

A G E N D A
SPECIAL MEETING
SAN RAFAEL SANITATION DISTRICT
BOARD OF DIRECTORS
FRIDAY – MARCH 17, 2023 - 9:00 A.M.
SAN RAFAEL CITY HALL
1400 FIFTH AVENUE – CONFERENCE ROOM CD3
SAN RAFAEL, CALIFORNIA 94901

Members of the Public may also participate in Open Session through the following:

Zoom link: <https://us06web.zoom.us/j/82259247452>

Or by Phone: +1 669 900 6833 US (San Jose)

Meeting ID: 822 5924 7452

Public comments for this meeting can be submitted via email to the District Clerk at Kathryn.Nelson@cityofsanrafael.org. The public comment period opens when the agenda is posted online and will close two hours prior to the start of the meeting. Include your name and the item you would like to provide written comment on.

To provide comments during the meeting, please use the “raise hand” feature in the Zoom Meeting and the host will notify and unmute you when it is your turn to speak.

Members of the public may speak on Agenda items.

1. ROLL CALL

2. OPEN PERIOD

Opportunity for the public to address the Board on items not on the agenda.
(Presentations are generally limited to 2 minutes.)

3. MINUTES OF THE MEETING

Request approval as submitted – January 12, 2023.

4. PAYMENTS

Request approval as submitted.

5. OLD BUSINESS

a. None

6. NEW BUSINESS

- a. Adopt Resolution authorizing the District Manager/District Engineer to execute a Professional Services Agreement with Park Engineering for Construction Inspection Services.
- b. Approve Municipal Resource Group, LLC proposal for conducting a Compensation Study.
- c. Adopt Resolution to Summarily Vacate a Sanitary Sewer Easement at 3301 Kerner Boulevard, APN 008-082-52, San Rafael, California.
- d. Approve Board meeting schedule changes for 2023.

7. INFORMATIONAL ITEMS

- a. Letter to Regional Water Quality Control Board, dated March 6, 2023, Request to Remove Collection Systems from Tentative National Pollutant Discharge Elimination System permit for CMSA.

8. DIRECTOR REPORTS/REQUESTS FOR FUTURE AGENDA ITEMS

9. CLOSED SESSION

- a. **Public Employee Performance Evaluation**
California Government Code Section 54957
Title: District Manager

10. ADJOURNMENT

The next scheduled meeting is April 21, 2023.

**SAN RAFAEL SANITATION DISTRICT
Minutes of the Special Meeting
January 12, 2023**

Special Meeting

Via Teleconferencing

The meeting was called to order at 1:30 P.M. by Chair Kate.

Attendance Board: Kate Colin, Chair
Maribeth Bushey, Secretary/Director
Katie Rice, Director

Attendance Staff: Doris Toy, District Manager/District Engineer
Kris Ozaki, Operations and Maintenance Manager
Tim Tran, Associate Civil Engineer
Kelvin Munar, Junior Engineer
Cynthia Hernandez, District Secretary
Kathryn Nelson, Administrative Analyst
Cynthia Fuller, Administrative Assistant Temp

Attendance Others: Kerry Gerchow, Deputy County Counsel
Jason Fried, LAFCO Executive Officer
Paul Thompson, Owner, 255 Margarita Drive
Tim McInerney, Legal Counsel for Paul Thompson
Jason Dow, CMSA General Manager
Dean DiGiovanni, CMSA Commissioner for SRSD

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1. **ROLL CALL** – A roll call was taken, Director Bushey, Director Rice, and Chair Kate were present.
 2. **ADOPT TELECONFERENCE MEETING RESOLUTION TO COMPLY WITH ASSEMBLY BILL 361**

Adopt resolution of the Board of Directors of the San Rafael Sanitation District making findings that the proclaimed State of Emergency continues to impact the ability to meet safely in person and declaring that the Board of Directors will continue to meet remotely to ensure the health and safety of the public.

MOTION by Director Bushey, seconded by Director Rice, to adopt the resolution making findings that the proclaimed State of Emergency continues to impact the ability to meet safely in person and declaring that the Board of Directors will continue to meet remotely to ensure the health and safety of the public.

AYES: Director Bushey, Director Rice, Chair Kate
NOES: None
ABSENT: None

Motion Carried

3. **OPEN PERIOD** – No persons were present to address the Board.

4. **MINUTES OF DECEMBER 1, 2022.**

MOTION by Director Rice, seconded by Director Bushey, to approve the minutes of the December 1, 2022, meeting as presented.

AYES: Director Bushey, Director Rice, Chair Kate

NOES: None

ABSENT: None

Motion Carried

5. **PAYMENTS**

MOTION by Director Rice, seconded by Chair Kate, to approve the payments for December 2022, for maintenance and operation of the District and for capital improvements.

AYES: Director Rice, Chair Kate, Director Bushey

NOES: None

ABSENT: None

Motion Carried

6. **OLD BUSINESS**

a. Hearing - proposed termination of sewer service at 255 Margarita Drive.

District Manager Toy reviews that at the December 2022 Board meeting, the Board directed staff to begin the process for termination of sewer service at 255 Margarita Drive since the property owner, Paul Thompson has not corrected his illegal connection after 7 years and multiple requests to do so. Manager Toy reports that Mr. Thompson, the owner of 255 Margarita Drive, had submitted a new sewer permit application on January 4, 2023, which includes the original plans that were submitted seven years ago. There are two conditions for the District's approval of the sewer permit: Mr. Thompson needs to provide an encroachment permit from Marin County and file a new annexation application with LAFCo. District Manager Toy then acknowledged that Jason Fried, LAFCo's Executive Officer, was in attendance to answer any questions. She also acknowledged the attendance of Mr. Thompson and his legal counsel, Tim McInerney.

Director Bushey asked Manager Toy, how soon the termination of service would take effect after the termination date had been decided, and Manager Toy responded that the termination would happen on the decided date.

Chair Kate then opened the meeting for comments from Mr. Thompson and/or his legal counsel, Tim McInerney. They reported that Mr. Thompson had received the encroachment permit from the County and had applied and paid for the LAFCo application. Mr. McInerney felt that Mr. Thompson should be allowed to move forward with the installation of the lateral and that the work should be completed by February 28th.

Chair Kate then addressed Jason Fried, LAFCo Executive Officer, who verified that an application and payment was received on January 12, 2023, and the process was moving forward for approval from the State Board of Equalization as well as the County of Marin

Surveyor's office. LAFCo will not meet again until April so they cannot officially verify that LAFCo has approved or denied this annexation application but hope that all requirements are met. Director Bushey suggested that the termination of service be moved to April 28, 2023, if all requirements are not met. Mr. Fried agrees that moving the termination to April 28th is acceptable. Mr. McInerney agrees with the April 28th termination date, Manager Toy agrees with the April 28th termination date.

MOTION by Director Bushey that termination to 255 Margarita Drive absent the complete compliance with the District, the County, and LAFCo be moved to April 28, 2023, seconded by Director Rice.

AYES: Director Bushey, Director Rice, Chair Kate
NOES: None
ABSENT: None *Motion Carried*

7. NEW BUSINESS

a. Report on adoption of investment policy.

General Manager Toy reports that the California Government Code requires all Special Districts adopt a Statement of Investment Policy annually. The District uses Marin County Services to collect its revenues, disperse expenses and to invest its cash. The County invests its cash in accordance with this policy which is adopted by the Board of Supervisors. The staff recommends that the Board approve and adopt the County's Statement of Investment Policy, which was adopted on December 13, 2022, as the investment policy for the San Rafael Sanitation District.

Director Bushey noted that the County is investing tens of millions of dollars of District funds, which is a significant issue.

Director Rice comments that the Marin County Investment policy has a small return (1% or 2%) of investment and questions that the current total amount is around \$90 Million dollars. Director Rice suggests the budget discussions include capital improvement plan and reserve policies. Chair Kate confirms that there will be a scheduled discussion at a future meeting.

No public discussion.

MOTION by Director Bushey moves to adopt the County's Investment Policy, seconded by Director Rice.

AYES: Director Bushey, Director Rice, Chair Kate
NOES: None
ABSENT: None *Motion Carried*

b. Adopt resolution authorizing the District Manager/District Engineer to execute a Professional Services Agreement with Miller Pacific Engineering Group for geotechnical observation and testing services for the 2020 Sewer Pipe Repair and Replacement Project, Phase 2.

Manager Toy reviewed the 2020 Sewer Pipe Repair and Replacement Project and the acquiring of our Engineering Design Consultant, Schaaf & Wheeler, who, after assessment of our sewer mains, informed us that there were five locations with ratings of 4 & 5 and that need urgent repairs and shouldn't wait for the completion of the project bid package which could take up to 9 months. The decision was made to split the project into two phases; phase one was to repair the 5 urgent locations which was completed in the Fall of 2021, and the second phase is to repair short segments and segments between manholes which total approximately 2.3 miles of sewer main which should take approximately 10 months to complete. In August of 2022, the Board awarded the Phase 2, 6-million-dollar contract to W.R. Forde who also worked on and completed the Bayside Acres Sewer Main Replacement and wanted their crew to work on this project. Miller Pacific Engineering Group is needed for geotechnical observation on this project on a time and material basis not to exceed \$112,000.00. Staff is recommending that the Board adopt the Resolution authorizing the District Manager District Engineer to execute a Professional Service Agreement with Miller Pacific Engineering Group for geotechnical observation and testing services for the 2020 Sewer Pipe Repair and Replacement Project, Phase 2 for an amount not to exceed \$112,000.00. Director Bushey asks why the request for observation and testing contract is coming up 6 months after the approval of the original construction project. District Manager Toy explains that proposal was late in coming and staff inadvertently did not follow up on that paperwork. Miller Pacific had been going to the job sites and observing and testing on a time and material basis. Director Bushey requests a place holder in future for possible service agreement costs and needs upfront at the beginning of the project. Manager Toy agrees.

No public discussion.

MOTION by Director Bushey to adopt the Resolution authorizing the District Manager District Engineer to execute a Professional Service Agreement with Miller Pacific Engineering Group for geotechnical observation and testing services for the 2020 Sewer Pipe Repair and Replacement Project, Phase 2 for an amount not to exceed \$112,000.00, seconded by Director Rice.

AYES: Director Bushey, Director Rice, Chair Kate
NOES: None
ABSENT: None *Motion Carried*

c. Agency Report of Public Official Appointments (FPPC Form 806).

Director Toy recites the Fair Political Practice Commission Amended Regulation 18705.5 requirements that Director Bushey as CMSA Commissioner and Director Rice, CMSA Alternate Commissioner on CMSA's Board, complete and sign the Form 806 after which time, staff will post on San Rafael Sanitation District's webpage.

No public discussion

MOTION by Director Rice moves to adopt the completed and signed FPPC Form 806, seconded by Director Rice.

AYES: Director Bushey, Director Rice, Chair Kate
NOES: None
ABSENT: None *Motion Carried*

d. Report on recent storm events. (Kris Ozaki)

Kris Ozaki, Operations Maintenance Manager, reports the damage to San Pedro Pump Station located at 160 Marina Boulevard due to the storm of January 2, 2023, and the insurance update. The Adjuster had been out to the pump station to note damage and take photos; quotes will be provided once received. Manager Toy informs the Board that the repair work can be done and what isn't covered by the insurance, we can come back to the Board if necessary. Director Rice asks District Manager Toy and Operations Manager Ozaki if this was the first time filing a claim with this type of incident and it is. Operations Manager Ozaki updated that SRSD's crew worked out of jurisdiction to assist other Districts during the storm. Director Rice asks Manager Jason Dow, CMSA, what the effects of the storm was for CMSA – Manager Dow explains that the average dry weather flow is about 7 million gallons per day from all collection agencies including San Quentin – but due to the storms and for the 3 main storms in December they collected from 94.5 million gallons per day up to 106 million gallons per day. General Manager Dow explains that approximately ½ of the additional wet weather flow comes from the water table and mains and the other ½ comes from the laterals.

e. Approve Board meeting schedule for 2023.

No public comment.

MOTION by Director Bushey to the Board Meeting Schedule for 2023, seconded by Director Rice.

AYES: Director Bushey, Director Rice, Chair Kate
NOES: None
ABSENT: None *Motion Carried*

8. INFORMATIONAL ITEMS

General Manager Toy states that at the December 2022 JPA Managers meeting, General Manager Dow informed the Managers, the CMSA's Finance Committee are planning to prepare their 10-year financial forecast. Manager Toy requests that Manger Dow give an update to the Board. Manager Dow informs the Board that CMSA is proposing possible revenue increases of 4% for the next two years and 3.5% for the following three years which will provide operational funding as well as capital program funding which includes per the request of the Committee, \$100,000 per year over the next 5 years for recycled water and water reuse planning studies. The Committee also asked for 5-million-dollars for the capital program for nutrient removal planning, predesign and design work based on the algae blooms in the south bay, EBMUD, and San Francisco's wastewater outfalls.

Chair Kate asks who would remove the nutrients. Manager Dow informs the Board that each

agency would remove their own. Director Rice confirms that the cost to us will go up and asks about sea level rise and costs to the District. Director Dow confirms but states that the sea level rise issue will be addressed in years to come.

9. DIRECTOR REPORTS/REQUESTS FOR FUTURE AGENDA ITEMS

None.

10. ADJOURNMENT

Respectfully submitted,

Maribeth Bushey, Recording Secretary

ATTEST THIS 17th DAY OF MARCH 2023

Kate Colin, Chair

SAN RAFAEL SANITATION DISTRICT**PAYMENT SUMMARY**

January 1, 2023 - January 31, 2023

<i>Vendor/Payee</i>	<i>Memo</i>	<i>Class</i>	<i>Acct #</i>	<i>Account Name</i>	<i>Amount</i>
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 11/16/22	200	2021	Uniforms	207.54
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 12/14/22	200	2021	Uniforms	203.71
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 12/21/22	200	2021	Uniforms	203.71
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 12/28/22	200	2021	Uniforms	203.71
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 1/04/23	200	2021	Uniforms	203.71
AT&T *1523	Telephone Service - land lines for pump stations and dialers from 12/02/22-1/01/23	100	2534	Telephone service	578.83
CALIFORNIA CAD SOLUTIONS INC(CALCAD)	Facilities Mapping Services - 12-month subscription from 2/01/23-1/31/24	100	4188	Facilities mapping services	5,940.00
CALIFORNIA DIESEL & POWER INC. (CD&POWER)	Pump Stations - automatic transfer switch maintenance for North Francisco Pump Station	200	2359	Maint- pump sta's & force mains	684.70
CAL-STEAM CO INC	Pump Stations - gas test block with valve	200	2359	Maint- pump sta's & force mains	18.12
CAL-STEAM CO INC	Pump Stations - NP 2 (1/2 SS/BR LIQ FILL GA)	200	2359	Maint- pump sta's & force mains	127.34
CAL-STEAM CO INC	Pump Stations - parts	200	2359	Maint- pump sta's & force mains	29.44
CITY OF SAN RAFAEL	Contract with San Rafael - third quarter FY 2022-23 reimbursement	100	2361	Contract with San Rafael	855,457.19
CITY OF SAN RAFAEL	Vehicles - diesel and unleaded fuel charge for 10/01/22-12/31/22	200	2083	Parts and repairs vehicles	8,283.58
JACKSON'S HARDWARE	Pump Stations - safety fencing	200	2359	Maint- pump sta's & force mains	49.15
JACKSON'S HARDWARE	Pump Stations - two poly tarps	200	2359	Maint- pump sta's & force mains	21.83
LEAK DETECTION PROS, INC.	Collection System - spot repair for Manderly and Locksly	200	2360	O&M - collection systems	550.00
MARIN MUNICIPAL WATER DIS	Water - 45 Lagoon Road from 10/19/22-12/15/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - 1271 Andersen Drive from 10/12/22-12/09/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - 3106 Kerner Boulevard from 10/18/22-12/14/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Andersen Drive from 10/12/22-12/09/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Castro Avenue from 10/14/22-12/13/22	200	2536	Water utility costs	199.49
MARIN MUNICIPAL WATER DIS	Water - Catalina Boulevard from 10/14/22-12/13/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - E Francisco Boulevard from 10/14/22-12/13/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - E Francisco Boulevard from 10/18/22-12/14/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Montecito Road from 10/18/22-12/14/22	200	2536	Water utility costs	86.60
MARIN MUNICIPAL WATER DIS	Water - North San Pedro Road from 10/19/22-12/15/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Peacock Drive from 10/19/22-12/15/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Point San Pedro Road from 10/18/22-12/14/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Rivera Drive LT28 Sewer Pump from 10/19/22-12/15/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Simms Street from 10/12/22-12/09/22	200	2536	Water utility costs	86.63
MARIN MUNICIPAL WATER DIS	Water - Woodland Avenue from 10/12/22-12/09/22	200	2536	Water utility costs	91.25
MARIN ROTO-ROOTER SEWER SERVICE, INC	Collection System - spot repair at 155 Pearce Road on 12/19/22	200	2360	O&M - collection systems	5,500.00
MARIN ROTO-ROOTER SEWER SERVICE, INC	Standby - service at 217 Bayview Street on 12/26/22	200	2363	Standby services	1,100.00
MARIN ROTO-ROOTER SEWER SERVICE, INC	Standby - service at 4 Miramar and 1393 Miramar Avenue on 12/18/22	200	2363	Standby services	1,500.00
MILLER PACIFIC ENGINEERING GROUP INC	Bayside Acres Beach Sewer Improvements Project - geotechnical services from 10/17/22-12/25/22	300	4338	Rehab of Beach Swr Bayside (80)	3,949.90
PG&E a/c 2480926202-5	Power - electric service for pump stations from 11/08/22-12/08/22	200	2535	Electric utility costs	16,732.53
PLATT	Pump Station - pump truck fuse box for pump crew spares	200	2359	Maint- pump sta's & force mains	44.96
TIFCO INDUSTRIES	Pump Stations - maintenance for pump station	200	2359	Maint- pump sta's & force mains	62.82
US BANK CORPORATE PAYMENT	Collection System - leader hose	200	2360	O&M - collection systems	418.96
US BANK CORPORATE PAYMENT	Miscellaneous Expenses - floral arrangement	100	2389	Miscellaneous expenses	122.64
US BANK CORPORATE PAYMENT	Office Supplies - monitor	100	2133	Office & shop supplies	346.29
US BANK CORPORATE PAYMENT	Subscription - Marin IJ	100	2131	Memberships and subscriptions	274.26

