7. On-Premise Components

The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Customer. The System Availability SLA does not apply to these components. Customer may only use the on-premise components during the Subscription Term.

### **3. SAP RESPONSIBILITIES**

#### **3.1. Provisioning**

SAP provides access to the Cloud Service as described in the Agreement. SAP makes the Cloud Service available and is responsible for its operation.

#### **3.2. Support**

SAP provides support for the Cloud Service as referenced in the Order Form.

#### **3.3. Security**

SAP will implement and maintain appropriate technical and organizational measures to protect the personal data processed by SAP as part of the Cloud Service as described in the Data Processing Agreement incorporated into the Order Form in compliance with applicable data protection law.

#### **3.4. Modifications**

##### **3.4.1. Scope**

SAP may modify the Cloud Service (including support services, Maintenance Windows and Major Upgrade Windows), provided that SAP shall not materially degrade the core functionality of the Cloud Service during the Subscription Term.

##### **3.4.2. Modification Notices**

SAP shall provide Customer with reasonable advance notice of modifications to the functionality of the Cloud Service in accordance with Section 13.5, except for any change to a Maintenance Window or Major Upgrade Window which shall be in accordance with the Service Level Agreement.

##### **3.4.3. Customer Termination**

If the modification materially degrades the Cloud Service and SAP does not provide equivalent functionality, Customer may terminate its subscription to the affected Cloud Service by providing written notice to SAP within 1 month of SAP's notice. If SAP does not receive timely notice, Customer is deemed to have accepted the modification.

### **4. CUSTOMER AND PERSONAL DATA**

#### **4.1. Customer Ownership**

Customer retains all rights in and related to the Customer Data. SAP may use Customer-provided trademarks solely to provide and support the Cloud Service.

#### **4.2. Customer Data**

Customer is responsible for the Customer Data and entering it into the Cloud Service. Customer grants to SAP (including SAP SE, its Affiliates and subcontractors) a non-exclusive right to process and use Customer Data to provide and support the Cloud Service and as set out in the Agreement.

#### **4.3. Personal Data**

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

#### **4.4. Security**

Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from SAP.

#### **4.5. Access to Customer Data**

##### **4.5.1. During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical**



limitations, in which case SAP and Customer will find a reasonable method to allow Customer access to Customer Data.

- 4.5.2. Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service.
- 4.5.3. At the end of the Agreement, SAP will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- 4.5.4. In the event of third party legal proceedings relating to the Customer Data, SAP will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

## **5. FEES AND TAXES**

### **5.1. Fees and Payment**

Customer shall pay fees as stated in the Order Form. If Customer does not pay fees in accordance with the terms of the Agreement then, in addition to any other available remedies, SAP may suspend Customer's use of the applicable Cloud Service until payment is made. SAP shall provide Customer with prior written notice before any such suspension. Any fees not paid when due shall accrue interest at the maximum legal rate. Purchase orders are for administrative convenience only. SAP may issue an invoice and collect payment without a corresponding purchase order. Customer may not withhold, reduce or set-off fees owed. Customer may not reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable. All fees are non-refundable except per Sections 6.3 or 7.4.2.

### **5.2. Taxes**

Fees and other charges imposed under an Order Form will not include Taxes, all of which will be for Customer's account. Customer is responsible for all Taxes. Customer must provide to SAP any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If SAP is required to pay Taxes, Customer will reimburse SAP for those amounts and indemnify SAP for any Taxes and related costs paid or payable by SAP attributable to those Taxes.

## **6. TERM AND TERMINATION**

### **6.1. Term**

The Subscription Term is as stated in the Order Form.

### **6.2. Termination**

A party may terminate the Agreement:

- a) for cause upon 30 days' prior written notice of the other party's material breach of any provision of the Agreement (including Customer's failure to pay any money due hereunder within 30 days of the payment due date) unless the breaching party has cured the breach during such 30 day period;
- b) as permitted under Sections 3.4.3, 7.3.b), 7.4.3, 8.1.4, or 13.4 (with termination effective thirty days after receipt of notice in each of these cases); or
- c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 13.6.

### **6.3. Refund and Payments**

For termination by Customer (including but not limited to Sections 3.4.3, 6.2(a), 7.3 (b) or 7.4.3) or termination under Sections 8.1.4 or 13.4 Customer will be entitled to:

- a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and
- b) a release from the obligation to pay fees due for periods after the effective date of termination.