VERIZON WIRELESS(242395655)	Telephone Service - private IP addresses for the San Pedro and Peacock Pump Stations from 11/18/22-12/17/22	100	2534	Telephone service	136.09
VERIZON WIRELESS(372347623)	Telephone Service - wireless service for laptops and iPad from 11/21/22-12/20/22	100	2534	Telephone service	426.11
WATER COMPONENTS & BLDG SUPPLY	Pump Station - marking flags and two lumber crayons	200	2359	Maint- pump sta's & force mains	18.59
					\$ 904,812.61

SAN RAFAEL SANITATION DISTRICT
PAYMENT SUMMARY
February 1, 2023 - February 28, 2023
Vendor/Payee

	<i>Memo</i>	<i>Class</i>	<i>Account</i>	<i>Amount</i>
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 1/11/23	200	2021 · Uniforms	208.52
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 1/18/23	200	2021 · Uniforms	204.77
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 1/25/23	200	2021 · Uniforms	203.62
ARAMARK UNIFORM SERVICES	Uniforms - weekly service ending 2/08/23	200	2021 · Uniforms	194.41
AT&T *1523	Telephone Service - land lines for pump stations and dialers from 1/02/23-2/01/23	100	2534 · Telephone service	605.24
AT&T MOBILITY	Telephone Service - cell phone service from 1/04/23-2/03/23	100	2534 · Telephone service	615.28
AT&T MOBILITY	Telephone Service - cell phone service from 12/04/22-1/03/23	100	2534 · Telephone service	614.60
ATELIER MARIN	Third Street (Fourth Street to Mary) - reimbursement to Atelier Marin for plumbing services	300	4340 · Third St (Hayes to Ritter) (80)	1,350.00
BAY AREA AIR QUALITY MANAGEMENT DIS	Pump Stations - San Pedro Pump Station generator permit	200	2359 · Maint- pump sta's & force mains	440.00
BWS DISTRIBUTORS	Safety - gas detection monitor	200	2365 · Safety equipment and supplies	1,106.36
BWS DISTRIBUTORS	Safety - gloves	200	2365 · Safety equipment and supplies	155.14
BWS DISTRIBUTORS	Safety - imprint charge for silk screening logo's onto rain gear	200	2365 · Safety equipment and supplies	127.82
BWS DISTRIBUTORS	Safety - new rain gear	200	2365 · Safety equipment and supplies	2,920.69
CALCON SYSTEMS, INC.	Pump Stations - pump service call for Loch Lomond and San Pedro Pump Stations	200	2359 · Maint- pump sta's & force mains	1,525.00
CALCON SYSTEMS, INC.	Pump Stations - pump service call for Simms, Glenwood, and Bret Hart Pump Stations	200	2359 · Maint- pump sta's & force mains	6,905.43
CALIFORNIA CAD SOLUTIONS INC(CALCAD)	Facilities Mapping Services - miscellaneous projects in December 2022	100	4188 · Facilities mapping services	1,650.00
CALIFORNIA DIESEL & POWER INC. (CD&POWER)	Pump Stations - generator inspection at San Pedro Pump Station due to tree incident	200	2359 · Maint- pump sta's & force mains	722.86
CALIFORNIA SANITATION RISK MGMT ATH	General Insurance - primary insurance renewal for 12/31/22-12/31/23	100	2059 · General insurance	154,882.41
CAL-STEAM CO INC	Pump Stations - parts for Bret Harte Pump Station	200	2359 · Maint- pump sta's & force mains	370.69
CENTRAL MARIN SANITATION AGENCY	Debt Service - semi-annual debt service payment for 1/31/23	400	4113 · Sewage treatment - debt service	331,830.11
CENTRAL MARIN SANITATION AGENCY	Service Charges - third quarter service charges for 1/01/23-3/31/23	400	4112 · Sewage treatment	1,448,370.22
CITY OF SAN RAFAEL	Vehicles - vehicle repair from 2/04/22-1/05/23	200	2083 · Parts and repairs vehicles	31,384.58
COLIN, KATE	Director's Fees - Kate Colin on 1/12/23	100	2282 · Director's fees	100.00
COUNTY OF MARIN	Director's Fees - Katie Rice on 1/12/23	100	2282 · Director's fees	100.00
CSW/STUBER-STROEH ENGR GROUP INC.	Third Street (Fourth Street to Mary) - design and construction related services through 1/08/23	300	4340 · Third St (Hayes to Ritter) (80)	314.75
DOWNEY BRAND LLP	Legal Services - legal services through 12/31/22	100	2713 · Legal services	124.50
DURACABLE MANUFACTURING	Collection System - chuck spindle for power rodder	200	2360 · O&M - collection systems	426.77
EVOQUA WATER TECHNOLOGIES, LLC	Odor Control - service and inspection of chemical tanks at pump stations from 12/01/22-12/31/22	200	2106 · Odor control chemicals	1,899.86
EVOQUA WATER TECHNOLOGIES, LLC	Odor Control - service and inspections of chemical tanks at pump stations from 1/01/23-1/31/23	200	2106 · Odor control chemicals	1,899.86
EWERS ENGINEERING INC	Isolation Valve Replacement Project - engineering services from 12/06/22-1/31/22	300	4345 · Isolation Valve Replacement (10	5,980.00
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 1/01/23	100	2325 · Consulting services	1,196.70
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 1/08/23	100	2325 · Consulting services	1,196.70
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 1/15/23	100	2325 · Consulting services	1,436.04
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 1/22/23	100	2325 · Consulting services	1,196.70
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 1/29/23	100	2325 · Consulting services	1,396.15
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 11/06/22	100	2325 · Consulting services	1,495.88
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 11/27/22	100	2325 · Consulting services	897.53
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 12/11/22	100	2325 · Consulting services	1,495.88
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 12/18/22	100	2325 · Consulting services	1,495.88
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 12/25/22	100	2325 · Consulting services	1,196.70
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 2/05/23	100	2325 · Consulting services	1,495.88
EXPRESS SERVICES INC.	Consulting Services - temporary administrative assistant for the week ending on 2/12/23	100	2325 · Consulting services	1,416.10

GENE FORD COMPANY, INC.	Pump Stations - air release valve for Force Mains	200	2359 · Maint- pump sta's & force mains	9,001.97
MAHER ACCOUNTANCY	Accounting Services - January 2023	100	2717 · Accounting services	3,600.00
MAHER ACCOUNTANCY	Accounting Services - February 2023	100	2717 · Accounting services	3,600.00
MARIBETH BUSHEY	Director's Fees - Maribeth Bushey on 1/12/23	100	2282 · Director's fees	100.00
MARIN COUNTY TAX COLLECTOR	County Counsel - second quarter Oct/Nov/Dec FY 2022/23	100	2713 · Legal services	3,506.25
MARIN ROTO-ROOTER SEWER SERVICE, INC	Collection System - repair to rodhole at 55 San Rafael Avenue	200	2360 · O&M - collection systems	350.00
MARIN ROTO-ROOTER SEWER SERVICE, INC	Collection System - spot repairs at 162 Glen Park Avenue	200	2360 · O&M - collection systems	9,500.00
MARIN ROTO-ROOTER SEWER SERVICE, INC	Standby - service for 117 Rafael Drive on 2/08/23	200	2363 · Standby services	800.00
MARIN ROTO-ROOTER SEWER SERVICE, INC	Standby - service for 232 Miramar Avenue on 1/30/23	200	2363 · Standby services	800.00
MARIN ROTO-ROOTER SEWER SERVICE, INC	Third Street PS and Beach Fiberglass PS Improvement Project - service at 1707 4th Street lateral	300	4149 · Third St / Fiberglass PS (10)	20,327.50
MATRIX HG, INC.	Pump Stations - exhaust vent hood for Castro Pump Station	200	2359 · Maint- pump sta's & force mains	6,673.00
NUTE ENGINEERING INC	Bayside Acres Beach Sewer Improvements Project - engineering services from 12/01/22-12/31/22	300	4338 · Rehab of Beach Swr Bayside (80)	14,215.50
NUTE ENGINEERING INC	Bayside Acres Beach Sewer Improvements Project - engineering services from 1/01/23-1/31/23	300	4338 · Rehab of Beach Swr Bayside (80)	28,776.93
NUTE ENGINEERING INC	North Francisco and West Railroad Pump Stations - engineering related services from 1/01/23-1/31/23	300	4155 · N. Francisco/WRR Pump St (10)	2,981.00
OWEN EQUIPMENT SALES	Collection System - hose protection for vactor truck	200	2360 · O&M - collection systems	183.54
PG&E a/c 2480926202-5	Power - electric service for pump stations from 12/09/22-1/08/23	200	2535 · Electric utility costs	37,255.71
PG&E a/c 2480926202-5	Power - electric service for pump stations from 1/09/23-2/07/23	200	2535 · Electric utility costs	46,186.06
PLATT	Pump Station - fuses	200	2359 · Maint- pump sta's & force mains	149.84
PUMP REPAIR SERVICE CO INC	Pump Stations - new pump at Anderson Pump Station	200	2359 · Maint- pump sta's & force mains	21,822.88
PUMP REPAIR SERVICE CO INC	Pump Stations - new pump at Bay Point Pump Station	200	2359 · Maint- pump sta's & force mains	13,798.46
PUMP REPAIR SERVICE CO INC	Pump Stations - pump parts for Sims Pump Station	200	2359 · Maint- pump sta's & force mains	1,959.95
SCHAAF & WHEELER, INC	2020 Sewer Pipe Repair and Replacement Project - design related services through 12/31/22	300	4342 · 2020-21 Sewer Improvement (80)	3,552.50
SEBASTOPOL BEARING & HYDRAULIC	Collection System - adapter and clamps for vactor hose	200	2360 · O&M - collection systems	208.95
SHAMROCK	Collection System - backfill material for pipe repair at 155 Pearce	200	2360 · O&M - collection systems	66.61
STAPLES INC	Office Supplies - banker boxes and pens	100	2133 · Office & shop supplies	130.73
TIFCO INDUSTRIES	Collection System - hacksaw blade and frame	200	2360 · O&M - collection systems	116.07
TRANSBAY LOCK, INC.	Pump Stations - ABUS padlocks	200	2359 · Maint- pump sta's & force mains	746.61
US BANK CORPORATE PAYMENT	Collection System - rechargeable batteries for power tools	200	2360 · O&M - collection systems	76.45
US BANK CORPORATE PAYMENT	Office Supplies - computer speakers	100	2133 · Office & shop supplies	21.84
US BANK CORPORATE PAYMENT	Office Supplies - SD card bundle	100	2133 · Office & shop supplies	59.53
US BANK CORPORATE PAYMENT	Office Supplies - wireless earbuds	100	2133 · Office & shop supplies	27.85
US BANK CORPORATE PAYMENT	Subscription - Marin IJ	100	2131 · Memberships and subscriptions	274.26
US BANK CORPORATE PAYMENT	Training and Education - How to Run a Collection System training	100	2388 · Training and education	185.00
VERIZON WIRELESS(242395655)	Telephone Service - private IP addresses for the San Pedro and Peacock Pump Stations from 12/18/22-1/17/23	100	2534 · Telephone service	137.36
VERIZON WIRELESS(372347623)	Telephone Service - wireless service for laptops from 12/21/22-1/20/23	100	2534 · Telephone service	426.11
W. R. FORDE ASSOCIATES (INC)	20-21 Sewer Improvement Project - progress payment #1	300	4342 · 2020-21 Sewer Improvement (80)	313,070.60
W. R. FORDE ASSOCIATES (INC)	Bayside Acres Beach Sewer Rehabilitation Project - progress payment #2	300	4338 · Rehab of Beach Swr Bayside (80)	341,263.75
WATER COMPONENTS & BLDG SUPPLY	Collection System - couplers for sewer repair	200	2360 · O&M - collection systems	459.83
WATER COMPONENTS & BLDG SUPPLY	Collection System - parts for sewer repair	200	2360 · O&M - collection systems	252.50
WATER COMPONENTS & BLDG SUPPLY	Collection System - pipe for 102 Elizabeth Esmt	200	2360 · O&M - collection systems	304.34
WATER COMPONENTS & BLDG SUPPLY	Collection System - sewer repair at 230 Coleman easement	200	2360 · O&M - collection systems	1,706.32
WECO INDUSTRIES LLC	Vehicles - truck repairs for rodder	200	2083 · Parts and repairs vehicles	1,708.20
WOODLAND CTR AUTO SUPPLY	Pump Stations - radiator cap for South Franklin generator	200	2359 · Maint- pump sta's & force mains	8.40

\$ 2,903,542.03

SAN RAFAEL SANITATION DISTRICT
Agenda Item 6.a.

DATE: March 17, 2023

TO: Board of Directors, San Rafael Sanitation District

FROM: Doris Toy, District Manager/District Engineer

SUBJECT: Adopt Resolution Authorizing the District Manager/District Engineer to Execute a Professional Services Agreement with Park Engineering for Construction Inspection Services

RECOMMENDATION:

Adopt Resolution Authorizing the District Manager/District Engineer to execute a Professional Services Agreement with Park Engineering for inspection related services for various projects not to exceed \$92,169.00.

BACKGROUND:

Since January 14, 2023, the District's construction inspector position has been vacant. The District requires an inspector for the construction of the 2020 Sewer Repair and Replacement, Phase 2, Project and for inspecting sewer lateral permits to ensure compliance to District's standards and contracts. Therefore, the District will require a full-time inspector.

The construction inspector position has been advertised and staff is currently reviewing applications.

Since Park Engineering has assisted the District with inspection services over the last eight years, staff has requested Park Engineering to submit a proposal for a full-time inspector from February through June 2023, which includes training the newly hired District inspector.

ANALYSIS:

Since 2015, Park Engineering has assisted the District with inspections from part-time to full-time at various periods for the Sun Valley Sewer Replacement Project, Phases 1 and 2; the Glenwood Pump Station Improvement Project; The Village at Loch Lomond Marina subdivision; the Lincoln Avenue Sewer Improvement Project; San Pedro Pump Station Improvement Project; Bayside Acres Sewer Relocation, Phase A; lateral inspections; and USA markings.

Park Engineering has proposed Rhea Bernardo as the inspector. Although, she has not worked on District's projects in the past, Chris Kinser who has helped the District with previous projects, with the most recent being the Bayside Acres Sewer Relocation, Phase A, and sewer lateral permits last year, will assist Ms. Bernardo with technical support and advise her on the District's expectations and requirements. Mr. Kinser is working in the vicinity,

since he is currently assisting Ross Valley Sanitary District with its office building project on Andersen Drive.

Park Engineering staff will also assist the District in training the new construction inspector. Staff anticipates the new hire will begin in early June.

Park Engineering has submitted a proposal for full-time construction inspection for a period of six months from February through June 2023, on a time-and-materials basis not to exceed \$92,169.00.

FISCAL IMPACT:

Park Engineering's cost for inspection services in the amount of \$92,169.00 will be funded out of the FY 2022-23 Budget for the 80-Year Life-Cycle Sewer Replacement Fund.

ACTION REQUIRED:

Staff recommends that the Board adopt the resolution authorizing the District Manager/District Engineer to execute a Professional Services Agreement with Park Engineering for inspection related services for various projects not to exceed \$92,169.00.

Attachments: Resolution
Professional Services Agreement
Proposal from Consultant, Exhibit "A"

SAN RAFAEL SANITATION DISTRICT

RESOLUTION NO. 23-1263

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SAN RAFAEL SANITATION DISTRICT AUTHORIZING
THE DISTRICT MANAGER/DISTRICT ENGINEER TO EXECUTE
A PROFESSIONAL SERVICES AGREEMENT WITH PARK ENGINEERING, INC.,
FOR INSPECTION RELATED SERVICES FOR VARIOUS PROJECTS NOT TO
EXCEED \$92,169.00**

**THE BOARD OF DIRECTORS OF THE SAN RAFAEL SANITATION DISTRICT,
COUNTY OF MARIN**, hereby resolves as follows:

The District Manager/District Engineer is hereby authorized to execute, on behalf of the San Rafael Sanitation District, a Professional Services Agreement with Park Engineering, Inc., for Inspection related services for various projects, a copy of which is hereby attached and by this reference made a part hereof.

PASSED AND ADOPTED at a Special Meeting of the San Rafael Sanitation District Board of Directors held on the 17th day of March 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT/ABSTAIN:

SAN RAFAEL SANITATION DISTRICT

Kate Colin, Chair

ATTEST:

Maribeth Bushey, Acting Secretary

**PROFESSIONAL SERVICES AGREEMENT
FOR INSPECTION RELATED SERVICES
FOR VARIOUS PROJECTS**

This Agreement is made and entered into this 17th day of March 2023, by and between the SAN RAFAEL SANITATION DISTRICT (hereinafter "DISTRICT"), and PARK ENGINEERING, INC. (hereinafter "CONSULTANT").

RECITALS

WHEREAS, the DISTRICT has selected PARK ENGINEERING, INC., to perform the required construction inspection related services for various projects (hereinafter "PROJECT"); and

WHEREAS, the CONSULTANT has offered to render certain specialized professional services in connection with this Project.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS.

DISTRICT and CONSULTANT have outlined the scope of services to be provided, and related expenses as described in Exhibit "A" attached and incorporated herein.

2. PROJECT COORDINATION

A. DISTRICT. The District Manager/District Engineer shall be the representative of the DISTRICT for all purposes under this Agreement. The District Manager/District Engineer is hereby designated as the PROJECT MANAGER for the DISTRICT and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. CONSULTANT. CONSULTANT shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. JAEMIN PARK is hereby designated as the PROJECT DIRECTOR for CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR for any reason, the CONSULTANT shall notify the DISTRICT within ten (10) business days of the substitution.