#### 6.4. Effect of Expiration or Termination

Upon the effective date of expiration or termination of the Agreement:

- a) Customer's right to use the Cloud Service and all SAP Confidential Information will end;
- b) Confidential Information of the disclosing party will be retained, returned, or destroyed as required by the Agreement or applicable law; and
- c) termination or expiration of the Agreement does not affect other agreements between the parties.

#### 6.5. Survival

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, 12 and 13 will survive the expiration or termination of the Agreement.

### 7. WARRANTIES

#### 7.1. Compliance with Law

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- a) in the case of SAP, the operation of SAP's business as it relates to the Cloud Service; and
- b) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.

#### 7.2. Good Industry Practices

SAP warrants that it will provide the Cloud Service:

- a) in substantial conformance with the Documentation; and
- b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service.

#### 7.3. Remedy

Customer's sole and exclusive remedies and SAP's entire liability for breach of the warranty under Section 7.2 will be:

- a) correction of the deficient Cloud Service; and
- b) if SAP fails to correct the deficient Cloud Service, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within 3 months of SAP's failure to correct the deficient Cloud Service.

#### 7.4. System Availability

7.4.1. SAP warrants to maintain an average monthly system availability for the production system of the Cloud Service as defined in the applicable Service Level Agreement or Supplement ("SLA").

7.4.2. Customer's sole and exclusive remedy for SAP's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow SAP's posted credit claim procedure. When the validity of the service credit is confirmed by SAP in writing (email permitted), Customer may apply the credit to a future invoice for the Cloud Service or request a refund for the amount of the credit if no future invoice is due.

7.4.3. In the event SAP fails to meet the SLA (i) for 4 consecutive months, or (ii) for 5 or more months during any 12 month period, or (iii) at a system availability level of at least 95% for 1 calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing SAP with written notice within 30 days after the failure.

#### 7.5. Warranty Exclusions

The warranties in Sections 7.2 and 7.4 will not apply if:

- a) the Cloud Service is not used in accordance with the Agreement or Documentation;
- b) any non-conformity is caused by Customer, or by any product or service not provided by SAP; or
- c) the Cloud Service was provided for no fee.

## 7.6. Disclaimer

Except as expressly provided in the Agreement, neither SAP nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of SAP or product roadmaps in obtaining subscriptions for any Cloud Service.

## 8. THIRD PARTY CLAIMS

### 8.1. Claims Brought Against Customer

8.1.1. SAP will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Cloud Service infringes or misappropriates a patent claim, copyright, or trade secret right. SAP will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement SAP enters into) with respect to these claims.

8.1.2. SAP's obligations under Section 8.1 will not apply if the claim results from:

- a) use of the Cloud Service in conjunction with any product or service not provided by SAP;
- b) use of the Cloud Service provided for no fee;
- c) Customer's failure to timely notify SAP in writing of any such claim if SAP is prejudiced by Customer's failure to provide or delay in providing such notice; or
- d) any use of the Cloud Service not permitted under the Agreement.

8.1.3. If a third party makes a claim or in SAP's reasonable opinion is likely to make such a claim, SAP may at its sole option and expense:

- a) procure for Customer the right to continue using the Cloud Service under the terms of the Agreement; or
- b) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality.

8.1.4. If these options are not reasonably available, SAP or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.

8.1.5. SAP expressly reserves the right to cease such defense of any claim(s) if the applicable Cloud Service is no longer alleged to infringe or misappropriate the third party's rights.

### 8.2. Claims Brought Against SAP

Customer will defend SAP against claims brought against SAP, SAP SE, its Affiliates and subcontractors by any third party related to Customer Data. Customer will indemnify SAP against all damages finally awarded against SAP, SAP SE, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

### 8.3. Third Party Claim Procedure

All third party claims under Section 8 shall be conducted as follows:

- a) The party against whom a third party claim is brought (the "**Named Party**") will timely notify the other party (the "**Defending Party**") in writing of any claim. The Named Party shall reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party subject to Section 8.3b).
- b) The Defending Party will have the right to fully control the defense.
- c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by the Named Party.

#### 8.4. Exclusive Remedy

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third party intellectual property rights.

### 9. LIMITATION OF LIABILITY

#### 9.1. No Cap on Liability

Neither party's liability is capped for damages resulting from:

- a) the parties' obligations under Section 8.1.1 and 8.2 (excluding SAP's obligation under Section 8.1.1 where the third party claim(s) relates to a Cloud Service(s) not developed by SAP);
- b) death or bodily injury arising from either party's gross negligence or willful misconduct; and/or
- c) Customer's unauthorized use of any Cloud Service and/or any failure by Customer to pay any fees due under the Agreement.