3. DUTIES OF CONSULTANT

CONSULTANT shall perform the duties and/or provide services as follows; the CONSULTANT agrees to provide professional services as a Construction Inspection Consultant to provide services outlined in the Proposal from CONSULTANT dated January 31, 2023, marked Exhibit "A", attached hereto, and incorporated herein by this reference. The CONSULTANT agrees to be available and perform the work as required by the District.

4. DUTIES OF THE DISTRICT

DISTRICT shall perform the duties as described and incorporated herein.

5. COMPENSATION

For the full performance of the services described herein by CONSULTANT, DISTRICT shall pay CONSULTANT on a time and materials basis for services rendered in accordance with the rates shown on the current fee schedule as described in Exhibit "A" attached and incorporated herein. The total payment will not exceed the \$92,169.00 as shown on the Proposal Budget, set out in Exhibit "A".

Payment will be made monthly upon receipt by PROJECT MANAGER of itemized invoices submitted by CONSULTANT.

6. TERM OF AGREEMENT

The term of this Agreement shall be from the date of execution until the Project is complete.

7. TERMINATION

A. Discretionary. Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. Cause. Either party may terminate this Agreement for cause upon ten (10) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination notice, to the reasonable satisfaction of the party giving such notice, within thirty (30) days of the receipt of said notice.

C. Effect of Termination. Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. Return of Documents. Upon termination, any and all DISTRICT documents or materials provided to CONSULTANT and any and all of CONSULTANT's documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to DISTRICT as soon as possible, but not later than thirty (30) days after termination.

8. OWNERSHIP OF DOCUMENTS

The written documents and materials prepared by the CONSULTANT in connection with the performance of its duties under this Agreement shall be the sole property of DISTRICT. DISTRICT may use said property for any purpose, including projects not contemplated by this Agreement.

9. INSPECTION AND AUDIT

Upon reasonable notice, CONSULTANT shall make available to DISTRICT, or its agent, for inspection and audit, all documents and materials maintained by CONSULTANT in connection with its performance of its duties under this Agreement. CONSULTANT shall fully cooperate with DISTRICT or its agent in any such audit or inspection.

10. ASSIGNABILITY

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

11. INSURANCE

A. During the term of this Agreement, CONSULTANT shall maintain, at no expense to DISTRICT, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence and \$2,000,000 aggregate for death, bodily injury, personal injury, or property damage;

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence;

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million (\$1,000,000) dollars to cover any claims arising out of the CONSULTANT's performance of services under this Agreement.

B. The insurance coverage required of the CONSULTANT by Section 11. A., shall also meet the following requirements:

1. The insurance shall be primary with respect to any insurance or coverage maintained by DISTRICT and shall not call upon DISTRICT's insurance or coverage for any contribution;

2. Except for professional liability insurance, the insurance policies shall be endorsed for contractual liability and personal injury;

3. Except for professional liability insurance, the insurance policies shall be specifically endorsed to include the DISTRICT, its officers, agents, and employees as additionally named insureds under the policies;

4. CONSULTANT shall provide to PROJECT MANAGER, (a) Certificates of Insurance evidencing the insurance coverage required herein, and (b) specific endorsements naming DISTRICT, its officers, agents and employees, as additional insureds under the policies;

5. The insurance policies shall provide that the insurance carrier shall not cancel or terminate said insurance policies except upon thirty (30) days written notice to DISTRICT's PROJECT MANAGER;

6. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years as long as the insurance is reasonably affordable and available;

7. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement;

8. The insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the County Counsel.

C. If it employs any person, CONSULTANT shall maintain Workers' Compensation and Employer's Liability Insurance, as required by the State Labor Code and other applicable laws and regulations, and as necessary to protect both CONSULTANT and DISTRICT against all liability for injuries to CONSULTANT's officers and employees.

D. Any deductibles or self-insured retentions exceeding \$20,000 in CONSULTANT's insurance policies must be declared to and approved by the PROJECT MANAGER and the County Counsel. At District's option, the deductibles or self-insured retentions with respect to DISTRICT shall be reduced or eliminated to DISTRICT's satisfaction, or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees, and defense expenses.

12. INDEMNIFICATION

CONSULTANT shall indemnify, release, and hold harmless DISTRICT, its officers, and employees against any claim, demand, suit, judgment, loss, liability, or expense of any kind, including attorney's fees, arising out of or resulting in any way from any negligent acts or omissions or negligence of CONSULTANT or CONSULTANT's officers, agents, and employees in the performance of their duties and obligations under this Agreement.

13. NONDISCRIMINATION

CONSULTANT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

14. COMPLIANCE WITH ALL LAWS

CONSULTANT shall use due professional care to observe and comply with all applicable Federal, State, and local laws, ordinances, codes, and regulations in the performance of its duties and obligations under this Agreement. CONSULTANT shall perform all services under this Agreement in accordance with these laws, ordinances, codes, and regulations.

15. NO THIRD-PARTY BENEFICIARIES

DISTRICT and CONSULTANT do not intend, by any provision of this Agreement, to create in any third party any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

16. NOTICES

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery or, if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO DISTRICT: Ms. Doris Toy, P.E. (Project Manager)
San Rafael Sanitation District
111 Morphew Street
San Rafael, CA 94901

TO CONSULTANT: Mr. Jaemin Park, P.E. (Project Director)
Park Engineering, Inc.
372 Village Square
Orinda, CA 94563

17. INDEPENDENT CONSULTANT

For the purposes and for the duration of this Agreement, CONSULTANT, its officers, agents, and employees shall act in the capacity of an Independent Contractor, and not as employees of the DISTRICT. CONSULTANT and DISTRICT expressly intend and agree that the status of CONSULTANT, its officers, agents, and employees be that of an Independent Contractor and not that of an employee of DISTRICT.

18. ENTIRE AGREEMENT -- AMENDMENTS

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the CONSULTANT and the DISTRICT.

C. No other agreement, promise, or statement, written or oral, relating to the subject matter of this Agreement shall be valid or binding except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the CONSULTANT and the DISTRICT.

E. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

19. SET-OFF AGAINST DEBTS

CONSULTANT agrees that DISTRICT may deduct from any payment due to CONSULTANT under this Agreement any monies which CONSULTANT owes DISTRICT under any ordinance, agreement, contract, or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks, or other amounts.

20. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any ordinance, law, or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law, or regulation or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, or covenant of this Agreement or any applicable law, ordinance, or regulation.

21. CITY BUSINESS LICENSE/OTHER TAXES

CONSULTANT shall obtain and maintain during the duration of this Agreement a CITY business license as required by the San Rafael Municipal Code. CONSULTANT shall pay any and all State and Federal taxes and any other applicable taxes. CONSULTANT's taxpayer identification number is 46-3675877, and CONSULTANT certifies under penalty of perjury that said taxpayer identification number is correct.

22. APPLICABLE LAW

The laws of the State of California shall govern this Agreement.

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

SAN RAFAEL SANITATION DISTRICT

CONTRACTOR

Doris Toy, P.E.
District Manager/District Engineer

PARK ENGINEERING, INC._____

APPROVED AS TO FORM:

By: _____
Jaemin Park, P.E.

Kerry Laiw Gerchow
Deputy County Counsel

Title: President_____



January 31, 2023

Doris Toy
District Manager / District Engineer
San Rafael Sanitation District
111 Morphew Street
San Rafael, CA 94901

RE: Project Specific and Permit Inspection Services

Dear Doris,

Park Engineering, Inc. is pleased to submit personnel qualifications and a related cost proposal to provide inspection services for the 2020 Sewer Pipe Repair & Replacement Project, Phase 2, and various permit compliance projects as specified by the District. We appreciate the opportunity to continue working with the Sanitation District.

As discussed through various conversations, the District is in need of a near full-time construction inspector to assist in sewer replacement capital improvement project and limited part time inspection for permit compliance. Both tasks combine for a full-time inspector for contract compliance and documentation of activities. I am proposing **Rhea Bernardo** as the inspector. Rhea will be supported for technical matters by Chris Kinser, who has assisted with previous SRSD work in the past. I will be also available for any technical support as necessary. Chris and I are also working in San Rafael on various improvement projects. Mine and Chris' efforts to assist Rhea with field activities and supporting documentation will not be charged to SRSD.

Our team can meet the challenges anticipated for this assignment and will ensure that the work is successfully completed and documented in accordance with the District's and all local requirements and regulations. Our team has the necessary technical expertise, as well as soft skills, required to complete this assignment successfully and efficiently. Team resumes and a proposed cost estimate are included for your information and review. Hours can be adjusted as needed to fit the needs of the assignment and the District.

Should you have any questions or need additional information, please do not hesitate to contact me. I can be reached at 372 Village Square, Orinda, CA 94563, E-mail: spatterson@park-eng.com and Cell: (510) 701-0319.

Sincerely,

A handwritten signature in blue ink that reads "Steve Patterson".

Steve Patterson, P.E.
Vice President

Orinda Office
372 Village Square
Orinda, CA 94563
Tel: 925-257-2508
Fax: 925-401-7030

Emeryville Office
3960 Adeline Street, #3
Emeryville, CA 94608
Tel: 925-257-2508
Fax: 925-401-7030

3. PROFESSIONAL EXPERIENCE

SUMMARY OF EXPERIENCE and CAPABILITIES

Company Profile

Park Engineering, Inc. was founded in 2013 with the vision of providing high quality construction management, construction inspection, program/project management, project controls, and contract administration services to public agencies on transportation and infrastructure projects.

The firm's guiding principle is to add value to public agencies by furnishing high level technical resources and expertise. Our approach combines highly developed engineering and management capabilities with proven problem solving and relationship building skills.

Park Engineering specializes in providing construction management, construction inspection, program/project management and contract administration services on projects with federal, state, bond, grant and other specialty funding requiring coordination with and audits by, Caltrans, FHWA and other oversight agencies.

Certifications

State of California CUCP DBE (No. 41711)

State of California DGS SBE (No. 1757722)

State of California PUC MBE (No. 17000825)

Services

- Construction management
- Construction Inspection
- Project management / program management
- Resident engineering
- SWPPP implementation and inspection
- Scheduling and schedule control
- Cost estimating and cost control
- Utility coordination
- Claims analysis, negotiation and resolution support
- Value engineering
- Permit compliance
- Constructability and bid-ability review
- Bid advertisement and award process
- Staff augmentation
- Federal and state audit support
- Federal fund reimbursement and project closeout

Year Founded	2013
Form of Organization	Corporation
Location of Offices	Headquarters: Orinda, CA Additional Office: Emeryville, CA
Number of Employees	4 Project Managers/ Resident Engineers 13 Construction Inspectors
Terminated Contracts	None

Our key personnel have experience delivering projects of this nature for transportation and local agencies that include new roadway and existing street improvements for public agency and private development projects. In addition, we have extensive experience with administering construction projects that receive funding from multiple sources, including FHWA funds. We have the skills necessary to ensure thorough reporting and strict adherence to federal guidelines.





San Rafael Sanitation District

Inspection Services

2020 Sewer Repair Project, Phase 2, and Various Permit Compliance

Position	Base Rate	Overtime Rate	Permit Compliance Hours	Sewer Replacement Hours	Overtime Hours	Cost
Rhea Bernardo Inspector	\$ 139.65	\$ 209.50	220	660	0	\$ 92,169.00
					Total =	\$ 92,169.00

- 1. Rate includes vehicle, mobile phone, laptop and all equipment required to perform required duties.
- 2. Based on full-time inspection services from February through June 2023 (approximately 110 working days) - split 25/75.

RHEA BERNARDO, CONSTRUCTION ENGINEER/CONSTRUCTION INSPECTOR**Years of Experience**

20

Education

B.S. Civil Engineering, Mapua Institute of Technology, 2000

Certifications and Training

Registered Professional Civil Engineer, Philippines

Key Qualifications

Rhea Bernardo has spent over 20 years in the engineering and construction industry working as design engineer, construction manager, and construction inspector for building and roadway construction projects for private entities and public agencies. She has extensive knowledge and experience with building codes as well as Caltrans standards. She is proficient in the execution of construction contracts, at the city, state, and federal levels. Her experience includes oversight for projects that include roadway reconstruction and rehabilitation, new and existing city intersection and streetscape construction/rehabilitation, underground utilities, structural components of large office buildings, condominiums, hotels and apartments. She can work independently with the contractor and as a member of a team to get the project to a successful completion.

Project Experience

- **Dublin Blvd Pavement Rehabilitation Project (federally funded), City of Dublin, CA**

Rhea was the Construction Inspector for this \$3.5M federally funded project which included street resurfacing of approximately 1 mile of Dublin Boulevard between Scarlett Drive and Hacienda Drive. Work included curb ramp replacements, cold planning and overlay, dig-out repair, pavement markings, adjusting utilities to grade, and modifications to traffic signals, including adding traffic cameras. Dublin Blvd is one of the City's main commute corridors, with three lanes in each direction with left and right turn lanes and bike lanes and is heavily congested. Ensuring the contractor was following approved traffic control plans was extremely important.
- **Dublin Citywide Energy Upgrades Project, City of Dublin, CA**

Rhea was the construction inspector on this \$25M design/build project that involves the design/builder to perform an Investment Grade Audit and develop and implement approved energy projects throughout the City. The individual projects to improve energy efficiency in the City included: Solar panels at ten sites plus battery storage at four locations

 - Replacement of aging generators for emergency back-up power
 - Back-up power for 22 traffic signals using either hydrogen fuel cells or lithium-ion batteries
 - Building energy efficiency upgrades, including replacement of older heating and air conditioning systems at eight sites to more efficient models combined with smart controls
 - LED lighting replacements at 15 locations
 - New electric vehicle charging stations at the Dublin Sports Grounds and Public Safety Complex.
- **Imola Ave/SR-29 Bus Improvements, Napa Valley Transportation Authority, CA**

Rhea was the construction inspector on the Imola Ave Bus Improvements project. The project is a \$2.2M locally funded project that included widening of the northbound off ramp and southbound SR-29 on ramp to construct new bus/transit stops. Improvements included new concrete curb, gutter & sidewalk, HMA paving of the ramps and the parking area, pedestrian lighting, landscaping & irrigation, and traffic signal upgrades.

- **Building Blocks Enterprise (111 successful projects) – Binangonan, Rizal, Philippines**

Rhea was the president of Building Blocks Enterprise overall in-charge of construction process, from planning, design, construction, and project closeout.

 - Supervised construction of real estate land developments and renovation projects such as: 4-story commercial-residential building (2.5 acres), private vacation resort (1.5 acres), various residential projects, condominium unit upgrades and interior design, landscaping with swimming pools, fountains, man-made pond and other water features, commercial kiosk fabrication, and woodworking.
 - Managed eight teams of full-time and part-time professionals and skilled workers - engineers, architect, and interior designer.
 - Resolved issues and recommended actions based on production and compliance reports.
 - Achieved under-budget and on-time project management to adhere to project goals.
- **Megaworld Corporation (Commercial Division), Mandaluyong City, Philippines**

Rhea was Building Administrator of Megaworld managed property: California Garden Square (249.6 acres mixed-use development complex)

 - Established effective operations management and technical engineering systems for the property.
 - Kept properties in compliance with local, state and federal regulations.
 - Discussed property projects and developments, leasing status, and marketing strategies as well as property and engineering concerns with the Megaworld Corporation Commercial Division president and committee members, and developed strategic resolutions.
 - Developed annual operating budgets and forecasts, as well as sales and marketing plans.
 - Conducted inspections of property grounds, buildings and equipment to identify maintenance concerns and direct timely repairs.
 - Maximized rental income while minimizing expenses through effective planning and control.
 - Communicated effectively with owners, tenants, and on-site associates.
 - Introduced and monitored effective lease renewal programs to maintain high occupancy rates.
 - Collected and maintained careful records of rental payments and payment dates.
 - Generated professional networks by engaging in professional, industry and government organizations.
 - Managed property documents for permanent records and regulatory requirements.
 - Responded to Common Area Maintenance (CAM) inquiries.
 - Delivered emergency 24-hour on-call service for tenants on building issues.

CHRIS KINSER, ASSISTANT RESIDENT ENGINEER**Years of Experience**

25

Education

B.S. Construction Management, California State University, Chico, 1996

Certifications and Training

40 hour HazWOPER and HazMat certifications
Caltrans Stormwater Management SWPPP training
COGZ CMMS Preventive Maintenance software

Key Qualifications

Chris has 25 years of experience in transportation and infrastructure construction, including highways and bridges, parking lots, athletic fields, residential streets, and commercial sites. Acting in the capacity of assistant resident engineer, construction inspector, and project manager for the contractor, Chris has managed highway interchanges, roadway widenings, emergency slide and flood repairs, box culverts, and multiple utility installations/relocations.

Chris has experience supervising construction staff and has assisted to complete projects on schedule and within budget in accordance with contract requirements. He has performed inspection of construction activities to ensure conformance with approved contract document and has experience in review of construction contracts, scope of work, labor and insurance requirements. He has worked with private companies, various utility companies, numerous agencies and the public. His experience, ability to work well with others and attention to detail impact his projects positively.

Chris is familiar with the Caltrans Standard Specifications, Standard Plans, Construction Manual, Local Assistance Procedures Manual, and the "Greenbook" Standard Specifications for Public Works Construction.

Project Experience

- **Central Corridor Pedestrian & Bike Safety Improvements (Fed funded), City of Daly City, CA**
Assistant Resident Engineer/Construction Inspector on this \$2.2M project improved safe access for pedestrians and bicyclist along Eastmoor Avenue/San Pedro Road/ Market Street and on Junipero Serra Boulevard from John Daly Boulevard to D Street, and Mission Street/El Camino Real (State Route 82). Specific items of work include construction of curb, gutter, sidewalk, bulb-outs, ADA compliant curb ramps, storm drainage modifications, speed feedback signs, pedestrian countdown signals, pedestrian push buttons, streetscape elements, other pedestrian facility enhancements, and installation of bicycle lanes and routes. Coordination efforts included both Caltrans & the County.
- **Contra Cost County Public Work, Kirker Pass Road Northbound Truck Climbing Lane Project**
Chris was the construction inspector on this \$15M federally funded project that constructed an additional lane for improved truck climbing safety. The project constructed six retaining walls to complete the widening lane, as well as grind & pave of all lanes (4) for approximately 2 miles, related drainage improvements and restriping work. Coordination was needed with the Cities of Concord & Pittsburg, Union 76 and the Concord Pavilion.

- **City of Alameda, Cross Alameda Trail, Main to Constitution**
Assistant resident engineer/construction inspector for this \$5.5M federally funded project that constructed a segment of a crosstown four-mile bicycling and walking corridor to connect the west side of the island to the east. Project work includes construction of separate walking and bicycling paths (asphalt concrete), plus a decomposed granite jogging path, in the City-owned abandoned railroad right-of-way along Atlantic Ave. Activities include import fill and management of the existing contaminated soils, drainage improvements, decorative concrete sidewalk & plaza work, existing signal modification, installation of a mid-block new pedestrian crossing, landscape & irrigation, site furnishings, path and roadway striping.
- **2nd Street & Grand Ave Intersection Improvement Project, City of San Rafael, CA**
Assistant resident engineer/construction inspector for this traffic signal improvement to this busy intersection with new & improved curb ramps while widening the northbound approach on Grand Ave. The project also upgraded and replaced all the traffic signal components. Daily traffic control and coordination with adjacent businesses was also a critical component of the project work.
- **John Daly Blvd Streetscape Improvements Project (Fed funded), City of Daly City, CA - \$3.3M**
Assistant resident engineer/construction inspector for streetscape improvements that included roadway modifications, installation of a concrete walkway, ADA compliant ramps, landscaping, irrigation using recycled water, bioswales, Class II bicycle lanes, and pedestrian amenities such as benches and trash/recycling receptacles. The project narrowed the center median, installed street lights on the outside medians, installed new decorative street lights for the pedestrian walkway, modified traffic signals at three intersections, repaired base sections of roadway with deep lift HMA, resurfaced the entire length of the project with HMA, installed new striping and decorative stamped AC crosswalks. The project required coordination with Caltrans, Samtrans, SF MUNI, utility companies, and various departments within the City.
- **Detroit Avenue Bicycle and Pedestrian Improvements Project (federally funded), City of Concord, CA - \$4M**
Assistant resident engineer/ construction inspector for this federally funded (OBAG) project constructing roadway and streetscape improvements on Detroit Avenue from Monument Blvd. to Clayton Road. Work on this \$4M project involves full street rehabilitation including, grading, AC paving, signals and lighting, new curb, gutter and sidewalks, new curb ramps, drainage improvements, irrigation and lighting, and enhanced striping and pavement markings.
- **El Monte Road Preservation Project (federally funded), Town of Los Altos Hills, CA - \$500K**
Assistant resident engineer/construction inspector for this federally funded project that removes, replaces and adds concrete curb ramps, and installs portions of new curb and gutter. Other work includes two inches of grinding and overlay of the existing roadway with new hot mix asphalt. Traffic detector loops and existing striping is being replaced and various utility covers and frames will be adjusted to the finished grade of the new pavement. Work requires closely monitored, daily traffic control as all the improvement work takes place through the busy area of the I-280 and El Monte Road interchange and adjacent to Foothill College and also requires coordination with Caltrans for ramp closures.

STEVE PATTERSON, P.E., RESIDENT ENGINEER / PROJECT MANAGER**Years of Experience**

30

Education

B.S. Civil Engineering, Michigan State University, East Lansing, 1991

Professional Registrations

Professional Engineer: California, #C54481, 1995

QSD / QSP: Certificate #22073

Key Qualifications

Steve Patterson's experience includes roadway widening and rehabilitation, highways and interchanges, emergency slide and flood repairs, sound walls, MSE walls, retaining walls, storm box culverts, utility installations and relocations. He has worked in the capacity of Project Manager, Resident Engineer, Construction Inspector, and Office Engineer. Steve is familiar with the Caltrans Standard Specifications, Standard Plans, Construction Manual, Local Assistance Procedures Manual, and the "Greenbook" Standard Specifications for Public Works Construction.

Steve is experienced with supervising inspection staff, CPM schedules, project controls and costs, quality control/quality assurance, analyzing claims, preparing reports, planning personnel resources, negotiating contract change orders. Steve coordinated project work with utility companies, cities, counties, Caltrans, California Department of Fish and Game, Regional Water Quality Control Board, Union Pacific Railroad, private businesses, and the public.

Representative Project Experience

- **City of San Rafael Public Works, Francisco Blvd East Sidewalk Improvement Project**
Steve is the construction manager on this \$5M federally funded project that widens the existing sidewalk to 8-feet for almost a mile along the busy Francisco Blvd East, Vivian to Grand. Other work includes replacing existing storm drain systems & street lighting, installing new irrigation & trees, and pedestrian improvements to the signal at Medway.
- **Contra Cost County Public Work, Kirker Pass Road Northbound Truck Climbing Lane Project**
Steve is the construction manager on this \$14.1M federally funded project that constructs an additional lane for improved truck climbing safety. The project constructs six retaining walls to complete the widening lane, as well as grind & pave of all lanes (4) for approximately 2 miles, related drainage improvements and restriping work. Coordination is needed with the Cities of Concord * & Pittsburg, Union 76 for their close proximity gas line and the Concord Pavilion.
- **City of San Rafael, Public Works & Engineering Department, San Rafael, CA
City Owned Property Improvements, Roadway and Drainage Improvements**
Steve was Project Manager and Resident Engineer for numerous City Projects ranging in construction costs from \$30,000 to \$2 million and including street rehabilitation, curb ramp improvements, drainage improvements, bridge resurfacing, City-owned facility improvements and sanitary sewer replacements. Assisted City Staff to develop and/or assist delivery of project documents for construction, advertise projects for bidding, answer pre-bid questions and evaluate bids, and monitor contract progress.
- **City of Concord, Multiple Projects**
Steve was the Resident Engineer/Project Manager on the following projects:
 - ✓ **Denkinger Road Pavement Rehabilitation Project, \$1.2M**

Rehabilitated the existing pavement for approximately 1 mile along Denkinger Road by full depth reclamation process. 7 curb ramps were also upgraded, spot repairs made at various locations.

- ✓ **Citywide Accessibility Improvement Project #6, \$300,000**
Federally funded project that upgraded 30 curb ramps with signal & striping improvements.
 - ✓ **Measure Q Pavement Repair Project #8, \$1.3M**
Rehabilitated the existing pavement on 8 local streets along with the construction of ADA curb ramps and valley gutters.
 - ✓ **West Concord Bikeways, \$80k**
Revised the existing striping to create a buffered Class II bike lane in both directions.
 - ✓ **Citywide Accessibility Improvements #4, \$365k**
Federally funded project that upgraded 45 curb ramps with signal & striping improvements.
 - ✓ **Central Concord Pedestrian Improvements Streetscape Project, \$3M** – Roadway resurfacing project that included work of both the mill and fill method and slurry seal, curb ramps for 25 intersections in downtown Concord, a new traffic signal, and streetscape features.
 - ✓ **Ellis Lake Restroom Project, \$120k** – This locally funded project included the site preparation, utility connections and installation of a prefabricated 4-unit restroom building.
- **City of Orinda, 2017 Paving Rehabilitation Project & BART-Downtown Access Ramp & Lighting Construction Cost: \$10M & \$900,000 (respectively)**
Construction Manager for this project that required work to occur on 65 different streets within the City. Roadway rehabilitation is primarily through Full Depth Reclamation with extensive drainage and concrete curb & gutter replacement work. Other work consists of utility adjustments, replacement AC dikes and roadway delineation. BART-Downtown Access Ramp consisted of removing an existing concrete stairway and replacing with a new stairway and ADA compliant ramp to link the City's busy Theater District with the adjacent Orinda BART Station. A series of seven retaining walls were constructed to achieve the ADA ramp in small work area, located on Caltrans right-of-way. Other work includes improved lighting and new landscaping with an improved irrigation system.
 - **Moraga Road Utility Undergrounding, Sidewalks & Pavement Resurfacing Projects, Town of Moraga, CA - \$2.7M**
Steve was the Resident Engineer/Project Manager on these three projects for the Town of Moraga that were construction simultaneously.
 - ✓ **Utility Undergrounding, \$1.7M** – A Rule 20A project with PG&E for the Town to convert existing overhead utilities to new underground facilities along one of the main roadways for the Town. Work consisted of extensive daily traffic control for vehicles and pedestrians to perform the installation of new joint trench and utility vault systems.
 - ✓ **Bicycle & Pedestrian Improvements, \$160k** – A federally funded project to construct about 300 LF of sidewalk to connect two critical side streets along Moraga Road.
 - ✓ **Resurfacing Project, \$800k** – A federally funded project that removed and replaced the top 3-inches of existing Moraga Road. One of the Town's busiest roadways and only a 2-lane road, daily one-way traffic control was required. Advance notice and monitoring of traffic control was critical to the community outreach on the project.
 - **City of Orinda 2014 Street Rehabilitation Project, Orinda, CA**
Resident Engineer for this \$1.4 million pavement rehabilitation project. Steve was responsible for managing all aspects of this project including contract administration, contract compliance and acceptance, project costs and schedule, and public relations.

SAN RAFAEL SANITATION DISTRICT
Agenda Item 6.b.

DATE: March 17, 2023

TO: Board of Directors, San Rafael Sanitation District

FROM: Doris Toy, District Manager/District Engineer

SUBJECT: Approve Municipal Resource Group, LLC proposal for conducting a Compensation Study

RECOMMENDATION:

Approve Municipal Resources Group, LLC (MRG) proposal for conducting a Compensation Study not to exceed \$15,375.00.

BACKGROUND:

As part of MRG's Organizational Study in 2021, MRG reviewed the City of San Rafael's compensation study, which was completed in the spring of 2021. The purpose of the City's compensation study was to evaluate the compensation status of the various classifications with other agencies. Also, the study was conducted by the City to offer insight on salary data in connection with the 2021 collective bargaining negotiations with SEIU and other bargaining units at the City. The study compared the salaries and total compensation with the JPA Member Agencies and eight Bay Area cities. However, most of the data collected was more focused toward City classifications and compensation. Therefore, additional survey data is needed to review market compatibility and competitiveness properly and accurately. MRG recommended that the District should consider conducting a separate and more focused classification and compensation review with comparable sanitation districts/agencies, which will produce more accurate and reliable salary and benefits data for the District's use.

ANALYSIS:

Staff has asked MRG to provide a proposal to conduct a compensation study of salary and salary-related survey of each classification (total of eight). MRG will collect the data, analyze, and evaluate the compensation, and present findings for consideration of salary adjustments and recommendations by May. Please see the attached proposal for more details.

MRG proposes to conduct the compensation study, on a time-and-materials basis not to exceed \$15,375.00.

FISCAL IMPACT:

MRG's cost for conducting the compensation study in the amount of \$15,375.00 will be funded out of the FY 2022-23 Budget for the Operations and Maintenance Fund.

ACTION REQUIRED:

Staff recommends approving Municipal Resources Group, LLC (MRG) proposal for conducting a Compensation Study not to exceed \$15,375.00.

Attachments: Professional Services Agreement
Proposal from Consultant, Exhibit "A"

**SAN RAFAEL SANITATION DISTRICT
COMPENSATION STUDY LITE
March 15, 2023**

Scope of work:

MRG proposes to conduct a compensation study (of salary and salary-related survey only) of the following classifications:

<ol style="list-style-type: none"> 1. District Manager/General Manager 2. O&M Manager 3. Associate Civil Engineer 4. Sewer Maintenance Supervisor 	<ol style="list-style-type: none"> 5. Sewer Maintenance Worker II 6. Administrative Analyst (District Clerk) 7. Construction Inspector 8. Administrative Assistant
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MRG will collect the data, analyze, and evaluate the compensation, and present findings for consideration of salary adjustments and recommendations ideally by early May. Benchmark agencies will include:

<ol style="list-style-type: none"> 1. Central Marin Sanitation Agency 2. Novato Sanitary District 3. Las Galinas Valley Sanitary District 4. Central Contra Costa Sanitary District 	<ol style="list-style-type: none"> 5. Napa Sanitation District 6. Stege Sanitary District 7. Union Sanitary District 8. Ross Valley Sanitary District
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Primary Task – Conduct Total Compensation (Salaries & Salary-related) Survey

- Review class specifications and conduct market compensation of 8 selected benchmark classifications as listed above.
- Collect data from the eight (8) agencies listed above,
- Survey data will include:

Compensation
<ul style="list-style-type: none"> ✓ Base salary ✓ Premium Pay (stand-by, call-back, on-call, bilingual pay, etc.) ✓ Signing or retention bonus, if applicable ✓ Premium Pay for any Industry-related Certificates/Trainings (e.g. CWEA, etc.)

During the duration of the project, MRG will engage in the following project activities:

- Meet with key stakeholders to establish background information, identify, and confirm classifications, confirm the contacts of survey agencies, set the timeline for project milestones, and develop an acceptable format for the report.
- Schedule bi-weekly and as-needed meetings with key stakeholders to provide project updates.
- Design and develop data spreadsheets to collect data survey elements.
- Review, analyze, and validate labor market survey data gathered from benchmark agencies to properly compare District's compensation for similarly situated classifications.
- Prepare and provide draft compensation reports for District's review, comment, and approval.
- Verify, research, and resolve concerns from draft compensation reports.
- Submit collected data sheets and supporting salary survey reports.
- Please note that at the mid-point of the project, MRG will provide an update to the District of the status of the project and preliminary findings based on collected data.

Project Fees:

MRG is proposing to provide professional consulting services for a not-to-exceed amount of \$15,375 including travel expenses, if necessary. The fee is comprised of an estimated 65 project hours invoiced at \$225 per hour. MRG will invoice only for actual hours incurred on the project. MRG anticipates this project will be conducted remotely through video conferencing and email/telephone correspondence. Work is estimated to be completed within six to eight weeks from the start of the project.

Additional services not contemplated in this proposal will be invoiced at \$225 per hour and will begin only after agreed upon by the District and MRG.

At all times during this project engagement, MRG will be an independent contractor. Both agencies confirm the specialized services are distinct from tasks customarily performed by the District. The services of Consultant specifically do not include hiring, firing, or supervising of any District personnel. Also, Consultant shall not have contracting or signing authority or act in the position of a Director or represent a management position at commission, Board or Council meetings.

**PROFESSIONAL SERVICES AGREEMENT
FOR COMPENSATION STUDY LITE**

This Agreement is made and entered into this 17th day of March 2023 by and between the SAN RAFAEL SANITATION DISTRICT (hereinafter “DISTRICT”), and *MUNICIPAL RESOURCE GROUP, LLC* (hereinafter “CONSULTANT”).

RECITALS

WHEREAS, the DISTRICT has selected *CONSULTANT* to perform the required consulting related services for “**Compensation Study Lite**” (hereinafter “PROJECT”); and

WHEREAS, the CONSULTANT has offered to render certain specialized professional services in connection with this Project.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. SCOPE OF SERVICES

DISTRICT and CONSULTANT have outlined the scope of services to be provided, and related expenses as described in Exhibit “A” attached and incorporated herein.

2. PROJECT COORDINATION

A. DISTRICT. The District Manager/District Engineer shall be the representative of the DISTRICT for all purposes under this Agreement. The District Manager is hereby designated as the PROJECT MANAGER for the DISTRICT and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. CONSULTANT. CONSULTANT shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. *PATTY FRANCISCO* is hereby designated as the PROJECT DIRECTOR for CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR for any reason, the CONSULTANT shall notify the DISTRICT within ten (10) business days of the substitution.

3. DUTIES OF CONSULTANT

CONSULTANT shall perform the duties and/or provide services as follows; the CONSULTANT agrees to provide professional services as a Resource Consultant to prepare work outlined in the Proposal from CONSULTANT dated March 15, 2023, marked Exhibit "A", attached hereto, and incorporated herein by this reference. The CONSULTANT agrees to be available and perform the work specified in this agreement in the time frame as specified and as shown in Exhibit "A".

4. DUTIES OF THE DISTRICT

DISTRICT shall perform the duties as described and incorporated herein.

5. COMPENSATION

For the full performance of the services described herein by CONSULTANT, DISTRICT shall pay CONSULTANT on a time-and-materials basis for services rendered in accordance with the rates shown on the current fee schedule as described in Exhibit "A" attached and incorporated herein. The total payment will not exceed \$15,375.00.

Payment will be made in full upon receipt by PROJECT MANAGER of itemized invoices submitted by CONSULTANT.

6. TERM OF AGREEMENT

The term of this Agreement shall be from the date of execution until the Project is complete.

7. TERMINATION

A. Discretionary. Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. Cause. Either party may terminate this Agreement for cause upon ten (10) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination notice, to the reasonable satisfaction of the party giving such notice, within thirty (30) days of the receipt of said notice.

C. Effect of Termination. Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other. However, CONSULTANT'S duties and obligation in Sections 11 and 12 hereunder shall survive the expiration or termination of this Agreement.

D. Return of Documents. Upon termination, any and all DISTRICT documents or materials provided to CONSULTANT and any and all of CONSULTANT's documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to DISTRICT as soon as possible, but not later than thirty (30) days after termination.

8. OWNERSHIP OF DOCUMENTS

The written documents and materials prepared by the CONSULTANT in connection with the performance of its duties under this Agreement shall be the sole property of DISTRICT. DISTRICT may use said property for any purpose, including projects not contemplated by this Agreement.