#### 9.2. Liability Cap

Except as set forth in Section 9.1, the maximum aggregate liability of either party (or its respective Affiliates or SAP's subcontractors) to the other or to any other person or entity for all events (or series of connected events) arising in any 12 month period will not exceed the annual subscription fees paid for the applicable Cloud Service associated with the damages for that 12 month period. Any "12 month period" commences on the Subscription Term start date or any of its yearly anniversaries.

#### 9.3. Exclusion of Damages

In no case will:

- a) either party (or its respective Affiliates or SAP's subcontractors) be liable to the other party for any special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage or for exemplary or punitive damages; and/or
- b) SAP be liable for any damages caused by any Cloud Service provided for no fee.

### 10. INTELLECTUAL PROPERTY RIGHTS

#### 10.1. SAP Ownership

10.1.1. Except for any rights expressly granted to Customer under the Agreement, SAP, SAP SE, their Affiliates or licensors own all Intellectual Property Rights in and derivative works of:

- a) the Cloud Service;
- b) SAP Materials;
- c) Documentation; and
- d) any Professional Services, design contributions, related knowledge or processes, whether or not developed for Customer.

10.1.2. Customer shall execute such documentation and take such other steps as is reasonably necessary to secure SAP's or SAP SE's title over such rights.

#### 10.2. Acceptable Use Policy

10.2.1. With respect to the Cloud Service, Customer will not:

- a) copy, translate, disassemble, decompile, make derivative works, or reverse engineer the Cloud Service or SAP Materials (or attempt any of the foregoing);
- b) enter, store, or transfer any content or data on or via the Cloud Service that is unlawful or infringes any Intellectual Property Rights;
- c) circumvent or endanger the operation or security of the Cloud Service; or
- d) remove SAP's copyright and authorship notices.

## 11. CONFIDENTIALITY

### 11.1. Use of Confidential Information

#### 11.1.1. The receiving party shall:

- a) maintain all Confidential Information of the disclosing party in strict confidence, taking steps to protect the disclosing party's Confidential Information substantially similar to those steps that the receiving party takes to protect its own Confidential Information, which shall not be less than a reasonable standard of care;
- b) not disclose or reveal any Confidential Information of the disclosing party to any person other than its Representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11;
- c) not use or reproduce any Confidential Information of the disclosing party for any purpose outside the scope of the Agreement; and
- d) retain any and all confidential, internal, or proprietary notices or legends which appear on the original and on any reproductions.

#### 11.1.2. Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing or any other related facts to any third party.

#### 11.1.3. Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.

### 11.2. Compelled Disclosure

The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided, that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information which is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

### 11.3. Exceptions

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information;
- b) has become generally known or available to the public through no act or omission by the receiving party;
- c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions;
- d) is lawfully acquired free of restriction by the receiving party from a third party having the right to furnish such Confidential Information; or
- e) the disclosing party agrees in writing is free of confidentiality restrictions.

### 11.4. Destruction and Return of Confidential Information

Upon the disclosing party's request, the receiving party shall promptly destroy or return the disclosing party's Confidential Information, including copies and reproductions of it. The obligation to destroy or return Confidential Information shall not apply:

- a) if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered;
- b) to Confidential Information held in archive or back-up systems under general systems archiving or backup policies; or

c) to Confidential Information the receiving party is legally entitled or required to retain.

## 12. FEEDBACK

12.1. Customer may at its sole discretion and option provide SAP with Feedback. In such instance, SAP, SAP SE and its Affiliates may in their sole discretion retain and freely use, incorporate or otherwise exploit such Feedback without restriction, compensation or attribution to the source of the Feedback.

## 13. MISCELLANEOUS

### 13.1. Severability

If any provision of the Agreement is held to be wholly or in part invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

### 13.2. No Waiver

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

### 13.3. Counterparts

The Agreement may be signed in counterparts, each of which is an original and together constitute one Agreement. Electronic signatures via DocuSign or any other form as determined by SAP are deemed original signatures.

### 13.4. Trade Compliance

13.4.1. SAP and Customer shall comply with Export Laws in the performance of this Agreement. SAP Confidential Information is subject to Export Laws. Customer, its Affiliates, and Authorized Users shall not directly or indirectly export, re-export, release, or transfer Confidential Information in violation of Export Laws. Customer is solely responsible for compliance with Export Laws related to Customer Data, including obtaining any required export authorizations for Customer Data. Customer shall not use the Cloud Service from Crimea/Sevastopol, Cuba, Iran, the People's Republic of Korea (North Korea) the so-called Luhansk Peoples Republic (LNR) and Donetsk Peoples Republic (DNR) or Syria.

13.4.2. Upon SAP's request, Customer shall provide information and documents to support obtaining an export authorization. Upon written notice to Customer SAP may immediately terminate Customer's subscription to the affected Cloud Service if:

- a) the competent authority does not grant such export authorization within 18 months; or
- b) Export Laws prohibit SAP from providing the Cloud Service or Professional Services to Customer.

### 13.5. Notices

All notices will be in writing and given when delivered to the address set forth in an Order Form. Notices from SAP to Customer may be in the form of an electronic notice to Customer's authorized representative or administrator. SAP may provide notice of modifications to the Cloud Service under Section 3.4.2 via Documentation, release notes or publication. System notifications and information from SAP relating to the operation, hosting or support of the Cloud Service can also be provided within the Cloud Service, or made available via the SAP Support Portal.

### 13.6. Assignment

Without SAP's prior written consent, Customer may not assign, delegate or otherwise transfer the Agreement (or any of its rights or obligations) to any party. SAP may assign the Agreement to SAP SE or any of its Affiliates.

### 13.7. Subcontracting

SAP may subcontract parts of the Cloud Service to third parties. SAP is responsible for breaches of the Agreement caused by its subcontractors.

**13.8. Relationship of the Parties**

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

**13.9. Force Majeure**

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

**13.10. Governing Law**

The Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter will be governed by and construed under the laws of the State of New York. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

**13.11. Jurisdiction and Mandatory Venue**

The parties submit to the exclusive jurisdiction of the courts located in New York, New York. The parties waive any objections to the venue or jurisdictions identified in this provision. The mandatory, sole and exclusive venue, place or forum for any disputes arising from the Agreement (including any dispute regarding the existence, validity or termination of the Agreement) shall be New York, New York.

**13.12. Waiver of Right to Jury Trial**

Each party waives any right it may have to a jury trial for any claim or cause of action arising out of or in relation to the Agreement.

**13.13. Statute of Limitation**

Customer must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within 1 year from the date when the Customer knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

**13.14. Entire Agreement**

The Agreement constitutes the complete and exclusive statement of the agreement between SAP and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under the Agreement. Terms and conditions of any Customer-issued purchase order shall have no force and effect, even if SAP accepts or does not otherwise reject the purchase order.



# STAFF REPORT

**Meeting Type:** Board of Directors  
**Title:** Grant Program Update  
**From:** Shaun Horne, Watershed Resources Director  
**Through:** Ben Horenstein, General Manager *BH SH*  
**Meeting Date:** November 6, 2024

**TYPE OF ACTION:**                    Action            X            Information                    Review and Refer

**RECOMMENDATION:** Receive a staff update on the District’s recent grant activities

**SUMMARY:** Staff will provide an update on recent grant activities.

**DISCUSSION:** The District continues to track and apply for state and federal grant funding opportunities as they become available. Staff will provide a detailed presentation of recent grant applications as well as upcoming funding opportunities. The table below describes the status of grant applications and ongoing grants currently being managed.

Summary of Grant Awards and Applications				
Project	Funder	Amount	Status	Date
Natural Hazards	FEMA/CalOES Hazard Mitigation Grant Program	22,000,000	Decision Pending	August 2024
Lagunitas Creek Restoration Project	CDFW-Environmental Enhancement	\$3,457,044	Submitted	September 2024
Phoenix and Lagunitas Valves & Actuator	DWR	\$2,000,000	Submitted	October 2024
Water Supply Planning	USBR WaterSmart Drought Resiliency	\$3,000,000	Decision Pending	October 2024
Forest Health Strategy	USBR Environmental	\$300,000	Decision Pending	June 2024