9. INSPECTION AND AUDIT

Upon reasonable notice, CONSULTANT shall make available to DISTRICT, or its agent, for inspection and audit, all documents and materials maintained by CONSULTANT in connection with its performance of its duties under this Agreement. CONSULTANT shall fully cooperate with DISTRICT or its agent in any such audit or inspection.

10. ASSIGNABILITY

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

11. INSURANCE

A. During the term of this Agreement, CONSULTANT shall maintain, at no expense to DISTRICT, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence and \$2,000,000 aggregate for death, bodily injury, personal injury, or property damage;

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence;

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million (\$1,000,000) dollars to cover any claims arising out of the CONSULTANT's performance of services under this Agreement.

B. The insurance coverage required of the CONSULTANT by Section 11. A., shall also meet the following requirements:

1. The insurance shall be primary with respect to any insurance or coverage maintained by DISTRICT and shall not call upon DISTRICT's insurance or coverage for any contribution;

2. Except for professional liability insurance, the insurance policies shall be endorsed for contractual liability and personal injury;

3. Except for professional liability insurance, the insurance policies shall be specifically endorsed to include the DISTRICT, its officers, agents, and employees as additionally named insureds under the policies;

4. CONSULTANT shall provide to PROJECT MANAGER, (a) Certificates of Insurance evidencing the insurance coverage required herein, and (b) specific endorsements naming DISTRICT, its officers, agents and employees, as additional insureds under the policies;

5. The insurance policies shall provide that the insurance carrier shall not cancel or terminate said insurance policies except upon thirty (30) days written notice to DISTRICT's PROJECT MANAGER;

6. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years as long as the insurance is reasonably affordable and available;

7. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement;

8. The insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the County Counsel.

C. If it employs any person, CONSULTANT shall maintain Workers' Compensation and Employer's Liability Insurance, as required by the State Labor Code and other applicable laws and regulations, and as necessary to protect both CONSULTANT and DISTRICT against all liability for injuries to CONSULTANT's officers and employees.

D. Any deductibles or self-insured retentions exceeding \$20,000 in CONSULTANT's insurance policies must be declared to and approved by the PROJECT MANAGER and the County Counsel. At DISTRICT's option, the deductibles or self-insured retentions with respect to DISTRICT shall be reduced or eliminated to DISTRICT's satisfaction, or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees, and defense expenses.

12. INDEMNIFICATION

CONSULTANT shall indemnify, release, and hold harmless DISTRICT, its officers, and employees against any claim, demand, suit, judgment, loss, liability, or expense of any kind, including attorney's fees, arising out of or resulting in any way from any acts or omissions, negligent or otherwise, of CONSULTANT or CONSULTANT's officers, agents, and employees in the performance of their duties and obligations under this Agreement.

13. NONDISCRIMINATION

CONSULTANT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

14. COMPLIANCE WITH ALL LAWS

CONSULTANT shall use due professional care to observe and comply with all applicable Federal, State and local laws, ordinances, codes, and regulations in the performance of its duties and obligations under this Agreement. CONSULTANT shall perform all services under this Agreement in accordance with these laws, ordinances, codes, and regulations.

15. NO THIRD-PARTY BENEFICIARIES

DISTRICT and CONSULTANT do not intend, by any provision of this Agreement, to create in any third party any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

16. NOTICES

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery or, if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO DISTRICT: Ms. Doris Toy, District Manager (Project Manager)
San Rafael Sanitation District
111 Morpew Street
San Rafael, CA 94901

TO CONSULTANT: Ms. Patty Francisco (Project Director)
Municipal Resource Group, LLC
P.O. Box 561
Wilton, CA 95693

17. INDEPENDENT CONSULTANT

For the purposes and for the duration of this Agreement, CONSULTANT, its officers, agents, and employees shall act in the capacity of an Independent Contractor, and not as employees of the DISTRICT. CONSULTANT and DISTRICT expressly intend and agree that the status of CONSULTANT, its officers, agents, and employees be that of an Independent Contractor and not that of an employee of DISTRICT.

18. ENTIRE AGREEMENT -- AMENDMENTS

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the CONSULTANT and the DISTRICT.

C. No other agreement, promise, or statement, written or oral, relating to the subject matter of this Agreement shall be valid or binding except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the CONSULTANT and the DISTRICT.

E. If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

19. SET-OFF AGAINST DEBTS

CONSULTANT agrees that DISTRICT may deduct from any payment due to CONSULTANT under this Agreement any monies which CONSULTANT owes DISTRICT under any ordinance, agreement, contract, or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks, or other amounts.

20. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any ordinance, law, or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law, or regulation or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, or covenant of this Agreement or any applicable law, ordinance, or regulation.

21. CITY BUSINESS LICENSE/OTHER TAXES

CONSULTANT shall obtain and maintain during the duration of this Agreement a CITY business license as required by the San Rafael Municipal Code. CONSULTANT shall pay any and all State and Federal taxes and any other applicable taxes. CONSULTANT's taxpayer identification number is 26-4149793, and CONSULTANT certifies under penalty of perjury that said taxpayer identification number is correct.

22. APPLICABLE LAW

The laws of the State of California shall govern this Agreement.

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

SAN RAFAEL SANITATION DISTRICT

CONSULTANT

Doris Toy, P.E.
District Manager/District Engineer

MUNICIPAL RESOURCE GROUP

APPROVED AS TO FORM:

By: _____
Mary Egan

Kerry Laiw Gerchow
Deputy County Counsel

Title: Managing Partner

SAN RAFAEL SANITATION DISTRICT
Agenda Item No. 6.c.

DATE: March 17, 2023

TO: Board of Directors, San Rafael Sanitation District

FROM: Doris Toy, District Manager/District Engineer

SUBJECT: Adopt Resolution to Summarily Vacate a 20-Foot Sanitary Sewer Easement at 3301 Kerner Boulevard, APN 008-082-52, San Rafael, California

RECOMMENDATION:

Adopt resolution to summarily vacate a 20-foot sanitary sewer easement at 3301 Kerner Boulevard, APN 008-082-52, San Rafael, California.

BACKGROUND:

According to “Resolution No. 3249, Resolution Ordering Closing Abandoning and Vacating Right of Way” approved April 19, 1965 by the City of San Rafael Council and the Map entitled “Parcel Map, Lands of Pansini as described in Book 2230 Official Records at Page 607 and Book 2503 Official Records at Page 236, San Rafael, Marin County, California”, filed December 30, 1980 in Book 18 of Parcel Maps, at Page 82, in the Marin County Recorder Office, there is a 20-foot sewer easement located at 3301 Kerner Boulevard. The property owner, County of Marin, is currently in the process of selling the property to Kerner Canal L.P. through escrow, which will close in a couple of weeks and has requested that the District vacate the sewer easement. Kerner Canal is planning to repurpose the existing office building with a 41-unit residential apartment building for Eden Housing.

ANALYSIS:

The subject property, 1301 Kerner Boulevard, is located on the corner of Bellam Boulevard, between Kerner Boulevard and Belvedere Street. According to the East San Rafael Assessment District No. 1 Plans, dated in 1958, there was a road, West Railroad Avenue, located on the west edge of the property between the corner of Larkspur Street and Kerner Boulevard on the north side and Belvedere Street on the south. Please refer to the attached Location Map.

Per East San Rafael Assessment District No. 2 Plans, dated in 1963, there was a sewer main along West Railroad Avenue, and a new parallel 6-inch sewer main being installed in the present Kerner Boulevard. The old sewer main in West Railroad Avenue was abandoned and is no longer in use. The District does not foresee a need of this sewer easement in the future.

Per California Streets and Highways Code Section 8333, the District is allowed to summarily vacate a public service easement where the easement has not been used for the purpose for which it was dedicated or acquired for five (5) consecutive years immediately preceding the proposed vacation.

FISCAL IMPACT:

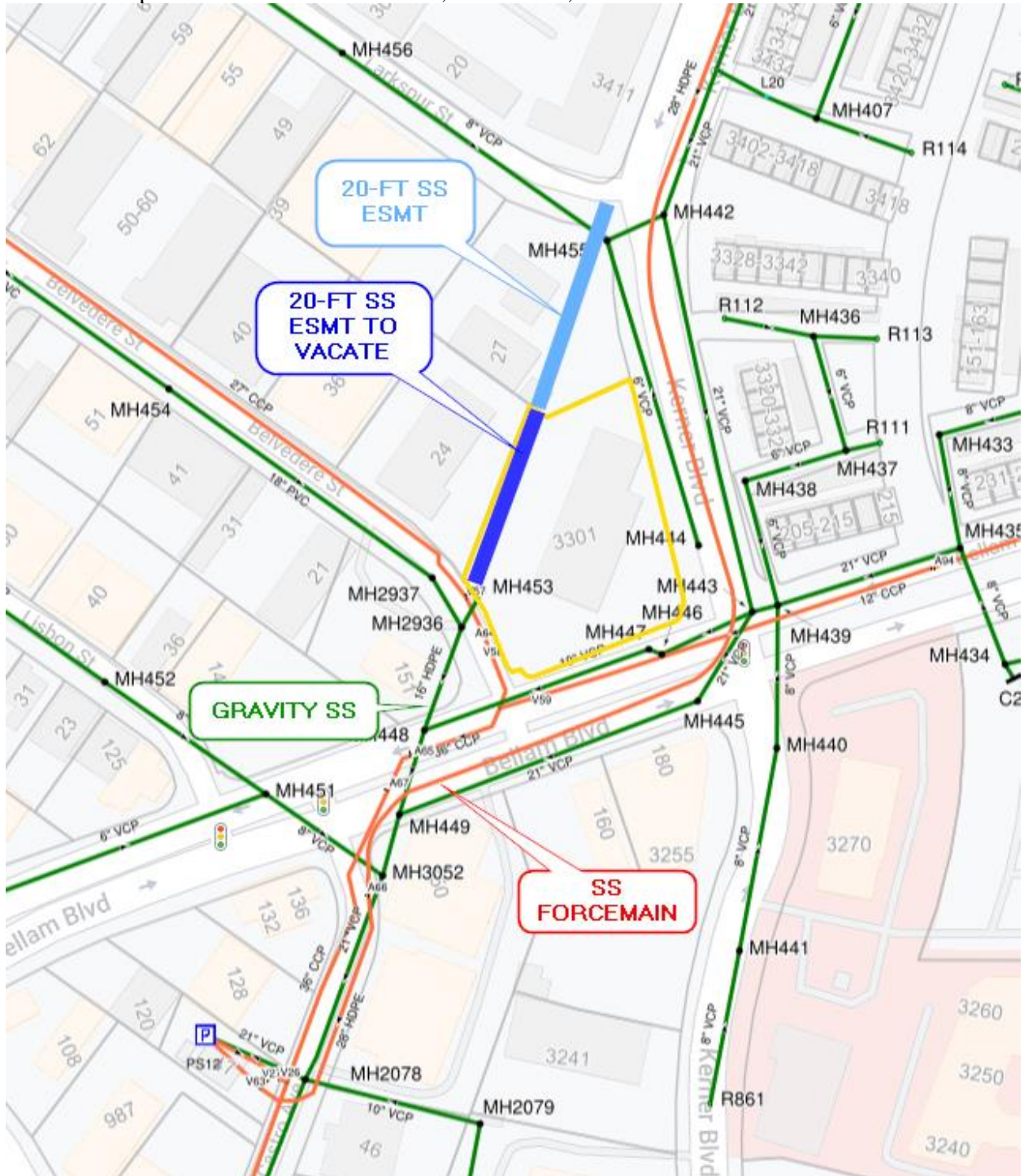
None.

ACTION REQUIRED:

Staff recommends that the Board adopt the resolution to summarily vacate a 20-foot sanitary sewer easement at 3301 Kerner Boulevard, APN 008-082-52, San Rafael, California.

Attachment: Location Map
Resolution
Easement Quitclaim Deed
Letter from the County of Marin, dated March 9, 2023

Location Map for 3301 Kerner Boulevard, San Rafael, CA



Not to Scale

SAN RAFAEL SANITATION DISTRICT**RESOLUTION NO. 23-1264****A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE SAN RAFAEL SANITATION DISTRICT
TO SUMMARILY VACATE A 20-FOOT
SANITARY SEWER EASEMENT
AT 3301 KERNER BOULEVARD, APN 008-082-52
SAN RAFAEL, CALIFORNIA**

WHEREAS, the San Rafael Sanitation District has an easement at 3301 Kerner Boulevard, APN 008-082-52, San Rafael, California; and

WHEREAS, the easement is more particularly described in Exhibit A and shown in Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the San Rafael Sanitation District has not used this easement for the past 60 years on the grounds that the easement was not utilized due to the location of the easement that was in a public right-of-way, which has been vacated, and is presently located on a parcel; and

WHEREAS, the existing sewer main in the easement has been relocated 60 years ago; and

WHEREAS, California Streets and Highways Code Section 8333 authorizes the legislative body of a local agency to summarily vacate a public service easement where the easement has not been used for the purpose for which it was dedicated or acquired for five (5) consecutive years immediately preceding the proposed vacation.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN RAFAEL SANITATION DISTRICT that the public service easement described in Exhibit A has not been used for more than five (5) consecutive years and thus, pursuant to California Streets and Highways Code Section 8333, this public service easement is hereby summarily vacated.

BE IT FURTHER RESOLVED that this Resolution shall be recorded upon the real property where the easement was located. The Resolution shall be recorded with the Marin County Recorder's Office.

PASSED AND ADOPTED at a special meeting of the San Rafael Sanitation District Board of Directors held on the 17th day of March, 2023, by the following vote, to wit:

AYES:

NOES:

ABSENT/ABSTAIN:

SAN RAFAEL SANITATION DISTRICT

Kate Colin, Chair

ATTEST:

Maribeth Bushey, Secretary

Recording Requested by:
San Rafael Sanitation District

When Recorded Mail To:

San Rafael Sanitation District
111 Morphew Street
San Rafael, CA 94901

Portion of APN: 008-082-52

**THIS DOCUMENT IS RECORDED FOR THE BENEFIT OF
THE SAN RAFAEL SANITATION DISTRICT, A PUBLIC ENTITY AND
IS EXEMPT FROM FEE PER GOVERNMENT CODE SECTIONS 27383 AND 6103
AND REVENUE & TAXATION CODE SECTION 11922**

**QUITCLAIM DEED
(TERMINATION OF EASEMENT IN ITS ENTIRETY)**

The undersigned Grantor Declares:

**DOCUMENTARY TRANSFER TAX is \$ -0- -R&T11911 -Release of interest in easement
recorded in various deeds of record.**

- () computed on the full value of the property conveyed; or
- () computed on the full value less value of liens and encumbrances remaining at time of sale.
- () unincorporated area; (x) City of San Rafael
- (x) realty not sold.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the SAN RAFAEL SANITATION DISTRICT, a Special District of the State of California, hereby REMISES, RELEASES AND FOREVER QUITCLAIMS to

KERNER CANAL, L.P., a California limited partnership

any and all interests in the easement as further described in Exhibit A attached hereto.

Signature on Following Page

The undersigned has executed this Quitclaim Deed on _____, 2023.

SAN RAFAEL SANITATION DISTRICT, a Special
District of the State of California

By: _____

Its: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

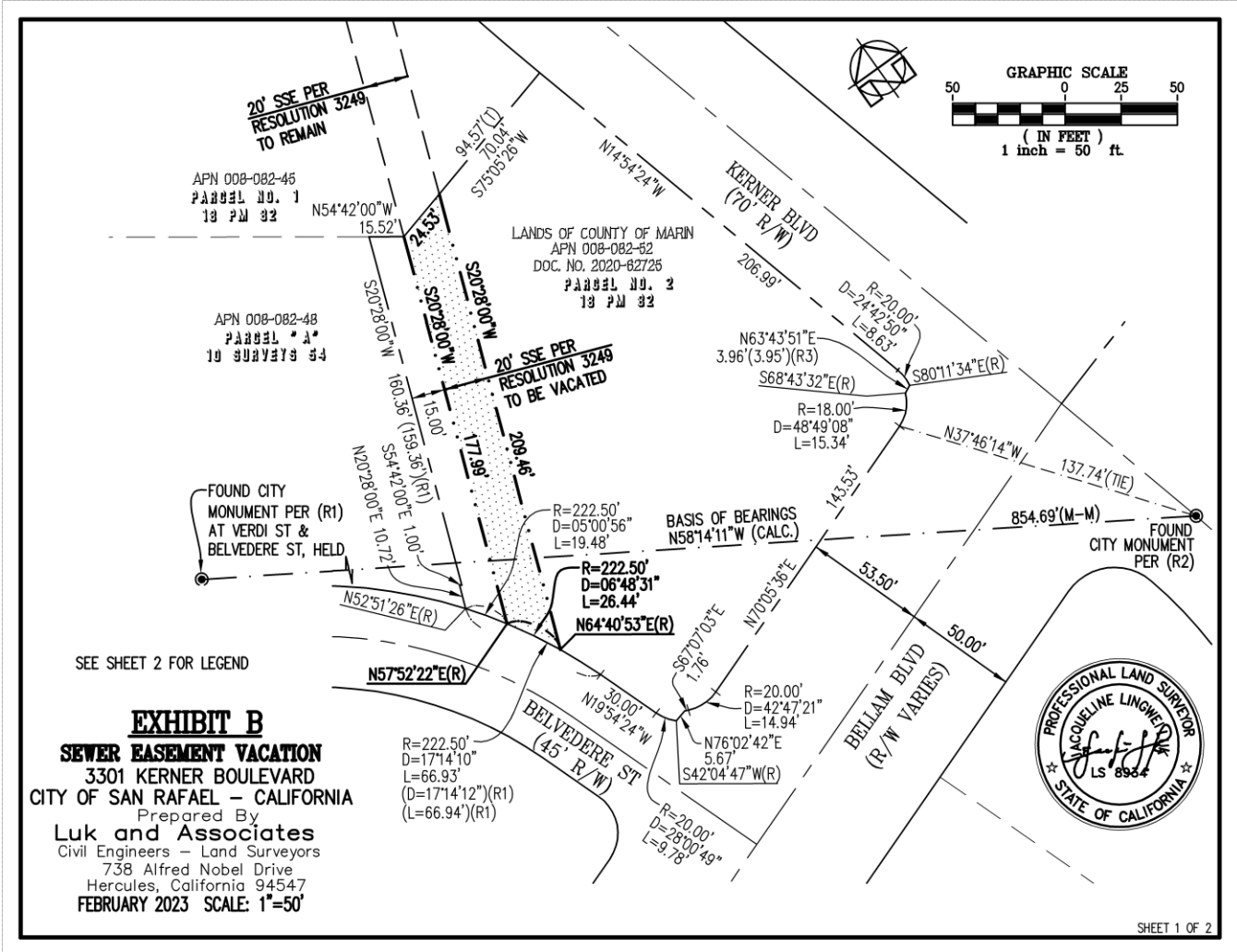
I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____ **(Seal)**

EXHIBIT A
Legal Description of Easement Area being Abandoned
(2 Pages)

All that real property situated in the City of San Rafael, County of Marin, State of California, being all that portion of Easement One as described in that certain Document entitled "RESOLUTION NO. 3249, RESOLUTION ORDERING CLOSING ABANDONING AND VACATING RIGHT OF WAY" approved April 19, 1965 by the Council of the City of San Rafael, lying with PARCEL NO. 2 as shown on that certain Map entitled "PARCEL MAP, LANDS OF PANSINI AS DESCRIBED IN BOOK 2230 OFFICIAL RECORDS AT PAGE 607 AND BOOK 2503 OFFICIAL RECORDS AT PAGE 236, SAN RAFAEL, MARIN COUNTY, CALIFORNIA", filed December 30, 1980 in Book 18 of Parcel Maps, at Page 82, in the Office of the County Recorder of Marin County, State of California.