	Water Resources Project			
One Tam Forest Health Strategy	CalFire	\$3,000,000 (Total award: \$6,966,078)	Awarded	June 2024
Water Supply Planning	USBR WaterSmart Planning & Design	\$400,000	Decision Pending	May 2024
Rain Harvesting Rebates	Marin County (MCSTOPPP)	\$15,032	Awarded	April 2024
AMI Expansion	U.S. Bureau of Reclamation (USBR)	\$1,000,000	Decision Pending	February 2024
One Tam Forest Health Strategy	Wildlife Conservation Board (WCB)	\$2,880,000 (Total award: \$6,447,687)	Administering	February 2024
Lagunitas Creek Restoration Phase II	California Dept. of Fish & Wildlife (CDFW) Fisheries & Restoration (FRGP)	\$600,000	Administering	December 2023
San Geronimo Treatment Plant Clarifiers	CalOES/FEMA	\$22,000,000	Not Awarded	December 2023
Lagunitas Creek Restoration	(CDFW) Prop 1	\$4,600,000	Administering	November 2023
Climate Adaptation Strategies: A Precipitation Modeling Initiative	USBR WaterSmart Energy Efficiency	\$150,628.00	Awarded	October 2023
Lagunitas Creek Restoration Project	USBR Environmental Restoration Project	\$1,400,000	Administering	August 2023
Reservoir Water Quality	CA Division of Boating & Waterways	\$86,800	Administering	July 2023
Lagunitas Creek Gravel Spawning Gravel	Department of Water Resources	\$590,000	Administering	June 2023

Improvement Project	(DWR) Riverine Stewardship			
Desalination Feasibility Study	USBR	\$200,000	Decision Pending	February 2023
Azalea Hill Trail Restoration	California State Parks	\$952,657	Administering	February 2023
Watershed Vegetation Management	Conservation Corp North Bay (CCNB)	\$500,000	Administering	January 2023
Marin City/San Rafael Water Supply Resiliency Project	DWR Integrated Regional Water Management Program (IRWMP)	\$6,500,000	Administering	January 2023
Fire Resilience in Mt. Tam Watershed	CCC Forestry Corps	\$374,000	Administering	December 2022
San Geronimo Emergency Generator Project	State Member Request (Levine)	\$1,000,000	Administering	July 2022
Water Conservation	USBR WaterSmart & Energy Efficiency (Sonoma-Marín Saving Water Partnership)	\$722,925	Administering	April 2022
Water Supply Alternatives	DWR Urban and Multi Benefit Drought Relief	\$2,000,000	Administering	March 2022
Forest Health	California Coastal Conservancy	1,088,610	Administering	June 2021
Water Conservation	Prop 1 IRWMP	\$222,477	Administering	June 2020
Water Resources Development Act of 2022				
Regional Water Supply	WRDA	\$28M	Passed/Not Authorized in House	December 2022

**ENVIRONMENTAL REVIEW:** Not Applicable.

**FISCAL IMPACT:** None.

**ATTACHMENT(S):** None.



permit applications. To support these efforts the District prepared and circulated two RFP's, one for the Nicasio Creek Fisheries Study and one for Environmental Compliance and Permitting.

The Nicasio Creek Fisheries Study RFP was distributed to three qualified consulting firms. The RFP included three tasks: 1) streamflow monitoring; 2) stream habitat surveys; and 3) biological surveys for salmonids and other special-status species. Staff reviewed the Nicasio Creek Fisheries Study RFP with the Watershed Committee at the October 17, 2024 meeting. The RFP was distributed on September 25, 2024, and one proposal from ESA was received on October 18, 2024. Staff met with ESA on October 22<sup>nd</sup> to review the study framework, scope and budget. Staff received input from the Watershed Committee regarding the study and in response has integrated temperature monitoring and ecohydrology mapping into the study. ESA's cost proposal for the Nicasio Creek Fisheries Study is \$398,212.

The Project Environmental Compliance and Permitting RFP encompasses preparation of necessary environmental analysis and compliance, including document preparation (California Environmental Quality Act (CEQA)/National Environmental Protection Act (NEPA)), permitting, Endangered Species Act compliance, as well as a robust stakeholder and agency engagement process. Staff reviewed the Environmental Compliance and Permitting RFP with the Operations Committee at the October 18, 2024 meeting. The RFP was distributed on October 4, 2024 and proposals from two firms were received on October 18, 2024. Interviews were carried out the week of October 21, 2024. Based on the proposals and interviews staff identified ESA as the most qualified firm. ESA's cost proposal for the Environmental Compliance and Permitting project is \$1,340,148.