LEGEND

- EXTERIOR BOUNDARY OF SUBJECT PARCEL
- ===== STREET RIGHT OF WAY LINE
- ADJOINER LOT LINE
- CENTERLINE
- MONUMENT LINE
- TIE LINE
- EXISTING SANITARY SEWER EASEMENT TO REMAIN
-  EXISTING SANITARY SEWER EASEMENT TO BE VACATED
- DOC. NO. DOCUMENT NUMBER
- APN ASSESSOR'S PARCEL NUMBER
- S.F.± SQUARE FEET, MORE OR LESS
- (T) TOTAL
- P.O.B. POINT OF BEGINNING
- R/W RIGHT-OF-WAY
- (115.50')(R5) RECORD DISTANCE PER RECORD REFERENCE
- (R5) REFERENCE
-  FOUND STREET MONUMENT AS NOTED
- CALC. CALCULATED VALUE
- SSE SANITARY SEWER EASEMENT
- (R) RADIAL BEARING

REFERENCES

- (R1) PARCEL MAP, FILED DECEMBER 30, 1980, IN BOOK 18 OF PARCEL MAPS, AT PAGE 82, IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, STATE OF CALIFORNIA.
- (R2) PARCEL MAP, FILED IN BOOK 16 OF PARCEL MAPS, AT PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, STATE OF CALIFORNIA.
- (R3) GRANT DEED, RECORDED FEBRUARY 22, 2010 AS DOCUMENT NUMBER 2010-8378, OFFICIAL RECORDS OF MARIN COUNTY, STATE OF CALIFORNIA.

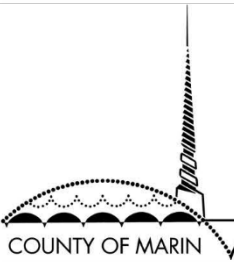
BASIS OF BEARINGS

THE BEARINGS ARE BASED ON FOUND MONUMENT AT THE INTERSECTION OF KERNER BOULEVARD AND BELLAM BOULEVARD AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 16 OF PARCEL MAPS, AT PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, STATE OF CALIFORNIA AND THE FOUND MONUMENT AT THE VERDI STREET AND BELVEDERE STREET AS SHOWN ON THAT CERTAIN PARCEL MAP FILED DECEMBER 30, 1980, IN BOOK 18 OF PARCEL MAPS, AT PAGE 82, IN THE OFFICE OF THE COUNTY RECORDER OF MARIN COUNTY, STATE OF CALIFORNIA. TAKEN AS NORTH 58°14'11" WEST (CALCULATED VALUE).



EXHIBIT B

SEWER EASEMENT VACATION
 3301 KERNER BOULEVARD
 CITY OF SAN RAFAEL – CALIFORNIA
 Prepared By
Luk and Associates
 Civil Engineers – Land Surveyors
 738 Alfred Nobel Drive
 Hercules, California 94547
FEBRUARY 2023



DEPARTMENT OF PUBLIC WORKS

Quality, Excellence, Innovation

Rosemarie R. Gaglione
DIRECTOR

Administration
PO Box 4186
San Rafael, CA 94913-4186
415 4736528T
415 473 3799 F
415 473 3232 TTY
CRS Dial 711
www.marincounty.org/pw

March 9, 2023

Doris Toy, Sanitation District Manager
San Rafael Sanitation District
111 Morpew Street
San Rafael, CA 94901

Accounting

RE: 3301 Kerner – Request to Formally Vacate Sewer Easement

Administrative Services

Airport

Dear Doris Toy,

Building Maintenance

This letter is to request that the San Rafael Sanitation District (SRSD) formally vacate an unused sewer easement on the property located at 3301 Kerner Boulevard in San Rafael, California (assessor parcel number 008-082-52). The County of Marin is currently in the process of selling the property to Kerner Canal L.P. through escrow which will close in a couple of weeks. The parties would like to clear title of any unused easement within the property. The Title Report is attached to this letter for reference. As requested, the sewer easement to be vacated is described in the attached Quitclaim Deed which includes a plot map and legal description of the sewer easement. Thank you for considering this request. We understand that you plan to take this action before the SRSD Board of Directors on March 17, 2023. Please feel free to contact us if you have any questions or comments.

Capital Projects

Certified Unified Program
Agency (CUPA)

Communications
Maintenance

Disability Access

Engineering & Survey

Flood Control &
Water Resources

Fleet Operations

Sincerely,

Land Development

Procurement

Alexandra Dicker
Real Property Agent II

Real Estate

Reprographic Services

Attachments:

Road Maintenance

1. Quitclaim Deed
2. Title Report
3. Grant Deed

Stormwater Program

Transportation &
Traffic Operations

Waste Management

**SAN RAFAEL SANITATION DISTRICT
SCHEDULED BOARD MEETINGS
Unless Otherwise Stated on the Agenda or
Rescheduled by the Board
Calendar Year 2023**

JANUARY 12, 2023 **Teleconference**

FEBRUARY 2, 2023 **Teleconference**

Third (3rd) Friday of each Month – 9:00 A.M.

MARCH 17, 2023 **In Person**

APRIL 21, 2023 **In Person**

MAY 19, 2023 **In Person**

JUNE 16, 2023 **In Person**

JULY 21, 2023 **In Person**

AUGUST 18, 2023 **In Person**

SEPTEMBER 15, 2023 **In Person**

OCTOBER 20, 2023 **In Person**

NOVEMBER 17, 2023 **In Person**

DECEMBER 15, 2023 **In Person**



**San Rafael
Sanitation
District**

111 Morphew Street
San Rafael, CA 94901
Telephone 415 454-4001

March 6, 2023

VIA EMAIL - KERRY.OCONNOR@WATERBOARDS.CA.GOV

Regional Water Quality Control Board Members

Eileen White, Executive Officer – Eileen.White@waterboards.ca.gov

Thomas Mumley, Asst. Executive Officer - Thomas.Mumley@waterboards.ca.gov

Kerry O'Connor, NPDES Permits Division

San Francisco Bay Regional Water Quality Control Board

1515 Clay Street, Suite 1400

Oakland, CA 94612

Re: **Central Marin Sanitation Agency (CMSA) Tentative Order – R2-2023-00XX
Request to Remove Collection Systems from Permit**

Dear Board Members and Regional Board Staff:

Thank you for the opportunity to comment on the Tentative National Pollutant Discharge Elimination System (NPDES) permit for Central Marin Sanitation Agency (CMSA). Ross Valley Sanitary District (RVSD), San Rafael Sanitation District (SRSD), and Sanitary District No. 2 of Marin County (SD2) submit the following comments and requests that the collection system agencies (RVSD, SRSD, and SD2) be removed from this permit because these entities are not required to be NPDES permittees under either federal or state law, and because the requirements contained in the Tentative Permit aimed at the collection system agencies are questionable under both state and federal law by mandating the cost and manner of compliance.

BACKGROUND

For the last two permits issued before the most recent 2018 permit (Order Nos. R2-2007-0007 and R2-2012-0051), RVSD, SRSD, and SD2 were not permittees on CMSA's NPDES permit. RVSD, SRSD and SD2 did not submit a Report of Waste Discharge (ROWD), did not request to be covered under an NPDES permit, and did not wish to be co-permittees on the last version of CMSA's 2018 Permit (Order No. R2-2018-0003). The collection systems are more appropriately permitted by the recently updated statewide General Waste Discharge Requirements for Sanitary Sewer Systems (WQ 2022-0103-DWQ, the Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems (SSS WDR), effective June 5, 2023. The SSS WDR replaced earlier Order No. 2006-0003-DWQ (2006 WDR), as amended by Order No WQ 2008-0002-EXEC). Nevertheless, RVSD, SRSD and SD2 were included on the 2018 Permit as a co-permittee.

In 2017/18, RVSD and SRSD formally requested that the 2018 Permit not be adopted as proposed with the collection systems included as co-permittees. The justification for including the collection system agencies was based on an outdated legal theory that misinterpreted blending as a prohibited "bypass," and inadequate legal justification was provided as to why the NPDES permit was the appropriate or only option for encouraging and maintaining adequate Inflow and Infiltration ("I/I") reduction activities by the collection systems tributary to the CMSA Plant. (Cal. Water Code §13263; 40 C.F.R. §124.8(b)(4); §123.25(a)(27).)

The NPDES permit does not authorize any direct discharges by the collection system agencies to waters of the United States. CMSA is the only permitted discharger authorized as a point source to discharge pollutants to a water of the United States and, therefore, the only entity required to get an NPDES permit for discharge under section 402 of the Clean Water Act. (33 U.S.C. §1342.)

CMSA does not own any of the satellite sewer systems that feed into the treatment plant. The satellite sewer collection systems are owned by separate entities:

- RVSD (previously known as Sanitary District No. 1 of Marin County), which owns and operates about 200 miles of sewer lines serving Larkspur, Ross, Fairfax, San Anselmo and nearby unincorporated areas (Kentfield, Greenbrae).
- SRSD owns and operates about 150 miles of sewer lines serving the City of San Rafael.
- Sanitary District No. 2 of Marin County owns and operates about 45 miles of sewer lines serving the Town of Corte Madera.
- California Department of Corrections owns and operates a sewer collection system serving the San Quentin Prison.
- The County of Marin owns and operates a sewer collection system serving San Quentin Village, which flows into the lines owned by the prison.

The 2018 Permit and the current Tentative Permit only include the first three entities listed above to the NPDES permit for CMSA. Although not explained in the Fact Sheet for the Tentative

Permit, the smaller satellite collections systems were not included as co-permittees even though they also contribute flows to CMSA.

Each of the above described collection systems are or will be regulated by the SSS WDR. Although the State Water Resources Control Board (State Water Board) had the option to re-adopt this statewide collection system order as an NPDES permit, it chose not to do so, opting instead for a Waste Discharge Requirements (WDR) under State law, which is not subject to citizen enforcement. “WDRs under Porter-Cologne can address both protection of water quality as well as the prevention of public nuisance associated with waste disposal.” (*See* Fact Sheet for 2006 WDR at p. 3 *citing* Cal. Water Code §13263.) It was the State Water Board’s “intent to have one statewide regulatory mechanism that lays out the foundation for consistent collection system management requirements....” (*Id.* at p. 8.)

Under the SSS WDR, spills into waters of the United States are prohibited. Thus, an additional, duplicative Discharge Prohibition in the NPDES permit is unnecessary and unreasonable.

Furthermore, Enrollees under the SSS WDR are required to:

- Properly operate, manage, and maintain all parts of the sewer system
- Ensure system operators are knowledgeable and adequately trained
- Allocate adequate resources for operation, maintenance, and repair of the system
- Provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events
- Design capacity must meet or exceed design criteria in the Enrollee’s System Hydraulic Evaluation and Capacity Assurance Plan (SHECAP)
- Develop and implement a Sewer System Management Plan (SSMP)
- Contain, control, and mitigate sanitary sewer overflows, including reduction, prevention, and control of storm water infiltration and inflow (I/I).

Although CMSA filed its Report of Waste Discharge (ROWD) for the 2018 Permit in early 2017, the collection system agencies did not hear anything about being included on CMSA’s NPDES permit until late July or early August of 2017. On August 11, 2017, the collection system agencies were called to and attended a meeting with Regional Water Board staff. This was the first formal notification that the collection system agencies were given of potentially being included on CMSA’s NPDES permit. None of the collection system entities ever filed a ROWD or requested being added onto an NPDES permit.

The justification for adding the collection systems was ostensibly to include blending reduction provisions applicable to the collection system agencies. To that end, the collection system agencies were instructed to bring a list of projects that could reduce I/I in their systems to the meeting. At the August 11th meeting, discussion ensued about each collection system’s lists of potential actions to be required on a set and enforceable time schedule. These lists were included as part of the “Collection System Agency Tasks to Reduce Blending” section of the 2018 Permit (Section VI.C.5.a., Table 5).

The meeting contained no discussion of the significant change or increased liability that becoming an NPDES co-permittee represented to the legal position of the collection system agencies. Further, the collection system agencies at that point had not had an opportunity to speak with their legal counsel or the individual collection system agency Boards about potential concerns with new and expanded regulatory requirements and substantial new federal legal exposure from the proposed move to the NPDES permit. After 2006, when collection systems were required to have permit coverage statewide, these collection system agencies have been adequately and appropriately regulated by the SSS WDR, which has resulted in reduced SSOs, reduced sewer spill volumes, and reduced I/I into collection systems throughout the state including RVSD, SRSD, and SD2.

Before adoption of the 2018 Permit, RVSD requested a meeting with Regional Board staff to discuss other options besides including the collection system agencies on the permit. That meeting was held on September 18, 2017, with CMSA and representatives from the three main collection system agencies. At that meeting, the collection systems provided a list of concerns over expanded liability under the NPDES permit, and presented a list of other options that should be considered in lieu of having the collection system agencies included as co-permittees on CMSA's NPDES permit. The options discussed included:

1. Supplemental or individual WDRs to add additional specified actions to be taken under the SSS WDR;
2. A binding contract or other commitment of the JPA agencies to take actions to reduce flows to the CMSA plant;
3. A Time Schedule Order (TSO) adopted alongside the NPDES permit for those entities not already under an enforcement order, which includes the tasks to be undertaken by the collection systems to support reduced flows and presumably reduce the need for blending;
4. A Cease and Desist Order (CDO) for those entities not already under one.¹
5. Individual NPDES permits. (This option was rejected by Regional Board staff as too time consuming, requiring additional fees, and because there is no discharge to waters of the United States that these permits would be permitting.)

The collection system agencies offered to assist with the drafting of any of the needed orders since the parties understood that resources were scarce at the Regional Boards.

¹ NOTE: RVSD was under a CDO (Order No. R2-2013-0020) requiring a comprehensive Infrastructure Asset Management Plan (IAMP) with collection system rehabilitation, operation, and maintenance improvements potentially through 2021, financial performance targets that have been met, and the adoption and implementation of a Private Sewer Lateral Program, which is currently active and being well utilized. The projects proposed for inclusion in the NPDES permit's table for RVSD duplicated projects committed to be completed under the CDO so no need existed for duplicative regulation.

At the end of the meeting on September 18th, despite the concerns raised by the collection system agencies and a request to delay the adoption of the 2018 Permit temporarily, Regional Board staff stated that, although the deadline for releasing the Tentative Order was not until September 29th, a draft would be released by Friday, September 22nd, unless management gave instructions otherwise. Regional Board staff also gave the collection systems until Wednesday, September 20th to provide any proposed changes to the Administrative Draft of the permit.

Despite the very short timeline for proposed changes, RVSD and SRSD timely proposed changes to reduce potential liability, while stating that its comments should in no way be construed as conceding to accept an NPDES permit even if these changes were made. Changes to the proposed NPDES permit were requested that would reduce, yet not eliminate all risk of, liability to the satellite collection systems proposed to be included on the permit. The other collection systems supported these suggested changes.

Not only were the proposed changes not made, the permit was made even more stringent, subjecting the collection systems to even more liability than had they not met with Regional Board staff or commented at all. Because of the increased liability and other concerns, RVSD and SRSD appealed the 2018 Permit, and RVSD, SRSD, and SD2 object to continuing to being included in the Tentative Permit being proposed for adoption in 2023.

LEGAL BACKGROUND AND ARGUMENT

A. Inapplicability of NPDES Permits to Collection Systems

The CMSA Tentative Permit does not *permit* any discharges from the collection systems to waters of the United States. In fact, even though sanitary sewer spills to waters of the United States are already prohibited by the federal Clean Water Act (CWA) and by the SSS WDR, the Tentative Permit contains a duplicative Discharge Prohibition (Section 3.5), making the collection systems subject to potentially three separate legal claims and enforcement for violations for each spill. This increased liability incurred by including the collection systems in the NPDES permit is not only unnecessary, it is also not authorized by federal law and fails to include the affirmative defenses set forth in both the CWA regulations and Attachment D of the Tentative Permit. (See 40 C.F.R. §122.41(m) and (n); Attachment D, Sections 1.7 and 1.8).²

“[I]n the absence of an actual addition of any pollutant to navigable waters from any point, there is no point source discharge, no statutory violation, no statutory obligation of point sources to comply with EPA regulations for point source discharges, and no statutory obligation of point sources to seek or obtain an NPDES permit in the first instance.” (*Waterkeeper Alliance, Inc. v. USEPA*, 399 F.3d 486, 505-06 (2nd Cir. 2005); see also *Env'tl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 469 F.Supp.2d 803, 826-27 (N.D. Cal. 2007) (following *Waterkeeper*); *Cnty. Ass'n for Restoration of Env't v. Nelson Faria Dairy, Inc.*, 2011 WL 61882, at *2-3 (E.D. Wash. Jan. 7, 2011) (defendant did not have a duty to obtain an NPDES permit); *Puget Soundkeeper All. v.*

² At the very least, whether the collection system agencies are maintained or removed from the Tentative Permit, Discharge Prohibition 3.5 must reference Attachment D, Sections 1.7 and 1.8.

Whitley Mfg. Co. Inc., 145 F.Supp.3d 1054, 1057 (W.D. Wash. 2015) (Under the CWA, “the obligation to obtain an NPDES permit is triggered only where a pollutant is discharged from a point source.”); *Alt v. USEPA*, 2013 WL 4520030, at *6 (N.D. W. Va. Aug. 22, 2013) (“without an actual discharge the EPA has no authority and there can be no duty to apply for a NPDES permit.”).) At least one of the collection system agencies has had no spills to waters of the United States in three of the last five years and none in the last two years (*see* Tentative Permit Fact Sheet, Table F-3), which argues against the need for NPDES Permit coverage that does not actually *permit* any discharges from the collection systems.

The State Water Board recognized this legal principle when adopting the 2006 WDR as a state law only permit, instead of as an NPDES permit. (2006 WDR Fact Sheet at pp. 3-4.) The State Water Board also recognized that “Satellite sewer collection systems (i.e., systems not owned and operated by the POTW) have not been typically regulated as part of the POTW and, therefore, have not generally been subject to NPDES permit requirements.” (*Id.* at p. 4.)

The proposal to maintain the collection system agencies in the CMSA permit is contrary to the action of this Regional Board in the 2007 timeframe after the 2006 WDR was adopted when collection systems were routinely being *removed* from NPDES permits because the State Board indicated that such inclusion was suspect based on recent court rulings. (*See* 2006 WDR Fact Sheet at pp. 3-4; *see also Waterkeeper Alliance, Inc. v. USEPA*, 399 F.3d 486, 505-06 (2nd Cir. 2005); *see also Env'tl. Prot. Info. Ctr. v. Pac. Lumber Co.*, 469 F.Supp.2d 803, 826-27 (N.D. Cal. 2007) (following *Waterkeeper*); *Cnty. Ass'n for Restoration of Env't v. Nelson Faria Dairy, Inc.*, 2011 WL 61882, at *2-3 (E.D. Wash. Jan. 7, 2011) (defendant did not have a duty to obtain an NPDES permit); *Puget Soundkeeper All. v. Whitley Mfg. Co. Inc.*, 145 F.Supp.3d 1054, 1057 (W.D. Wash. 2015); *Alt v. USEPA*, 2013 WL 4520030, at *6 (N.D. W. Va. Aug. 22, 2013).)

Besides being beyond the legal authority of the Regional Board under the Clean Water Act, including the collection systems as co-permittees on the CMSA NPDES permit substantially increases the potential liability of the collection system agencies. RVSD already suffered through two citizen suits in 2005 and 2009. (*Garrill Page v. Sanitary District No. 1 of Marin County*, Northern District Court Case No. C:05-4358 and in a private settlement with California River Watch.) SRSD also suffered a citizen suit in 2009 from River Watch, which was settled. And SRSD suffered through a settlement of a potential citizen suit from River Watch in 2021, where River Watch alleged violations of the 2018 Permit by claiming: “The order violated is RWQCB-SF Order No. R2-2018-0003, NPDES No. CA0038628, *Waste Discharge Requirements for San Rafael Sanitary District and Associated Wastewater Collection System* (“NPDES Permit”).” Thus, being on the NPDES permit added an additional claim of liability not previously available.

Although the collection systems may still have potential liability for any spills to waters of the United States, they do not currently have the additional liability that comes with being a co-permittee on an NPDES permit (e.g., additional duplicative prohibitions, additional liability for operation and maintenance under federal law, and increased exposure to citizen suits).

The collection system agencies strive to have well-maintained and fully compliant sewer systems at all times, and have been working towards reducing avoidable spills from and I/I into their systems. These activities are already being undertaken through the same or similar tasks to those requirements in the Tentative Permit, and will continue to occur without having the collection system agencies as co-permittees to the NPDES permit. Since the Regional Board has failed to demonstrate, with evidence, the existence of excessive I/I that is causing receiving water quality impacts, no valid justification or need to continue to include the collection system agencies as co-permittees on the CMSA permit exists.

REQUEST: RVSD, SRSD, and SD2 all request that the collection system agencies be removed from the Tentative Permit and Section 6.3.4.3 be removed. Instead, under a revised Section 6.3.5.1 (set forth in the accompanying redline version of the Tentative Permit included with these comments), CMSA would be required to provide an annual report to the Regional Board of the collection system agencies' activities over the last year to ensure that progress continues to be made. Regional Board staff have provided no evidence that any of the tasks now prescribed in the Tentative Permit will have any impact on flow reductions to CMSA or will eliminate or even reduce blending. The Regional Board cannot demonstrate a necessity for the collection system agencies to be on the NPDES Permit because the Fact Sheet finds that having these agencies on the 2018 Permit **did not reduce blending events**. (*See* Tentative Permit Fact Sheet at F-9 (“During the previous order term, CMSA discharged blended effluent about 17 times per year, somewhat more often than during the permit term before that, when CMSA blended about 11 times per year. The difference likely results from the year-to-year variability in storms.”)(emphasis added).)

B. Blending Is Not an Unlawful “Bypass.”

The stated reason for including the collection system agencies in the Tentative Permit is to address “blending” by CMSA at the Plant. RVSD, SRSD, and SD2 cannot understand why the Regional Board proposes to take such a strict approach on the blending issue in the Tentative Permit, when at least one federal appeals court has ruled that blending is not an illegal “bypass” subject to the bypass prohibitions and rules.

1. History of Blending Regulation

Nowhere in federal permitting regulations is the word “blending” found, nor is the concept of treatment plants being designed to blend discussed. POTWs, like CMSA, typically move incoming flows (influent) through a primary treatment process and then through a secondary treatment process. Most secondary treatment processes are biological-based, but the secondary treatment regulations do not “specify the type of treatment process to be used to meet secondary treatment requirements nor do they preclude the use of non-biological facilities.”³ (68 Fed.Reg.

³ Biological-based systems use microorganisms to treat incoming flows. A facility can be designed to use non-biological treatment processes, such as chemical additives or physical filtration equipment, instead of or in conjunction with biological facilities. Washing out of the microorganisms during high flows would cause severe property damage and cause the system to become inoperable.

63,042, 63,046 (Nov. 7, 2003).) At many POTWs, including at CMSA, primary treatment capacity exceeds secondary treatment capacity. Biological-based processes in particular are sensitive to deviations in volume of flow and pollutant levels. Correspondingly, during periods of heavy rain, large influxes of storm water can overwhelm a facility's standard biological secondary treatment processes, potentially rendering them inoperable. (*Id.*) Blending can prevent this, by channeling a portion of "peak wet weather flows" around biological secondary treatment units and through non-biological units, recombining that flow with its counterpart that traveled through the biological units, and then discharging the combined stream. (*Id.* at 63,045.) Just like non-blended streams, the combined output must still comply with all applicable effluent limitations, including the water quality levels specified in the secondary treatment regulations. (*Id.* at 63,047; 40 C.F.R. §133.102.)

CMSA's discharges comply with its permitted limits even during periods of blending (which is better than many POTWs that do not blend). (*See* Tentative Permit Fact Sheet at F-7, Section 2.4.1. ("CMSA did not violate its effluent limitations during the previous order term.") (emphasis added).) Thus, CMSA is in compliance with its permit and the CWA so the Regional Board's desire to eliminate or reduce blending has no water quality-based basis and no nexus to water quality standards.

Instead, the Regional Board's desire to eliminate blending comes from a **misinterpretation** of the federal bypass regulations. All NPDES permits must comply with federal regulations regarding "bypass," which regulates the "intentional diversion of waste streams from any portion of a treatment facility." (40 C.F.R. §122.41(m)(1)(emphasis added).)⁴ Bypass is generally prohibited unless there are "no feasible alternatives." (40 C.F.R. §122.41(m)(4).) The bypass rule "is not itself an effluent standard," but instead "merely 'piggybacks' existing requirements." (53 Fed.Reg. 40,562, 40,609 (Oct. 17, 1988).)

The rule's purpose was to "ensure that users properly operate and maintain their treatment facilities ... [pursuant to applicable] underlying technology-based standards," by requiring incoming flows to move through the facility as it was designed to be operated. (*Id.*) Like the more general secondary treatment regulations, the bypass rule does not require the use of any particular treatment method or technology. (*Id.*; *see also NRDC v. EPA*, 822 F.2d 104, 123 (D.C.Cir.1987).) Thus, if the treatment plant was designed to blend, as CMSA's plant was, then the bypass regulation does not apply to blending.

⁴ At CMSA, blending happens automatically. When primary effluent flows exceed about 30 mgd, the excess flow is *passively* diverted around the secondary systems. This built-in system was never intended to be covered by the bypass regulations and Regional Board staff have not shown any evidence to the contrary. Even if the "bypass" provisions *did* apply, those provisions prohibiting bypass only apply to bypasses that violate effluent limitations. *See accord* 45 Fed. Reg. 33339 (1980)("Section 122.60(g) [now 122.41(m)] contains provisions covering bypass.... the paragraph now clarifies that bypass which causes violations of effluent limitations is prohibited.").

Further, even if bypass regulations did arguably apply, a “no feasible alternatives analysis” is complete once no feasible alternatives are identified, as was the case here by CMSA.⁵ Going beyond the treatment plant to further regulate the collection system is not feasible when the satellite systems are owned by different and distinct legal entities. Such overreach is also unnecessary when having the collection systems on the permit is duplicative to their regulation under the SSS WDR and makes no difference to water quality, yet subjects these systems to unneeded additional liability.

On January 19, 2001, EPA issued its *Current [Draft] Thinking on Peak Flows at POTWs*. EPA correspondence indicated that blending was permissible. EPA stated that “NPDES authorities have considerable flexibility through the permitting process to account for different peak flow scenarios that are consistent with generally accepted good engineering practices.” Permits can allow a POTW to discharge effluent routed around biological treatment units that are blended with effluent from the units if all of the following principles are met (which is the case with CMSA):

- (1) The final discharge meets effluent limits for secondary treatment and/or any more stringent water quality-based effluent limits.
- (2) The NPDES permit application for the POTW provides notice of, and the permit specifically recognizes, the treatment scheme that will be used for peak flow management. The treatment scheme, including designed capacity of various units, should be consistent with generally accepted practices and design criteria and designed to meet applicable effluent limits.
- (3) Alternative flow routing scenarios are only used when flows exceed the capacity of storage/equalization units and biological treatment units based on generally accepted good engineering practices and criteria.
- (4) During peak flow conditions, the treatment system chosen by the permittee is operated as it is designed to be operated and in accordance with permit conditions.
- (5) The permit contains appropriate requirements for the collection system, including, at a minimum, that the permittee properly design, operate, and maintain *its* collection system.

In 2003, EPA offered “a proposed interpretation of the bypass provision” (40 CFR §122.41(m)) as applied to blending. (68 Fed.Reg. at 63,049.) Prior to this proposal, EPA stated that it had “not established a national policy (either through rulemaking or through non-binding guidance to assist in the interpretation of the bypass regulation) regarding whether and under what circumstances wet weather blending at a POTW plant would not constitute a bypass.” (*Id.* at 63,052.) The 2003 proposed policy would have “provide[d] guidance to EPA Regional and State permitting authorities ... on how EPA intends to exercise its discretion in implementing the

⁵ The Tentative Permit even acknowledges that “There are no feasible alternatives to the bypass.” (Tentative Permit Fact Sheet at F-14, Section 4.1.1.3.2.)

statutory and regulatory provisions related to discharges from POTWs where peak wet weather flow is routed around biological treatment units and then blended with the effluent from the biological units prior to discharge.” (*Id.* at 63,051.) Going forward, blending “would not be a prohibited bypass and could be authorized in an NPDES permit” so long as certain enumerated conditions were met. (*Id.* at 63,049-50.) These conditions primarily focused on ensuring that the discharge met all applicable effluent limitations and water quality standards, that it passed through a primary treatment unit prior to discharge, and that a “portion of the flow [w]ould only be routed around a biological or advanced treatment unit when the capacity of the treatment unit is being fully utilized.” (*Id.*) EPA posted the proposed policy on its website and declared its consistency with the CWA. Implicitly, the 2003 policy seemed to view the secondary treatment phase as encompassing both traditional biological secondary treatment units and auxiliary non-biological treatments for peak wet weather flows. The focus was on whether the water quality of the resulting combined discharge at the end of the secondary treatment phase met all applicable effluent limitations.

Two years later, in 2005, EPA abandoned the previous 2001 policies and 2003 proposal. (70 Fed.Reg. 76,013, 76,015 (Dec. 22, 2005).) EPA acknowledged recent “confusion regarding the regulatory status of peak wet weather flow diversions around secondary treatment units at POTW treatment plants” and observed that blending was treated only intermittently as a “bypass.” (*Id.* at 76,015.) The 2005 policy announced that this type of “diversion” was now to be interpreted as a “bypass” and would be allowed only if there were “no feasible alternatives.” (*Id.* at 76,016.)

The 2018 Permit and Tentative Permit reference this 2005 *Draft* EPA rule, which was never finalized and could not be relied upon as binding.⁶ The 2005 draft policy has never been finalized or otherwise officially adopted. As late as June of 2010, the EPA continued to solicit input on the 2005 policy through notices in the Federal Register. (*See* 75 Fed.Reg. 30,395, 30,401 (June 1, 2010).) This *proposed* 2005 Policy is mentioned in the Tentative Permit at Table 4, Section 6.3.5.2, and the Regional Board continues to rely on this draft document to justify the need for CMSA to demonstrate “no feasible alternatives.” (*See* Tentative Permit Fact Sheet at F-39, Section 6.3.5.2 (“The analysis and reporting requirements are based in part on U.S. EPA’s proposed Peak Wet Weather Policy (December 2005).”) No other authority is cited by staff to justify its interpretation that blending constitutes a prohibited bypass. Basing NPDES requirements on outdated, unfinalized EPA policies represents an abuse of discretion and unlawful action.⁷

⁶ This 2005 proposed policy is cited in the Tentative Permit as justifying the blending reduction requirements. *See* Tentative Permit at p. 17, Table 6, Task 7 (citing “U.S. EPA’s proposed peak wet weather policy”); p. F-30 at Section 5.c.

⁷ Interpretations of law and findings not supported by authority or evidence constitute an abuse of discretion. *See* 40 C.F.R. §124.8(b)(4); *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 515; *California Edison v. SWRCB*, 116 Cal. App. 751, 761 (4th Dt. 1981); *see also In the Matter of the Petition of City and County of San Francisco, et al.*, State Board Order No. WQ-95-4 at 10 (Sept. 21, 1995). The Regional Board must make findings based on evidence in the record and may not merely tick off statutory requirements and make

2. Illegality of EPA's 2005 Blending Policy under Federal Law

Regulating blending as a “bypass” effectively dictates treatment design despite EPA’s acknowledgment that the bypass rule and secondary treatment regulations do not allow for such regulation inside the treatment plant, and effectively applies secondary treatment effluent limitations within a treatment facility (e.g., to the individual streams exiting peak flow treatment units), instead of at the end of the pipe.

EPA contends that its 2005 draft policy simply reflects an interpretation of the bypass rule. (*See* 70 Fed.Reg. at 76,015 (describing the 2005 policy as “the Agency’s interpretation” of the bypass rule).) However, EPA’s blending policy represents a legislative rule because it is irreconcilable with both the promulgated secondary treatment rule and the bypass rule. (*See Nat’l Family Planning & Reprod. Health Ass’n*, 979 F.2d 227, 235 (D.C.Cir. 1992) (“If a second rule repudiates or is irreconcilable with [a prior legislative rule], the second rule must be an amendment of the first; and, of course, an amendment to a legislative rule must itself be legislative.” (alteration in original) (*quoting* Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform*, 1985 Duke L.J. 381, 396 (1985)).)

Prior to 2005, EPA had not viewed the use of blending as an inevitable trigger of a no-feasible-alternatives requirement, which is why blending requirements first appeared in CMSA’s permit in 2007. (*See* Order No. R2-2007-0007 at 25, section 6 (“Corrective Measures to Minimize Blending Events”) and at F-15 to F-16 and F-43 (Section 6 “based on 40 CFR 122.41(m). It requires that the Discharger [CMSA] implement feasible alternatives to reduce the need to blend during this permit cycle.” Section 5.c. (No Feasible Alternatives and Implementation Schedule) is also “based on 40 CFR 122.41(m). It requires that the Discharger [CMSA] reevaluate prior to the next permit issuance that it has explored every feasible alternative to eliminate blending.”).)