After reviewing the proposals and interviewing consultants, staff is recommending one combined contract with ESA to include both areas of work in the amount of \$1,738,360. ESA's work will be done concurrently with the engineering analysis and design for the project and will aid the District in implementing this high priority project. The Nicasio Creek Fisheries Study will help the District better understand seasonal streamflow patterns and the presence/absence of aquatic species. This information will inform the District environmental analysis and compliance documentation, permit applications and provide critical data to support stakeholder discussions. As such, Staff sees project efficiencies that can be realized through having one firm carry out the work and is recommending that the District execute one professional services agreement with ESA in the amount of \$1,738,360 with a staff requested contingency of \$260,754, for a total not to exceed amount of \$1,999,114.

Budget

Professional Services Agreement Fees: \$1,738,360

Contingency (15%): \$260,754

Total Budget: \$1,999,114

Budget Category: A1A16

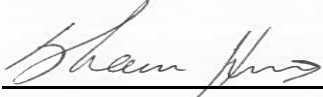

This work is scheduled to take place across Fiscal Years 2025 and 2026.

**ENVIRONMENTAL REVIEW:** Not Applicable.

**FISCAL IMPACT:** The total costs for the Nicasio Fisheries Study task is \$398,212 and the Environmental Compliance and Permitting task is \$1,340,148 for a total contract cost of \$1,738,360, with a staff requested contingency of \$260,754, for a total not to exceed amount of \$1,999,114 to be spread across FY25 and FY26. Funding for this contract is identified in the adopted budget for Fiscal Year 2024 and 2025 under the A1A16 Program Management fund center, under Roadmap Planning and Pre-Design.

<b>Task Description</b>	<b>Budget</b>
<b>Task 1</b> – Project Management and Coordination: This task includes project management activities including day-to-day administration, progress meetings, and technical reviews throughout the duration of the project.	\$246,369
<b>Task 2</b> – Environmental Compliance: This task includes preparation of CEQA documents, including EIR project description development, scoping meetings, assessment and delineation reports, AB52 compliance, terrestrial and fishery resources analyses, development of mitigation measures, draft EIR preparation, public review, and final EIR preparation.	\$769,534
<b>Task 3</b> – Regulatory Agency Permitting: This task includes preparing permit applications, assessments, and coordination for involved agencies, such as US Army Corps of Engineers, US Fish and Wildlife Service, California Department of Fish and Wildlife, National Marine Fisheries Service, Regional Water Quality Control Board	\$232,047
<b>Task 4</b> – Agency and Stakeholder Engagement: This task includes outreach and coordination with involved agencies and interested stakeholders, including an engagement plan, briefings, and meetings.	\$209,105
<b>Task 5</b> – Nicasio Creek Fishery Study: This task includes an ecohydrology assessment, salmonid habitat survey, and biological surveys along Nicasio Creek downstream of the dam to the confluence with Lagunitas Creek	\$281,305
<b>Professional Services Agreement Total</b>	\$1,738,360
<b>Contingency (15%)</b>	\$260,754
<b>Total Authorized Amount</b>	\$1,999,114

**ATTACHMENT(S):** None.

<b>DEPARTMENT OR DIVISION</b>	<b>DIVISION MANAGER</b>	<b>APPROVED</b>
Watershed	 <hr/> <b>Shaun Horne</b> Watershed Resources Director	 <hr/> <b>Ben Horenstein</b> General Manager



**UPCOMING MEETINGS**

This schedule lists upcoming board and committee meetings as well as upcoming agenda items for the next month, which may include Board interest in adding future meeting items. The schedule is tentative and subject to change pending final publication and posting of each meeting agenda.

<b>Internal Meetings</b>		
<b>Meeting Date</b>	<b>Meeting Type</b>	<b>Key Item(s)</b>
Friday, Nov. 15, 2024 9:30 a.m.	Operations Committee Meeting/Special Meeting of the Board of Directors	Paving Program Update
Tuesday, Nov. 19, 2024 6:30 p.m.	Board of Directors’ Regular Bi-Monthly Meeting	
Wednesday, Nov. 20, 2024 9:30 a.m.	Communications & Water Efficiency Committee Meeting/Special Meeting of the Board of Directors	
Thursday, Nov. 21, 2024 9:30 a.m.	Finance & Administration Committee Meeting/Special Meeting of the Board of Directors	

<b>External Meetings</b>	
<b>Meeting Date</b>	<b>Meeting Type</b>
Friday, Nov. 22, 2024 9:00 a.m.	Lagunitas Technical Advisory Committee Meeting