The 2005 draft Policy characterized itself as “significantly different” from the EPA’s 2003 proposal on blending. (70 Fed.Reg. at 76,014.) The 2003 proposal, in turn, corresponded to the reality on the ground: widespread use by POTWs nationwide of blending peak wet weather flows. The 2005 draft Policy acknowledged that blending previously had been “permitted at [POTWs] without consideration of the bypass regulation criteria.” (70 Fed.Reg. at 76,015.) In a response to a 2002 Freedom of Information Act (“FOIA”) request, EPA admitted to “the use of

claims without supporting evidence. *See City of Carmel-by-the-Sea v. Bd. of Supervisors*, 71 Cal.App.3d 84, 93 (1977) (holding that written findings of fact were insufficient as a matter of law because they were merely a recitation of the statutory language). In addition, the Regional Board may not rely on speculation in reaching a decision. Rather, it must be clear from the record that the Regional Board actually relied upon solid evidence to support its findings, and that this clearly identified and cited evidence supports the agency’s findings and ultimate conclusion. Further, the Regional Board must adequately demonstrate a rational connection between the evidence, the choices made, and the purposes of the enabling statute. *See California Hotel & Motel Ass’n v. Industrial Welfare Comm.*, 25 Cal.3d 200, 212 (1979). The level of detail that must be included in the Regional Board’s consideration must clearly demonstrate the “analytical route” contemplated under *Topanga*. *See Department of Corrections v. State Personnel Board*, 59 Cal.App.4th 131, 151 (1997). It is insufficient for the Regional Board to simply cite to unsubstantiated findings of blending being a prohibited bypass without proof. Without evidence to support the findings, imposing these requirements on collection system agencies is unlawful.

federal funds under the Construction Grants Program to build facilities that were designed to blend effluent from primary treatment processes with effluent from biological treatment processes during peak wet weather events.” In a 2004 report to Congress, EPA praised the use of blending processes to deal with peak wet weather flows with no reference to a no-feasible-alternatives requirement. California approved many POTW permits — with no objection from the EPA and no imposition of a no-feasible-alternatives requirement — allowing municipalities to blend utilizing non-biological peak flow secondary treatment processes prior to 2001, when this issue first arose in California permits.

Municipalities chose to use blending as an exercise of their discretion under the secondary treatment rule (see 48 Fed.Reg. at 52,259), to select the particular technologies they deemed best suited to achieving the applicable secondary treatment requirements. (*See also* Cal. Water Code §13360(a)(prohibiting water boards from specifying the manner of compliance).) After 2005, if a POTW utilizes a secondary treatment process that routes a portion of the incoming flow around secondary treatment to avoid washout of the microorganisms, then this will be viewed as a prohibited “bypass,” regardless of whether the end of pipe output ultimately meets the secondary treatment regulations.

This interpretation of the bypass provisions of federal law conflicts with the secondary treatment regulations. (*See* 40 C.F.R. § 133.100-102.) EPA does not receive deference when its interpretation of its own regulations is “plainly erroneous or inconsistent with the regulation.” (*See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012) (internal quotation marks omitted).) Further, EPA cannot adopt wildly inconsistent interpretations “under the guise of interpreting a regulation, to create *de facto* a new regulation” without notice and comment rulemaking procedures required under the Administrative Procedure Act (APA). (*See Christensen v. Harris County*, 529 U.S. 576, 588 (2000).)

The Eighth Circuit Court of Appeals has held that blending of flows around traditional biological secondary treatment processes “would not need to meet the restrictive no-feasible-alternatives requirement.” (*Iowa League of Cities v. EPA*, 711 F.3d 844, 876 (8th Cir. 2013).) In other words, if POTWs separate incoming flows into different streams during the secondary treatment phase, the EPA would apply the effluent limitations of the secondary treatment regulations to each individual stream, rather than at the end of the pipe where the streams are recombined and discharged. This new approach and rule related to blending, as set forth in the 2005 draft policy, was **vacated** because EPA violated the APA’s procedural requirements by not using notice and comment procedures — “without observance of procedure required by law.” (*Id. citing* 5 U.S.C. §706(2)(D).) With no other interpretation of section 122.41(m), the only federal court ruling on the meaning of this federal regulation should be very persuasive and should overrule an interpretation previously made by Regional Board staff with no authority or support.

The usefulness of the *Iowa League of Cities* ruling for CMSA is to show that, prior to 2005, USEPA and the Regional Board had never viewed the process of blending as an inevitable trigger for the bypass regulation’s “no feasible alternatives” requirement. This “no feasible alternatives” requirement, which has been imposed on CMSA in the last few permit cycles (but

interestingly not before even though the bypass rule was adopted prior to 1983), is just a construct of previous Regional Board staff (that began right after the 2005 draft rule was released) and is not based on any law or regulation per se. It is just a new interpretation of an old rule (the bypass rule), which was *clearly not originally* intended to apply to blending, given the large number of municipal wastewater treatment plants in the United States, such as CMSA, that incorporate blending *and* were approved and built using federal USEPA construction grant funding.⁸

Since the 2013 *Iowa League of Cities* decision was issued *after* the CMSA permit issued in 2012 and before the 2018 Permit, the collection system agencies asked that the 2018 Permit be revised to remove the unlawful interpretation that blending represents a prohibited “bypass.” (*See e.g.*, 2018 Permit at p. 5, Section III.C. (blending “approved under the bypass conditions stated in 40 C.F.R. section 122.41(m)(4)...”); p. 16, Table 5, Task 31 (“seeks to continue bypassing peak wet weather flows around secondary treatment units”); p. F-30, Section VI.C.5.a. (“to eliminate wet weather bypasses”).) These changes were not made and the 2018 Permit was appealed, but the collection system agencies did not prosecute that appeal in hopes that the Regional Board would modify these provisions in the 2023 Tentative Permit. Since that has not been proposed, RVSD, SRSD, and SD2 raise these issues again to show that the proposed permit is contrary to the current state of the law.

3. Illegality of Regulating Blending Beyond Through Effluent Limitations

Regulating the inner workings of a treatment plant, or upstream entities, is not sanctioned by state or federal law so long as effluent limitations are met end of pipe (or outside an allowed mixing zone). (*See* Water Code §13360(a)(“No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.”)(emphasis added). A California Court of Appeals decision in *Tahoe-Sierra Preservation Council v. State Water Resources Control Board, et al*, 210 Cal. App. 3d 1421 (1989) opined the purpose of Water Code §13360(a) as follows:

“Section 13360 says that the Water Board may not prescribe the manner in which compliance may be achieved with a discharge standard. That is to say, the Water Board may identify the disease and command that it be cured but not dictate the cure...

Section 13360 is a shield against unwarranted interference with the ingenuity of the party subject to the waste discharge requirement; it is not a sword precluding regulation of

⁸ CMSA completed construction on its regional wastewater treatment facility and began receiving sanitary flows from its member agencies in January 1985, after the bypass regulations were adopted. The facility was constructed and designed to blend at a cost of \$84 million with approximately 87.5% being funded by federal and state grant monies. Part of the requirements for that funding was a demonstration that discharges “into the proposed treatment works project is not or will not be subject to excessive infiltration/inflow.” (40 C.F.R. §35.2120(a).)

discharges of pollutants. It preserves the freedom of persons who are subject to a discharge standard to elect between available strategies to comply with that standard.”

(*Id.* at 1438 (emphasis added).) Thus, the Regional Board can impose secondary treatment or more stringent water quality based effluent limits to protect the beneficial uses of the receiving water, but may not prescribe how much must be spent or impose the treatment methods or control strategies needed to meet those limits end of pipe. The requirements set forth in Tables 3 and 4 of the Tentative Permit improperly dictate the manner and cost of compliance.

Similarly, a federal Court of Appeals in *American Iron and Steel Institute v. EPA*, 115 F.3d 979 (D.C. Cir. 1997) specifically determined that a permitting authority may not go beyond the imposition of effluent limits to regulating the internal processes of a plant, and held as follows:

“The statute is clear: The EPA [or a designated State] may regulate the pollutant levels in a waste stream that is discharged directly into the navigable waters of the United States through a ‘point source’; it is not authorized to regulate the pollutant levels in a facility’s internal waste stream.”

We are apprised of nothing in the policy underlying the CWA that undercuts the plain meaning of the statutory text. To the contrary, by authorizing the EPA [or a designated State] to impose effluent limitations only at the point source, the Congress clearly intended to allow the permittee to choose its own control strategy.... the statute does not permit this sort of meddling inside a facility.”

(*Id.* at 996 (emphasis added); *see also* 33 U.S.C. §1284(d)(requiring certification that the treatment works meet the design specifications for the plant and effluent limitations for the plant contained in the NPDES permit).)

“[E]ffluent limitations are restricted to regulations governing ‘discharges from point sources into navigable waters.’ . . . The EPA would like to apply effluent limitations to the discharge of flows from one internal treatment unit to another. We cannot reasonably conclude that it has the statutory authority to do so . . . Therefore, insofar as the blending rule imposes secondary treatment regulations on flows within facilities, we vacate it as exceeding the EPA’s statutory authority.” (*Iowa League of Cities*, 711 F.3d at 877, *citing Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 996 (D.C. Cir. 1997)) (internal citations omitted.)

For these reasons, the Regional Board should not regulate the inner workings of the plant or the collection systems to regulate blending. The Regional Board’s main focus is and should be on maintaining and improving receiving water quality. Because CMSA is meeting all of its effluent limitations, both technology-based and water quality-based, then water quality in the San Francisco Bay is being maintained and protected regardless of whether blending occurs at CMSA or not.

By including the collection systems on the Tentative Permit to ostensibly reduce I/I and also blending, the Regional Board is inappropriately regulating upstream and internal waste streams and the inner workings of CMSA’s plant by essentially imposing secondary treatment

requirements inside the plant *prior to* discharge. Nothing in the Clean Water Act or state law requires this. Secondary treatment requirements and water quality-based effluent limits must only be met upon discharge into a navigable waters. (33 U.S.C. §1311(a) and (b)(1)(B).) The Regional Water Board must ensure its actions to implement the CWA are consistent with any applicable provisions of the CWA and its implementing regulations. (Cal. Water Code §13372.) In addition, restrictions on I/I are not required when the Regional Board has made no determination that such I/I is excessive,⁹ and where I/I reductions may limit the amount of wastewater available for future reclamation and reuse.

Federal regulations specify that I/I is considered “nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.” (40 C.F.R. §133.103(d).) Regional Board staff estimate the population of CMSA’s service area (*see* Tentative Permit Fact Sheet at F-4, Section 2.1.1.) as being 104,500, and previously claimed that the flows are “as high as 285 gallons per capita per day.” Presumably, staff’s calculation was made by dividing 30 million gallons per day (mgd) by this population to get more than 285 gallons per capita per day. However, given that CMSA’s flows rarely exceed 30 mgd (and state at page F-14 of the Tentative Permit Fact Sheet that this value is “about four times its average dry weather flow”), the average flows per capita per day would be substantially less. This value should be calculated based on the “average daily flow during periods of significant rainfall (i.e., any storm event that creates surface ponding and surface runoff; this can be related to a minimum rainfall amount for a particular geographic area),” not just highest flow days. (*See* USEPA Infiltration/Inflow, I/I Analysis and Project Certification, May 1985 at p. 1.) If this analysis were done, the total flows would be deemed “nonexcessive.”

CMSA has met all of the secondary treatment and water quality based effluent limitations and permit requirements for all blending events over the last permit term (Tentative Permit at p. F-7, Section 2.4.1.) Thus, additional requirements to address blending are not warranted or justified and represent an abuse of discretion.

⁹ Federal regulations at 40 C.F.R. §35.2005(b)(16) define “Excessive infiltration/inflow” as “The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.” (emphasis added). Furthermore, the regulations define “Non-excessive infiltration as “The quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.” (40 C.F.R. §35.2005(b)(28). The Regional Board staff did not perform the cost-effectiveness analysis cited in these regulations in its determination that the collection system agencies need to be co-permittees and that flows must be controlled due to “excessive I/I.” Because receiving water quality is not being impacted by CMSA’s effluent even during blending events, and because in many places in California storm water is being diverted to treatment plants to protect water quality, the stated need to reduce flows through the CMSA plant has not been adequately justified.

4. The Requirements of the SSS WDR Are Adequate to Reduce I/I and Blending Without Creating Additional Liability

Under the SSS WDR, collection systems are highly regulated and infractions can be enforced by the regional boards. The SSS WDR gives collection systems the ability to create their own Sewer System Management Plans (“SSMPs”) and Capital Improvement Programs (“CIP”), which can be updated on a rapid timeline. By mandating particular projects, particularly where resources are limited, the Tentative Permit restricts the collection system agencies in their ability to be nimble and address issues on the ground in a prioritized manner, and fails to allow for schedules to be modified in the case of strike, emergency, pandemic, or other situation that could arise.

The additional liability added by making the collection system agencies co-permittees has not been addressed in the Tentative Permit. This was one of the reasons why the SSS WDR has not been made an NPDES permit by the State Water Board. Currently, the collection system agencies are only liable under the CWA if they have a sewer spill that reaches waters of the United States for which no CWA defenses apply. When the collection system agencies are included as co-permittees on the CMSA permit, they become subject to Discharge Prohibition 3.5. and the operation and maintenance Standard Provisions in Attachments D and G. Because of this a third party citizen suit can be filed not just alleging an unpermitted discharge as it currently could, but could also allege:

- 1) Violation of Discharge Prohibition 3.5.
- 2) Violation of Provision 6.1 (which requires compliance with Standard Provisions in Attachments D and G, including proper operation and maintenance)
- 3) Violation of Attachments D and G (which are *separately and duplicatively* required to be met in the Tentative Permit – see Tentative Permit at page 5¹⁰)
- 4) Violation of Section 6.3.4.3 and/or Section 6.3.5.1

Therefore, one spill could have 4-6 alleged violations of permit provisions, instead of just one alleged violation of the CWA. At nearly \$60,000 per violation per day, the potential liability adds up quickly and could be over \$300,000 per spill per day, plus attorneys’ fees. As proper operation and maintenance is already required under the SSS WDR, and because I/I controls and sewer spill prohibitions are also included in the SSS WDR, it is unreasonable to impose

¹⁰ “IT IS HEREBY FURTHER ORDERED that the San Rafael Sanitation District, Ross Valley Sanitary District, and Sanitary District No. 2 of Marin County shall comply with Discharge Prohibition 3.5; Provisions 6.1, 6.3.4.3, and 6.3.5.1; **and** Attachments D and G of this Order.” Since Provisions 6.1.1 and 6.1.2 require compliance with “all ‘Standard Provisions’ in Attachment D,” and “all applicable provisions... in Attachment G,” requiring compliance twice in this Order is unnecessary. Further, by making the collection system agencies subject to all standard provisions, instead of just a subset that might be applicable, the staff is applying ALL sections of Attachment D despite its claims or desire not to. If the collection system agencies are not removed from the Tentative Permit, this at least must be fixed in the final draft.

duplicative regulation on the collection system agencies that are already focusing their limited ratepayer monies on fixing pipes and pumps and maintaining other conveyance infrastructure.¹¹

RVSD, SRSD, and SD2 understand the Regional Board's desire to oversee the collection system agencies' activities, but RVSD, SRSD, and SD2 are already under the SSS WDR, and RVSD is also under a Cease and Desist Order. (See footnote 1.) RVSD is under three layers of regulation when the CMSA permit includes the three satellite agencies as co-permittees. Regional Board staff rejected each of the options previously discussed in 2018 because they were not linked back to the bypass regulation and the need for CMSA to show no feasible alternatives. However, CMSA has already made that showing, even though arguably not required to do so by law, so no "linkage" is needed.

The Regional Board's 2018 experiment to add some of the collection system agencies to the previous NPDES permit for CMSA has not provided any added value to Regional Board oversight or to water quality outcomes that were not otherwise provided by RVSD's Cease and Desist Order and the SSS WDR. RVSD, SRSD, and SD2 received no interaction with Regional Board staff over the five-year duration of the 2018 Permit's coverage. The annual report tables were submitted, but no comments or feedback from Regional Board staff on these NPDES reports were received by RVSD, SRSD, and SD2 until the CMSA administrative draft permit was released. This regulatory experiment has only added potential liability to collection system agencies. RVSD, SRSD, and SD2 respectfully submit that this experiment should end after one permit term.

RVSD, SRSD, and SD2 collectively ask that the Tentative Permit not be adopted as proposed with the collection system agencies included as co-permittees. Instead, the Regional Board staff should remove the collection systems from the Tentative Permit and make the edits RVSD, SRSD, and SD2 have suggested that address and achieve everyone's goals of protecting water quality by reducing blending to the extent feasible, and recognizing and properly allocating limited public resources, while protecting the collection system agencies from unnecessary liability as we work together with the Regional Board to accomplish these shared goals.

¹¹ The California Legislature has found and declared that activities affecting water quality "shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (See Water Code §13000 (emphasis added).) This section sets State policy and imposes an overriding requirement on the Regional Boards that all water regulation be reasonable considering all circumstances. For reasons set forth above, the requirements contained in the Permit as discussed herein as applied to the collection system agencies are not reasonable, considering all of the circumstances. Therefore, the provisions contained in the proposed Permit as applied to the collection systems violate Water Code section 13000.

Respectfully submitted,



STEVEN MOORE
RVSD GENERAL MANAGER



DORIS TOY
SRSD DISTRICT MANAGER



R.J. SUOKKO
DISTRICT MANAGER
SANITARY DISTRICT #2 OF MARIN COUNTY

ATTACHMENT

cc: Melissa Thorne, Downey Brand LLP
Jason Dow, Manager, CMSA



COUNTY OF MARIN

March 10, 2023

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Re: Closed Session – Public Employee Performance Evaluation

Dear Directors:

I request that you conduct a closed session during your special meeting on March 17, 2023, to discuss the following matter: public employee performance evaluation of the District Manager. In my opinion, public discussion of this matter would prejudice your position.

DEPUTIES

The specific reason and the legal authority for the closed session are:

Colleen McGrath
ADMINISTRATIVE SERVICES
OFFICER

Government Code section 54957: A legislative body of a local agency may hold closed sessions to consider the evaluation of performance of a public employee.

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It should be noted that Government Code section 54954.5 requires the Board to post a Closed Session item on the Board Agenda. With respect to the above referenced matter, you should include the fact that you are conducting a public employee performance evaluation, the code section involved, and the title of the employee involved as set forth below.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
California Government Code Section 54957
Title: District Manager

Should you have any further questions, please contact me.

Respectfully submitted,
BRIAN E. WASHINGTON
Marin County Counsel

By:



Kerry Gerchow
Deputy County Counsel